EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (REFUND OF TAX TO MUSEUMS AND GALLERIES) (AMENDMENT) ORDER 2012

2012 No. 2731

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. Purpose of the instrument

2.1 The Valued 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 ("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. This instrument amends the Schedule to the 2001 Order to add two new bodies to column 1, and five relevant museums and galleries to column 2, together with an additional site for a museum already listed in column 2, and updates the references to fifteen 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 it comes into force. However, this instrument does involve an element of retrospection (the vires for such retrospection is provided for in s33A(9)(d) of the Act) in that taxpayers are permitted to claim a refund of VAT for periods prior to the Order coming into force. 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). This is because the provision of free admission is not a taxable supply.

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 fifteen existing museums and galleries.

4.4 Although subsection (1)(c) 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. This applies both to an order made under (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 Bill 2001 was given on 11 May 2001. This meant that, unless the power in s33A(9)(d) was exercised in order to specify a date significantly later than 1 April 2001, the first order made under subsection (9) would inevitably have contained 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 specified some dates that were later, but not in relation to all of the relevant galleries and museums that were specified. Consequently, there were more than thirty museums and galleries in respect of which retrospective claims could legitimately be made.

4.7 Because of the way subsections (1)(c) and (9) were framed, this retrospection must have been clearly 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 was given 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 that 1 April 2001, but it may predate the making of the Order, thus allowing an element of retrospective VAT recovery for the benefit of the taxpayer.

4.8 This instrument does not come into force before it is laid, and it 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 6 additional museums and galleries specified. It is understood that this does not cause a breach of the 21-day rule. The four Orders which previously amended the

Schedule to the 2001 Order (S.I 2004/1709, S.I. 2005/1993, S.I. 2008/1338 and S.I. 2010/608) also included such an element of retrospection.

4.9 However, the Committee may wish to know the reason why these particular dates for insertion in column 3 of the Schedule to the 2001 Order were chosen.

4.10 These are the dates from which the New Bodleian Library (Weston Library) and the Stanley and Audrey Burton Gallery started incurring VAT including on their planning and construction costs. As with VAT incurred after a museum is opened to the public, where a body intends to grant the free right of admission to its collections any VAT incurred on such costs would normally be recoverable.

4.11 The Royal Observatory and Queen's House have been permitting free admission and are now added as separate premises. The other additions are the Urbis Centre, which is an additional site of the National Football Museum, and Seized!, the former HMRC Museum.

4.12 This Order was not made earlier because there were a number of technical issues that required resolution before the museums could be added to the refund scheme.

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 VAT 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. 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.

7.2 Most of the bodies listed in column 1 of the Schedule to the 2001 Order display their collections in several buildings or sites. For various reasons, not every one of these buildings or sites admits the public free of charge. However, section 33A is confined exclusively to VAT incurred in

connection with collections that the public can view without payment. Consequently, it was necessary for the Schedule to the 2001 Order to also list, in column 2, those sites which are committed to free public access.

7.3 This instrument adds 2 new bodies to those listed in column 1 and to column 2 adds a museum/gallery operated by each of those bodies. These are:

i) In column 1, the University of Leeds. In column 2, the Stanley and Audrey Burton Gallery which has been allowing free admission to the public since it opened.

ii) In column 1, the UK Border Agency National Museum has been added and is now the sponsoring body of Seized! The Borders and Customs Uncovered which is the former HMRC Museum and has been renamed following a change of ownership.

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. This instrument adds museums/galleries to column 2, in addition to those already identified at Para 7.3 above. These are:

i) The Royal Observatory and Queen's House Greenwich, which are sites of the National Maritime Museum. They have been added to column 2 so they are clearly identified as sites which fall within the VAT Refund Scheme.

ii) The Urbis Centre, a new site for the National Football Museum.

iii) The New Bodleian Library (Weston Library) of the University of Oxford which will admit the public free of charge when it opens.

7.5 This instrument inserts the relevant dates in column 3 of the Schedule to the 2001 Order for each of the additional relevant museums and galleries referred to above and new sites of existing bodies listed in Para 7.4 above.

7.6 This instrument also makes changes to columns 1, 2 and 3 of the Schedule to the 2001 Order to amend and update existing entries.

8. Consultation outcome

8.1 The new institutions were nominated by DCMS according to their normal procedures so consultation has been restricted to a 4 week exposure of the draft Order.

9. Guidance

9.1 The VAT Refund Schemes for National Museums and Galleries, Notice 998 will be updated to include the changes legislated for in the Statutory Instrument.

10. Impact

10.1 A Tax Information and Impact Note covering this instrument was published on 21 September 2012 alongside the draft Value Added Tax (Refund of Tax to Museums and Galleries)(Amendment) Order 2012 and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

10.2 Adding two bodies to the VAT Refund Scheme for Museums will assist in enabling free public access to collections that have not previously been available to the general public.

11. Regulating small business

11.1 Some of the museums and galleries involved are small businesses but the net impact on them is believed to be insignificant.

12 Monitoring and 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

Alec Tasker at HM Revenue and Customs Tel: 020 7147 0651 or email: alec.tasker@hmrc.gsi.gov.uk can answer any queries regarding the instrument.