EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (REFUND OF TAX TO THE NATURAL RESOURCES BODY FOR WALES) ORDER 2013

2013 No. 412

1. This explanatory memorandum has been prepared by HM Revenue and Customs ("HMRC") and is laid before the House of Commons by Command of Her Majesty. It contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument specifies a body for the purposes of section 33 of the Value Added Tax Act 1994 ("section 33"). The effect is that the body is entitled to claim refunds of VAT charged on supplies, acquisitions and importations even though those supplies, acquisitions and importations are not for the purpose of a business carried on by them.

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

3.1 None.

4. Legislative Context

4.1 Section 33 provides that certain local government bodies are able to recover the VAT which they are charged when they purchase goods or services in pursuance of their non-business activity. Section 41 of the VAT Act has a similar effect in relation to the Crown or government departments but only where they contract-out certain qualifying services. This VAT would not, in the absence of sections 33 or 41, be recoverable as local government bodies or the Crown do not usually make business supplies as defined in the VAT Act. Under section 33(k) the Treasury may specify additional bodies to whom section 33 is to apply.

4.2 The National Resources Body for Wales ("NRBW") will be established on 19 July 2012 by the Welsh Ministers, pursuant to section 11 of the Public Bodies Act (c.24). With effect from 1 April 2013 it will assume the responsibilities of the Environment Agency Wales, Forestry Commission Wales, and the Countryside Council for Wales, (collectively referred to as the "predecessor bodies"); the predecessor bodies will in turn be wound-down or abolished. Both the Environment Agency Wales and the Forestry Commission Wales were specified under section 33 and 41 respectively.

4.3 This Order specifies that NRBW for the purposes of section 33 so that the NRBW will have the same VAT treatment as the predecessor bodies whose functions it has assumed."

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As this 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 Public bodies are not normally able to recover VAT paid on purchases made to support their statutory duties because these are not business activities and input VAT is only recoverable on purchases made to support taxable business activities. However, since 1973, certain bodies – mainly in local government - have been entitled to recover this VAT under a special refund scheme provided for in section 33. The objective is to ensure that irrecoverable VAT does not become a cost that has to be met from local taxation.

7.2 To qualify, a body must be named in section 33(3), either generically or individually. The Treasury has the power under section 33(3)(k) to add new bodies to the list.

7.3 As a consequence of the enactment of the Natural Resources Body for Wales (Establishment) Order 2012 from 1 April 2013 this body will undertake environmental protection functions presently undertaken by the Environment Agency Wales, the Forestry Commission Wales and the Countryside Council for Wales.

7.4 The predecessor bodies are not explicitly referred to in sections 33 or 41, however those sections prescribe general categories of body to whom the provisions are to apply and it was considered that the predecessor bodies fall within those categories. It is not considered that the NRBW will itself fall within the general categories prescribed by section 33 or 41 (section 41 provides for refunds of VAT costs to government bodies where they contract out certain qualifying services in pursuance of their non-business activity).

7.5 However, HM Treasury has published criteria setting out when it will exercise the power to extend section 33 by specifying a further body under section 33(k). Those criteria are that the body in question undertakes a function ordinarily carried out by local government, and has a power to draw funding directly from local taxation. The NRBW satisfies both of those criteria, and it is therefore considered appropriate to specify it under section 33(k).

8. Consultation outcome

8.1 HMRC has not followed the consultation procedure set out in the Tax Consultation Framework. This is because the purpose of the measure is to ensure that, for all practical purposes, the NRBW inherits the same tax treatment as its predecessor bodies and not to bring about a substantive change to the tax code. It is therefore considered that this measure falls within one of the exceptions ("other minor measures") to the requirement to consult set out in the paragraph 8 of the Tax Consultation Framework

9. Guidance

9.1 Existing guidance is being updated to name this body. No further guidance is required at this stage.

10. Impact

10.1 The impact on businesses, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 A Tax Information and Impact Note covering this instrument will be published on the HMRC website at http://www.hmrc.gov.uk/the library/tiins/htm

11. Regulating small business

11.1 This measure does not apply to small businesses.

12. Monitoring & review

12.1 For reasons of consistency, the VAT issues relating to the Welsh Government are dealt with by a dedicated unit within HMRC. Normal audit activity will encompass these changes.

13. Contact

Alan Mckay at HMRC Tel: 0207 147 2622 or email: alan.mckay@hmrc.gsi.gov.uk can answer any queries regarding this instrument.