EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (REFUND OF TAX TO THE EAST MIDLANDS COMBINED COUNTY AUTHORITY) ORDER 2024

2024 No. 1145

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) on behalf of His Majesty's Treasury and is laid before the House of Commons by Command of His Majesty.

2. Declaration

2.1 James Murray MP, Exchequer Secretary to the Treasury, confirms that this Explanatory Memorandum meets the required standard.

2.2 Eileen Patching, Deputy Director for Indirect Tax Policy, at HMRC, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 David Smith at HMRC Telephone: 03000 593922 or email: david.smith7@hmrc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument specifies the East Midlands Combined County Authority for the purposes of section 33 of the Value Added Tax Act 1994 ("section 33"). The effect of the instrument is that this body will be entitled to claim a refund of value added tax ("VAT") incurred on goods and services purchased for its non-business activities.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 The Secretary of State for the Ministry of Housing, Communities and Local Government is empowered by The Levelling-up and Regeneration Act 2023 to create Combined County Authorities. A Combined County Authority is a body corporate which brings together the whole area of a two-tier county council with the whole area of one or more of a two-tier county council, a unitary county council, or a unitary district council. It allows a group of local authorities to pool appropriate responsibility

and receive certain delegated functions from local and/or central government in order to deliver policy more effectively over a wider area.

5.2 The East Midlands Combined County Authority was established under the East Midlands Combined County Authority Regulations 2024 (SI 2024/232) on 28 February 2024.

5.3 VAT incurred in the course of non-business activities is not generally recoverable. This means that ordinarily public bodies are unable to recover the VAT charged on their purchases of goods and services (or imports of goods) related to their statutory duties because these are not business activities for VAT purposes. However, section 33 contains a VAT refund scheme that allows certain bodies to recover the VAT incurred in respect of their non-business activities. The purpose of the refund scheme is to ensure that irrecoverable VAT does not become a cost that has to be met from local taxation.

5.4 To qualify, a body must be named in section 33(3), either generically or individually or specified by HM Treasury in an Order under section 33(3)(k).

5.5 The East Midlands Combined County Authority is not named in section 33(3). However, it meets the criteria for consideration by HM Treasury for admittance to the section 33 refund scheme. HM Treasury is now using its powers under section 33(3)(k) to specify the East Midlands Combined County Authority for these purposes, which will provide this authority with parity of treatment with other local government bodies.

5.6 The East Midlands Combined County Authority does not have any unique identifying numbers that may be included in the instrument.

5.7 As a result of the above there is no change in policy but a simple use of the relevant process for adding a body to the section 33 refund scheme.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument is made under sub-section (3)(k) of section 33, Value Added Tax Act 1994, and specifies the East Midlands Combined County Authority for the purposes of the VAT refund scheme under section 33.

6.2 The VAT refund scheme under section 33 of the Value Added Tax Act 1994 allows certain eligible bodies to claim a refund of VAT charged on supplies of goods and services to them (or the importation of goods by them) in pursuance of their non-business activity. In the absence of section 33, this VAT would not usually be recoverable under the normal VAT rules because it is not attributable to supplies made in the course of business.

6.3 HM Treasury has the power under section 33(3)(k), Value Added Tax Act 1994 to make an Order specifying new bodies that qualify for this refund scheme.

Why was this approach taken to change the law?

6.4 To qualify for the VAT refund scheme under section 33, a body must be defined in section 33(3) or separately specified in a Treasury Order. The East Midlands Combined County Authority is not defined in section 33(3) and must therefore be specifically named in an Order under section 33(3)(k) to be included in the refund scheme.

7. Consultation

Summary of consultation outcome and methodology

7.1 As this change impacts on a single entity and provides the East Midlands Combined County Authority with parity of treatment with other local government bodies, no consultation was undertaken.

8. Applicable Guidance

8.1 Guidance relating to the administration of the section 33 refund scheme is available in the VAT Government and Public Bodies manual on GOV.UK[1]. The manual will be updated to include the change made by this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A Tax Information and Impact Note covering this instrument will be published on GOV.UK[2].

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the legislation does not apply to their activities.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector beyond the named body.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 For reasons of consistency, the VAT issues relating to the public sector are dealt with by a dedicated unit within HMRC. Normal audit activity will encompass the change. Additionally, the measure will be kept under review through communication with affected taxpayer groups.

10.2 The instrument does not include a statutory review clause as this Order does not make regulatory provision in relation to a qualifying activity, as defined in sections 29 and 32 of the Small Business, Enterprise and Employment Act 2015.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

[1] VAT Government and Public Bodies Manual: https://www.gov.uk/hmrc-internal-manuals/vat-government-and-public-bodies.
[2] Tax Information and Impact Note: https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).