EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (REFUND OF TAX TO THE HEALTH SERVICES SAFETY INVESTIGATIONS BODY) ORDER 2024

2024 No. 1144

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 Section 33E of the Value Added Tax Act 1994 (c. 23) ("the Act") gives the Treasury the power to specify non-departmental public bodies and similar organisations as bodies which may claim refunds of Value Added Tax ("VAT") incurred in the course of their non-business activities. This instrument specifies the Health Services Safety Investigations Body ("the HSSIB") so that, once it is in force, the HSSIB will be entitled to claim VAT refunds under section 33E.

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 HSSIB is a recently created publicly-funded body which investigates patient safety concerns across the NHS in England and in independent healthcare settings where safety learning could also help to improve NHS care. This instrument specifies the HSSIB as a body entitled to recover VAT incurred in cost-sharing arrangements, or on the cost of contracting-out certain services under section 33E of the Act.

5.2 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.

5.3 Section 41 of the Act allows government departments to reclaim VAT on the cost of contracting out a number of services, or the VAT incurred in cost-sharing arrangements, listed in a Treasury direction. This scheme ensures that what would otherwise be irrecoverable VAT does not become a disincentive to contracting out public services to other providers, or to departments sharing their back-office costs.

5.4 Section 33E of the Act was introduced to allow other public bodies to recover VAT related to their non-business activities on the same basis as government departments.

5.5 To qualify, a body must be specified by the Treasury in an Order under section 33E. The HSSIB meets the criteria for consideration by the Treasury for admittance to the section 33E refund scheme. The Treasury is therefore naming the HSSIB in an Order entitling that body to reclaim non-business VAT insofar as section 33E permits.

5.6 There is no change in policy. This instrument is made to add the recently created HSSIB to the section 33E refund scheme.

6. Legislative and Legal Context

How has the law changed?

6.1 The HSSIB was established by section 109 of the Health and Care Act 2022 (c. 31), and came into force on 1 October 2023. This instrument provides that the HSSIB is a specified person for the purposes of section 33E of the Act.

Why was this approach taken to change the law?

6.2 There are a number of VAT refund schemes for public bodies provided for in the Act. The section 33E scheme allows a specified person 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 such non-business activity, as directed by the Treasury.

6.3 The power in subsection (8) of section 33E to specify a person for the purposes of that section in an order made by the Treasury is the only approach to providing that the recently established HSSIB is a specified person in section 33E.

7. Consultation

Summary of consultation outcome and methodology

7.1 As this change impacts on a single entity and provides the HSSIB with parity of treatment with government departments, no consultation was undertaken.

8. Applicable Guidance

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

[1] VAT Government and Public Bodies manual: https://www.gov.uk/hmrc-internal-manuals/vat-government-and-public-bodies/vatgpb9660

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 His Majesty's Revenue and Customs. 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.

[2] Tax Information and Impact Note: https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins

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.

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").