EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (REFUND OF TAX TO MUSEUMS AND GALLERIES) (AMENDMENT) ORDER 2016

2016 No. 235

1. Introduction

1.1 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.

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

2. Purpose of the instrument

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 ("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 three new bodies to Column 1, add four relevant museums and galleries to Column 2 and update references to two existing museums and galleries.

3. Matters of special interest to Parliament

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 fewer than 21 days before it comes into force. However, this instrument does involve an element of retrospection (the vires for such retrospection is provided in paragraph (d) of subsection 33A(9) of the Act) in that once the Order comes into force 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.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

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 are attributable to their provision of free admissions for 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 subsection 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. Subsection (9) of section 33A allows 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").

4.4 Although paragraph (c) of subsection (1) 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, paragraph (d) of subsection (9) allows the Treasury to specify a later date. This applies both to an order made under either paragraph (b) or (c) of subsection (9). Where dates are indicated in Column 3 of the Schedule to the 2001 Order they are substituted for 1 April 2001 in paragraph (c) of subsection 33A(1).

4.5 Royal Assent to the Finance Bill 2001 was given on 11 May 2001. This meant that, unless the power in paragraph (d) of subsection 33A(9) 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, 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 paragraph (c) of subsection (1) and subsection (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 paragraph (d) of subsection (9) 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 additional museums and galleries specified. It is understood that this does not cause a breach of the 21-day rule. The six Orders which previously amended the Schedule to the 2001 Order (S.I 2004/1709, S.I. 2005/1993, S.I. 2008/1339, S.I. 2010/608, S.I. 2012/2731 and S.I. 2014/2858) 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 Kelvin Hall operated by the National Library of Scotland, the specified date, 1 April 2014, relates to the date it decided to begin its application for inclusion.

4.11 With regards to the Women's Library operated by the London School of Economics and Political Science, the specified date, 1 May 2012, relates to the date that it began the process of moving the historical documents to a new site.

4.12 With regards to the Essex Collection of Art from Latin America (ESCALA) Gallery operated by the University of Essex, the specified date, 20 March 2014, relates to the date that it decided to install the collection within the new building and make the building open to the public to view the collection without an admission charge.

4.13 With regards to the Middlesbrough Institute of Modern Art operated by Teesside University, the specified date, 1 September 2014, relates to the date on which the gallery was purchased by Teesside University.

5. Extent and Territorial Application

5.1 The extent of this instrument is to the whole of the United Kingdom.

5.2 The territorial application of this instrument is to all of the United Kingdom.

6. European Convention on Human Rights

6.1 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 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 also to list, in Column 2, those sites which are committed to free public access.

7.3 This instrument adds three new bodies to those listed in Column 1 together with their relevant museum or gallery to Column 2. These are:

- London School of Economics and Political Science, whose specified museum, The Women's Library, has been allowing free admission to the public since 1 August 2004 under its present and previous operators;
- The University of Essex, whose specified gallery, Essex Collection of Art from Latin America (ESCALA) Gallery, has been allowing free admission to the public since it opened; and
- The Teesside University, whose specified gallery, Middlesbrough Institute of Modern Art, has been allowing free admission to the public since it opened.

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 Kelvin Hall, which is a site of the National Library of Scotland to Column 2.

7.5 This instrument adds the phrase "(in respect of the historical collections in its galleries, temporary exhibitions and other related public programmes and events)" underneath The Women's Library and the sites of the National Library of Scotland in Column 2. The scheme covers the permanent collections of these libraries, as they qualify as museum collections. VAT incurred to other parts of the libraries are subject to the normal rules.

7.6 This instrument also makes changes to Column 2 of the Schedule to the 2001 Order to amend and update existing entries.

Consolidation

7.7 HMRC do not intend to consolidate the relevant legislation.

8. Consultation outcome

8.1 HMRC issued a public consultation (14 January – 12 February 2016) and received no responses on modifying the Statutory Instrument or opposing the proposal.

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 The impact on business, charities or voluntary bodies is negligible.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note was published on 14 January and is available on the Government website at https://www.gov.uk/government/publications/vat-amendments-to-the-vat-refund-scheme-for-museums-and-galleries

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses, as the net impact on them is believed to be insignificant.

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

13.1 Mustafa Noor at the HM Revenue and Customs Telephone: 03000 579 656 or email: mustafa.noor@hmrc.gsi.gov.uk can answer any queries regarding the instrument.