EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (REFUND OF TAX) ORDER 2020

2020 No. 185

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 Section 33E of the Value Added Tax Act 1994 ("the Act") gives HM Treasury the power to entitle non-departmental public bodies and similar organisations to refunds of Value Added Tax (VAT) incurred in the course of their non-business activities. This instrument names four public bodies (High Speed Two (HS2) Limited, the East West Rail Company Limited, Transport for Wales and the Single Financial Guidance Body) which will be entitled to VAT refunds in this manner.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the United Kingdom.

4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

6.1 There are a number of VAT refund schemes for public bodies provided for in the Act. The section 33E scheme allows non-departmental public bodies and similar organisations to qualify for VAT refunds as directed by HM Treasury. The four bodies named in this instrument are the first to be granted VAT refunds under section 33E.

7. Policy background

What is being done and why?

7.1 This instrument names four bodies as entitled to recover VAT incurred in cost-sharing arrangements, or on the cost of contracting out certain services. The four bodies named are: -

- High Speed Two (HS2) Limited (HS2), a company responsible for delivering the new high-speed rail network linking London to Birmingham and the North of England. HS2 is a Department for Transport executive non-departmental public body, presently wholly funded through grant-in-aid.
- The East West Rail Company Limited (EWRC), a company set up by the government to accelerate the East West Rail project – a new rail link between Cambridge and Oxford. EWRC is non-departmental public body funded wholly by monthly receipts of grant-in-aid from the Department for Transport in order to carry out and manage the project.
- Transport for Wales (TfW), a company limited by guarantee responsible for the promotion and delivery of transport infrastructure and related services on behalf of the Welsh Government. TfW will be funded primarily through grant-in-aid directly from the Welsh Government.
- The Single Financial Guidance Body (SFGB), a non-departmental public body which replaces the three existing providers of government-sponsored financial guidance, namely the Money Advice Service, the Pensions Advisory Service and Pension Wise, bringing together the provision of debt advice, money guidance and pension guidance for the first time. SFGB will be funded through grant-in-aid by the Department for Work and Pensions.

7.2 Section 41 of the Act allows government departments to reclaim VAT incurred on the cost of contracting out a number of services, or incurred in cost-sharing arrangements, listed in a Treasury direction. This scheme ensures that what would otherwise be irrecoverable VAT does not become a disincentive to government departments contracting out public services to other providers or sharing their back-office costs.

7.3 Section 33E of the Act was introduced to allow other public bodies to recover VAT related to non-business activities on the same basis as government departments.

7.4 HM Treasury will name the four bodies in a direction, entitling them to reclaim non-business VAT insofar as the direction permits.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 This instrument does not consolidate any other legislation.

10. Consultation outcome

10.1 HMRC published a consultation on 17 October 2019, inviting responses on the draft

legislation. One minor technical comment was received, which does not necessitate any change to the published documents. There were no other responses to the consultation.

11. Guidance

11.1 HMRC guidance (VAT Government and Public Bodies) will be updated to include the changes legislated for in this instrument once the instrument has taken effect.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 The impact on the public sector is that the instrument will allow the public bodies named to reclaim VAT incurred in the course of their non-business activities.

12.3 A Tax Information and Impact Note covering this instrument was published on 17 October 2019 alongside the draft legislation and explanatory memorandum, and is available on the website at https://www.gov.uk/government/consultations/draft-legislation-the-value-added-tax-refund-of-tax-order-2019. It remains an accurate summary of the impacts that apply to this instrument.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The policy objective of this measure is that the named bodies should receive parity of treatment in terms of VAT recovery with government departments. The measure does not require further monitoring, beyond HMRC's normal risk-based assurance of VAT repayment claims.

14.2 This measure does not require a review clause under the Small Business Enterprise and Employment Act 2015, because it does not make or amend any regulations relating to the business activity of the named public bodies.

15. Contact

15.1 David Webb at Her Majesty's Revenue and Customs (Telephone: 03000 585994 or email: david.webb@hmrc.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Eileen Patching, Deputy Director for Indirect Tax Directorate at HMRC, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.