EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (REFUND OF TAX TO MUSEUMS AND GALLERIES) (AMENDMENT) ORDER 2014

2014 No. 2858

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

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 four new bodies to Column 1, and twelve relevant museums and galleries to Column 2 and updates the references to four existing museums and galleries.

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

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 incurred by certain bodies operating museums and galleries on supplies of goods and services, and acquisitions and importations of goods, that is 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 four 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

four additional museums and galleries specified. It is understood that this does not cause a breach of the 21-day rule. The five Orders which previously amended the Schedule to the 2001 Order (S.I 2004/1709, S.I. 2005/1993, S.I. 2008/1338, S.I. 2010/608 and S.I. 2012/2731) 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 With regards to the Design Museum, it is the date agreed with HMRC from which it started incurring VAT on its 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 refundable.

4.11 With regards to the Special Collections Centre, inserted in Column 2 opposite the University of Aberdeen in Column 1, the specified date relates to the time from which this museum has been providing free admission.

4.12 Following the amendment made in this instrument to the Science Museum in Column 1, which has become the Science Museum Group, and the Museum of Science and Industry in Manchester's organisational move to this body, it has been re-inserted accordingly in Column 2, with its original date maintained in Column 3.

4.13 Similarly, the National Coal Mining Museum for England has been re-inserted into the Schedule to the 2001 Order by this Order, though no longer specified under the Science Museum Group (as amended by this Order), but as a relevant body in Column 1 in its own right. As this is an administrative re-insertion, it keeps its original specified date in Column 3.

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 four new bodies to those listed in Column 1 and to Column 2 adds at least one museum or gallery operated by each of those bodies. These are:

7.3.1 The Design Museum, whose specified museum of the same name in Column 2 will allow free admission to the public when it opens its new gallery in Kensington;

7.3.2 The University of Leicester, whose specified museum, Embrace Arts Centre, Fielding Johnson Building, has been allowing free admission to the public since it opened;

7.3.3 Design Dundee Ltd, which is a partnership between the Victoria and Albert Museum, Dundee City Council, the University of Dundee, the University of Abertay Dundee and Scottish Enterprise. It receives grant-in-aid funding from the Scottish Government. Its specified museums, entitled "V & A Dundee" at its various locations, will include permanent exhibition spaces that allow free admission to the public; and

7.3.4 The National Coal Mining Museum for England. This museum was previously listed under the Science Museum but is not part of the newly formed Science Museum Group. It is now to be treated as a qualifying body in its own right.

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 or galleries to Column 2, in addition to those already identified at Para 7.3 above. These are:

7.4.1 Kettle's Yard, which is a site of the University of Cambridge;

7.4.2 The Special Collections Centre, which is a site of the University of Aberdeen; and

7.4.3 The British Museum, Science Museum Group and the Victoria & Albert Museum each store part of their permanent, already qualifying collections in a shared storage facility at Blythe House, 23 Blythe Road, Hammersmith, London. These premises are added in Column 2 against each of those museums in Column 1.

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 7.3 and 7.5 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

In accordance with HMRC's Tax Consultation Framework, the Order will be published in draft for a four week technical consultation period.

9. Guidance

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 will be published on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

10.2 Adding new bodies, museums or galleries 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

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: 03000 586047 or email: alec.tasker@hmrc.gsi.gov.uk can answer any queries regarding the instrument.