Press Summary

15 April 2026

Orsted West of Dutton Sands (UK) Limited (now named Orsted Schroders Greencoat WODS HoldCo Limited) and others (Respondents) *v* Commissioners for His Majesty's Revenue and Customs (Appellant)

[2026] UKSC 12

On appeal from: [2025] EWCA Civ 279

Justices: Lord Lloyd-Jones, Lord Hamblen, Lord Burrows, Lady Rose and Lord Richards

Background to the Appeal

The respondents are all members of a group of companies of which the ultimate parent is Orsted A/S. They own and operate windfarms off the coast of England. During the course of planning and designing their windfarms, Orsted spent considerable sums on surveys and studies investigating many different aspects of the environment in which the windfarms would be constructed. The question raised by this appeal is whether those costs qualify for capital allowances under section 11(4) of the Capital Allowances Act 2001 ("section 11(4)"). If so, Orsted would be entitled to deduct a certain percentage of those costs from the income of the trade each year when computing the taxable profit.

Capital expenditure will qualify under section 11(4) if certain conditions are met. One such condition is that "it is capital expenditure on the provision of plant". HMRC accept that the generation assets of the windfarm treated as a single item is "plant" and that the expenditure on the reports and studies was capital in nature. The issue is whether the costs incurred in obtaining the surveys and studies to investigate the environment were incurred "on" the provision of the windfarms.

The First-tier Tribunal held that most of the expenditure on the studies and reports currently in dispute did qualify for capital allowances. The Upper Tribunal allowed HMRC's appeal and held that none of them qualified for the allowance. The Court of Appeal (Newey and Zacaroli LJJ and Sir Launcelot Henderson) allowed Orsted's appeal and held that all the expenditure qualified. HMRC now appeals to the Supreme Court.

Judgment

The Supreme Court unanimously allows the appeal. Lady Rose gives the judgment, with which Lord Lloyd-Jones, Lord Hamblen, Lord Burrows and Lord Richards agree.

Reasons for the Judgment

The Court holds that the costs incurred in obtaining studies and surveys are not capital expenditure "on" the provision of the windfarms.

The ordinary meaning of the words used in the context of section 11(4)(a) indicates a narrow test. The requirement that the expenditure must be "on" the provision of plant requires a close connection between the expenditure and the plant provided. Phrases used in other statutory provisions such as "in connection with" or "relating to" or "with a view to" connote a looser nexus than the word "on" **[74]**.

Orsted's construction of section 11(4) is not consistent with *Inland Revenue Commissioners v Barclay, Curle* [1969] 1 WLR 675 ("*Barclay, Curle*"). That case concerned a taxpayer who had incurred expenditure in creating a dry dock for use in its trade of shipbuilding and ship repair. The expenditure in dispute was the cost of excavating the earth to create a basin, and on lining that basin with concrete. The majority concluded that the dry dock was "plant" and that the excavation works and the concrete lining were "on" the provision of plant **[31]–[40]**. That case made clear that expenditure beyond the actual purchase price of the plant can fall within the provision, particular the cost of transporting the plant and installing it where it will be used.

However, *Barclay, Curle* is not authority for the proposition argued for by Orsted that all costs necessarily incurred to provide the windfarms would qualify as expenditure "on" the provision of plant. Orsted submitted that Lord Reid in that case was treating the excavation as something necessary to the provision of the plant and that was why it qualified. That is a misreading of his judgment. Each member of the court emphasised how integral the lined excavated basin was to the dry dock. They treated the lined basin as part of the plant itself, rather than as necessary to the provision of some other items as plant **[77]–[78]**. Further, if the test were as broad as argued by Orsted, it would have been clear that the costs of excavation and concreting were "on" the provision of plant. The fact that the House of Lords found the question whether the cost of excavation qualified to be a difficult question is not consistent with Orsted's broad construction **[76]**.

Ben-Odeco v Powlson (Inspector of Taxes) [1978] 1 WLR 1093 strongly supports HMRC's narrower construction of the phrase "on" the provision of plant. That case concerned a taxpayer who incurred commitment fees and capitalised interest on large loans it needed to finance the construction of an oil rig. The House of Lords held by a majority of four to one that the expenditure incurred in financing did not qualify **[41]–[49]**. The main point emphasised in *Ben-Odeco* was that there was a lack of proximity between the expenditure and the plant itself **[81]**.

Orsted submits that a key principle derived from *Ben-Odeco* is that taxpayers in the same position should be treated equally and it could not have been intended that a taxpayer who had to obtain a loan to buy an oil rig would be treated more favourably than a taxpayer who could buy the rig from its own resources. Similarly here a taxpayer who commissions a bespoke plant should be treated the same as a taxpayer who buys the same plant off the shelf. The design costs of an off the shelf item are built into the price paid yet the whole of the purchase price

qualifies for allowance. It follows, Orsted argues, that the design costs which are necessary for the fabrication of a bespoke plant should equally qualify. The Court rejects this argument. There are many costs incurred by a supplier that are wrapped up in the price at which it sells the item. The price set by the supplier says nothing about whether the elements incorporated in that price are qualifying capital expenditure when incurred by the taxpayer who purchases an item **[82]–[84]**.

Further, the Court accepts HMRC's argument that the expansive reading of section 11 argued for by Orsted risks scooping up expenditure which rightly falls within different sections in Chapter 3 of Part 2 and disturbing the careful balance between what is allowed and what is not allowed under the detailed terms of different provisions **[87]**. Section 11, as well as other capital allowance provisions, are needed to reflect the depreciation of capital assets used in the taxpayer's business. The concept of the capital allowance reflects both the gradual deterioration of the asset through the wear and tear and the ultimate need to replace it. The surveys and studies have only a tangential connection with the diminishing value of the windfarm assets. This further militates against including these surveys and studies within the ambit of section 11(4) **[88]–[89]**.

Although the purpose of section 11(4) is to incentivise business to invest in plant and machinery, the question remains: how extensive is that incentive? One cannot rely on the broad purpose of a provision to define where the precise boundary lies between what is caught and what is not caught by the provision **[90]–[92]**.

The Court does not accept Orsted's submission that, as the money spent on the surveys and studies would be reflected in its profits shown in its annual financial accounts, those costs should be allowed under the capital allowances regime. Generally accepted accounting methods have never determined how the taxable profits are calculated and cannot determine the construction of statutory wording **[93]**.

There was much discussion about the exact boundary between costs that should be regarded as having been incurred "on" the provision of plant and those that should not be so regarded. It is clear, however, that the costs incurred in obtaining the studies and surveys do not fall close to that boundary **[94]–[100]**.

References in square brackets are to paragraphs in the judgment.