EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (REFUND OF TAX TO MUSEUMS AND GALLERIES) (AMENDMENT) ORDER 2010

2010 No. 608

1. This explanatory memorandum has been prepared by HM Revenue and Customs 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. Purpose of the instrument

2.1 This Order amends the Schedule to the Value Added Tax (Refund of Tax to Museums and Galleries) Order 2001 (S.I. 2001/2879) ("the 2001 Order") to include six additional museums and galleries. 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 ("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 they operate.

2.2 The Order also amends the Schedule by deleting entries relating to museums for which claims for refunds under section 33A of the Act will no longer be made and to substitute new titles for museums specified by the Schedule.

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

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

4. Legislative Context

4.1 Section 33A of the Act, which was 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 that may be refunded is that incurred by the bodies on supplies of goods and services, and acquisitions and importations of goods, attributable to their provision of free admission of the public to their museums and galleries.

4.2 Such VAT is not deductible as input tax (which can be set off against a person's output tax liability) because it is not attributable to taxable supplies made by the bodies (see section 26(2) of the Act). In fact, the provision of free admission is not a business activity. Before the enactment of section 33A, therefore, bodies running museums and galleries providing free admission would have borne the full burden of this VAT. Subsections (9)(a) and (b) of section 33A allow the Treasury to specify the bodies to which section 33A applies and the particular museums and galleries operated by them that are to attract the entitlement to refunds ("relevant" museums and galleries). That is effectively what this new Order does.

4.3 Although subsection (1)(c) of section 33A requires the supply of goods or services to the body (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. The dates indicated in column 3 of the Schedule to the 2001 Order are those substituted for 1 April 2001.

4.4 It may be noted that 1 April 2001 fell before Royal Assent to the Finance Bill 2001 (which was given on 11 May 2001). This meant that, unless the power in section 33(9)(d) was exercised in order to specify a date 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 a period before the Order was made and laid. The 2001 Order did specify some dates that were later, but not in relation to all of the relevant galleries and museums that were specified. Consequently, there were indeed some galleries and museums in respect of which retrospective claims could legitimately be made.

4.5 Because of the way subsections (1)(c) and (9) of section 33A were framed, this retrospection must clearly have been contemplated by Parliament. There is nothing in section 33A to require it to be construed as allowing retrospection only in relation to orders made shortly after Royal Assent to the Finance Act 2001. When the Treasury makes an Order and specifies a date under subsection (9)(d), that date may not be earlier than 1 April 2001, but it may predate the making of the Order, thus allowing an element of retrospective VAT recovery.

4.6 Although it does not purport to come into force before it has been made and laid, this Order will allow claims for refunds in respect of VAT incurred before it has been made and laid. It is understood that this does not result in a breach of the 21-day rule.

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

- *What is being done and why*

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 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. Ordinarily this VAT would be irrecoverable for the reasons already explained.

7.3 Periodically representations are made to include in the measure either a new body (as named in column 1 of the Schedule to the 2001 Order), or some new museum or gallery premises of an existing body (as named in column 2 of the Schedule). It is also from time to time necessary to make amendments to the existing

list of bodies, museums and galleries in the Schedule to take account of changing circumstances – for example, a change in name or title.

7.4 This Order amends column 1 of the Schedule to add three new bodies, one of which has two sites for the purposes of column 2. All offer the required amount of free public access to the permanent collections on display. It also amends column 2 to show two new museum sites of bodies named in column 1 (the University of Cambridge and the Museum of London).

7.5 The Order deletes from the existing list the Theatre Museum (National Museum of Performing Arts) and the Wellington Museum. For inclusion in the refund scheme, the museum or gallery must be covered by the Government's free access commitment. This means that central government or a devolved administration will have some influence over the museum or gallery's admission policy.

7.6 The Theatre Museum has closed and its collection is in storage and not currently on public display. Therefore it no longer qualifies for this scheme. The Wellington Museum is no longer covered by the Government's free access commitment, it is administered by another body who have decided to charge for admission and therefore it cannot remain in the scheme.

7.7 Finally, the Order updates the details of some existing bodies named in the Schedule to the 2001 Order, merely to reflect changes in circumstances.

- *Consolidation*

7.8 The 2001 Order has been amended by S.I. 2004/1709, 2005/1993 and 2008/1339 so as to add new bodies to the scheme or to add additional museums and galleries operated by bodies already within the scheme. This Order similarly amends the 2001 Order, adding and removing museums and galleries to and from the scheme. There are no plans to consolidate the legislation in the foreseeable future.

8. Consultation outcome

8.1 No consultation on this instrument has been undertaken as it is not required.

9. Guidance

9.1 Guidance regarding the section 33A refund scheme is available in an HMRC public notice "VAT refund schemes for national museums and galleries" (Notice 998).

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible. The inclusion of the museums and galleries in the refund scheme is at the request of the institutions. Most of the museums and galleries will already be registered for VAT under their parent institution and claim recovery of VAT when the parent body makes a VAT return. Those bodies will therefore continue to use their existing procedures to claim VAT in relation to their museums and galleries under section 33A as a result of this Order. Likewise where any museum or gallery is registered for VAT independently of its parent institution it will claim recovery of VAT on its periodic VAT returns. Any museum or gallery included in this Order that is not VAT registered will be able to use an existing procedure to recover VAT on qualifying supplies, acquisitions and importations occurring on or after the date of admission to the refund scheme.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been produced for this instrument as it has a negligible impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The policy objective of this measure is that irrecoverable VAT should not become a disincentive to museums providing free admission to their collections. Allowing the bodies named in this instrument to recover VAT incurred in carrying out their duties and activities will ensure this does not happen. The measure does not require further monitoring, beyond HM Revenue and Customs' normal risk-based assurance of VAT repayment claims.

13. Contact

Richard Stokes at HM Revenue and Customs Tel: 020 7147 0733 or email: Richard.Stokes2@hmrc.gsi.gov.uk can answer any queries regarding the instrument.