EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (REFUND OF TAX TO MUSEUMS AND GALLERIES) (AMENDMENT) ORDER 2008

2008 No. 1339

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

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

2.1 The Value Added Tax (Refund of Tax to Museums and Galleries) Order 2001 (S.I. 2001/2879; "the 2001 Order") specifies the bodies that are entitled to claim a refund of VAT under section 33A of the Value Added Tax Act 1994 (c. 23) ("the Act"). Such refunds are of VAT incurred by the bodies on goods and services used in providing free admission to specific museums and galleries which they operate. This instrument amends the 2001 Order to include six additional museums and galleries and to update the references to five existing museums and galleries.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 This instrument does not come into force before it is laid, nor is it laid less than 21 days before coming into force. However, this instrument does involve an element of retrospection. This is explained in the following section.

3.2 The explanatory note to this instrument explains that:

> "A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen."

This is because the accepted Government practice is that no IA will be published for HMRC and HMT tax measures for which:

- The total effect of the changes across all UK business is less than £100,000 of administrative burden costs/savings and/or £3m of compliance cost in total; and
- The Department's Better Regulation and Policy team has confirmed that
  - there are no disproportionate impacts on any business or sector; and
  - there are no other issues which might make publication of an IA advisable.

This is such a measure.

HMRC are working with BERR to ensure that the next edition of the Statutory Instrument Practice reflects these changes.

4. Legislative Background

4.1 Section 33A of the Act, inserted by section 98 of the Finance Act 2001 (c. 9), requires the Commissioners for Revenue and Customs (at that time the Commissioners of Customs and Excise) to refund VAT claimed by certain bodies operating museums and galleries. The VAT which may be refunded is that incurred by the bodies on supplies of goods and services, and acquisitions and importations of goods, attributable to the provision of free admission for the public to their museums and galleries.

4.2 Such VAT is not deductible as input tax, which can be set off against output tax liability, because it is not attributable to taxable supplies made by the bodies (see section 26(2) of the Act). This is because the provision of free admission is not a business activity.

4.3 Before the enactment of section 33A, bodies operating museums and galleries providing free admission for the public would therefore have borne the full burden of this VAT. Subsections (9)(a), (b) and (c) of section 33A allow the Treasury to specify the bodies to which section 33A applies and those museums and galleries which they operate which are to attract the entitlement to refunds ("relevant museums and galleries"). This instrument specifies additional bodies, and relevant museums and galleries, to which section 33A is to apply. It also updates the references to five existing relevant museums and galleries.

4.4 Although subsection (1)(c) requires the supply of goods or services, or the acquisition or importation of goods, to have been made on or after 1 April 2001, subsection (9)(d) allows the Treasury to specify a later date. This applies to orders made under subsections (9)(b) and (c). Where dates are indicated in column 3 of the Schedule to the 2001 Order they are substituted for 1 April 2001 in section 33A(1)(c).

4.5 Royal Assent to the Finance Act 2001 was given on 11 May 2001. This meant that, unless the power in subsection 9(d) was exercised in order to specify dates later than 1 April 2001, the first order made under subsection (9) would inevitably contain an element of retrospection, in that it would allow bodies to claim VAT refunds in respect of VAT incurred from 1 April 2001, that is before the order was made and laid.

4.6 The 2001 Order, made and laid on 9 August 2001, specified some later dates, but not in relation to all of the relevant museums and galleries. Consequently there were more than thirty museums and galleries in respect of which retrospective claims from 1 April 2001 could legitimately be made.

4.7 Because of the way that subsections (1)(c) and (9) were framed, this retrospection must clearly have been contemplated by Parliament. There is nothing in section 33A which requires it to be construed as allowing retrospection only in relation to orders made shortly after Royal Assent was given to the Finance Act 2001. The Treasury is not therefore required to exercise the power in subsection (9)(d) so as to specify not only a date later than 1 April 2001, but also a date later than the making of the order concerned.

4.8 This instrument does not come into force before it is laid, and is not laid less than 21 days before coming into force. It does however involve an element of retrospection in that it will allow claims for refunds of VAT incurred before it has been made and laid in relation to the six additional museums and galleries specified. It is understood that this does not cause a breach of the '21 day rule'.

4.9 The two orders which previously amended the 2001 Order (S.I. 2004/1709 and 2005/1993) also included such an element of retrospection.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 Section 33A of the Act supports the Government's commitment to free public access to the principal collections displayed in the main national museums and galleries. These are operated by the bodies listed in column 1 of the Schedule to the 2001 Order.

7.2 Section 33A allows the refund to these bodies of the VAT incurred on the goods and services purchased to display, house, maintain and publicise the collections on free display. In the absence of section 33A this VAT would be irrecoverable for the reasons explained above.

7.3 Many of the bodies listed in column 1 of the Schedule to the 2001 Order display their collections at several sites. For various reasons not every one of those sites admits the public free of charge. However section 33A is confined to VAT incurred in relation to sites to which the public is admitted free of charge. Consequently it was necessary for the 2001 Order also to list, in column 2 of the Schedule, those sites which offer free public access.

7.4 The Government's policy is that any new site of a body listed in column 1 should be eligible for inclusion in column 2, provided that it offers free access to the principal collections on display. The International Slavery Museum is a new site of the National Museums and Galleries on Merseyside, The Royal Air Force Museum Cosford is a site of the Royal Air Force Museum and the Museum of the History of Science is a site of the University of Oxford. The International Slavery Museum, The Royal Air Force Museum Cosford and the Museum of the History of Science all admit the public free of charge.

7.5 The Government's policy of free access to museums and galleries has been extended to include, from the dates that they ceased charging the public for admission, the People's History Museum and the National Football Museum. They are being added

to the bodies listed in column 1, and to the relevant museums and galleries listed in column 2, of the Schedule to the 2001 Order.

7.6 The Government's policy of free access to museums and galleries has also been extended to include certain university museums and galleries offering free access to the public. The University of Liverpool's Victoria Gallery and Museum is a new site which will admit the public free of charge when it opens. The University of Liverpool is being added to the bodies listed in column 1, and the Victoria Gallery and Museum is being added to the relevant museums and galleries listed in column 2, of the Schedule to the 2001 Order.

7.7 This instrument inserts the relevant dates in column 3 of the Schedule to the 2001 Order for each of the six additional relevant museums and galleries referred to above.

7.8 This instrument also makes changes to column 2 of the Schedule to the 2001 Order in relation to five of the relevant museums and galleries operated by National Museums and Galleries on Merseyside to reflect the fact that:

- Liverpool Museum has changed its name to World Museum Liverpool.
- The Museum of Liverpool Life is being redeveloped and is changing its name to the Museum of Liverpool.
- The postcode for The Lady Lever Art Gallery has changed.
- The Conservation Centre has changed its name to the National Conservation Centre.
- The HM Customs & Excise National Museum has changed its name to the HM Revenue and Customs National Museum.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 Similarly, there is no regulatory impact on the public sector as no additional resources will be required to ensure the correct application of the refund regime to these additional museums and galleries.

9. Contact

Lynda Barbato at HM Revenue and Customs Tel: 020 7147 0032 or e-mail: Lynda.Barbato@hmrc.gsi.gov.uk can answer any queries regarding the instrument.