EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (REFUND OF TAX TO THE OLD OAK AND PARK ROYAL DEVELOPMENT CORPORATION) ORDER 2016

2016 No. 307

1. Introduction

1.1 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.

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 c. 23 ("Section 33"). The effect is that the specified 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 Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

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 33 provides that certain local government bodies are able to recover the VAT that they are charged when they purchase goods or services in pursuance of their non-business activity. Section 41 of the Value Added Tax Act 1994 has a similar effect in relation to the Crown or government departments but only where they contract-out certain qualifying services. In the absence of section 33 or 41, this VAT would not be recoverable, as local government bodies or the Crown do not usually make business supplies as defined in the Value Added Tax Act 1994. Under section 33(3)(k) the Treasury by Order specify additional bodies to whom section 33 is to apply.

4.2 The Old Oak and Park Royal Development Corporation ("OPDC") has been established as a Mayoral Development Corporation under The Old Oak Park and Park Royal Development Corporation (Establishment Order) 2015[1].

4.3 Under the Localism Act 2011 c. 20, the OPDC has been granted a number of specific powers and performs a number of statutory functions, many of which are not regarded as business activities for VAT purposes.

4.4 Under the normal VAT rules, it is unable to recover the VAT incurred on purchases made in relation to these activities. This Order will specify the OPDC under section

[1] S.I. 2015/53

33(3)(k) of the Value Added Tax Act 1994, which will allow them to recover VAT incurred on purchases made to support their non-business activities.

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 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 must be met from local taxation.

7.2 To qualify, a body must be either named in section 33(3), generically, individually or specified by the Treasury under section 33(3)(k). The OPDC is not a body which is named in section 33(3).

7.3 The Treasury has published criteria setting out when it will exercise the power to extend section 33 by specifying a further body under section 33(3)(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.

7.4 The planning functions of the local authorities in relation to the Mayoral development area[2] have been transferred to the OPDC so that it meets the first criterion i.e. it carries out a function ordinarily carried out by local government.

7.5 In London, the Greater London Authority ("GLA") precepts on the London Boroughs for itself and for its 'functional bodies'. London is therefore unique because the GLA's precept on behalf of the functional bodies has been accepted as sufficient to meet the second criterion. Mayoral development corporations such as the OPDC are named 'functional bodies' of the GLA.

7.6 The OPDC therefore satisfies the Treasury's published criteria and it is considered appropriate to specify the OPDC under section 33(3)(k).

Consolidation

7.7 HMRC do not intend to consolidate the relevant legislation.

[2] "Mayoral development area" is defined in Article 2 of The Old Oak Park and Park Royal Development Corporation (Establishment Order) 2015 (S.I. 2015/53) .

8. Consultation outcome

8.1 As the purpose of the measure is to ensure that the OPDC will have the same tax treatment as other bodies and not to bring about a substantive change to the tax code, it is considered that this measure falls within one of the exceptions ("other minor measures") to the requirement to consult set out in 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 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 A Tax Impact and Information Note was published on 28 January 2016 and is available on the Government website at https://www.gov.uk/government/publications/vat-refunds-of-non-recoverable-vat-for-the-old-oak-and-park-royal-development-corporation.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 This measure will be reviewed through communication with affected taxpayer groups.

12.2 A dedicated unit within HMRC deals with the VAT issues of the OPDC and normal audit activity will encompass these changes.

13. Contact

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