EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (REFUND OF TAX TO THE TEES VALLEY AND WEST MIDLANDS COMBINED AUTHORITIES) ORDER 2016

2016 No. 993

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 the Tees Valley Combined Authority and the West Midlands Combined Authority for the purposes of section 33 of the Value Added Tax Act 1994 ("section 33"). The effect is that these authorities will be entitled to claim a refund of VAT charged on supplies, acquisitions and importations even though those supplies, acquisitions and importations are not used for the purpose of any 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 This instrument is made under subsection (3)(k) of section 33.

4.2 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. Section 33(3)(k) enables the Treasury to make an order specifying additional bodies to which section 33 is to apply.

4.3 The Tees Valley Combined Authority was established by article 3 of the Tees Valley Combined Authority Order 2016[1] with effect from 1 April 2016.

4.4 The West Midlands Combined Authority was established by article 3 of the West Midlands Combined Authority Order 2016[2] with effect from 17 June 2016.

[1] S.I. 2016/449.
[2] S.I. 2016/653.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is 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 On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

7.2 Input VAT is recoverable on purchases, acquisitions and importations made to support taxable business activities. Ordinarily public bodies are not able to recover VAT paid on purchases, acquisitions and importations made to support their statutory duties because these are not business activities.

7.3 However, certain bodies, mainly local authorities, are able to recover VAT under a special refund scheme provided for in section 33. This scheme means that irrecoverable VAT does not become a cost that has to be met from local taxation.

7.4 To qualify for VAT refunds 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.

7.5 Local authorities are defined in section 96(4) of the Value Added Tax Act 1994, and in the main these are county, parish, borough and unitary councils. Combined authorities are not such bodies and must be named to be included in the refund scheme.

7.6 Section 103 of the Local Democracy, Economic Development and Construction Act 2009 enables the local councils in an area to establish a combined authority to assume overall responsibility for economic development, regeneration and transport in that area.

7.7 In 2014 five combined authorities were specified as bodies eligible to claim refunds of VAT incurred on purchases to be used for their non-business purposes[3]. The Treasury is now using its powers under section 33(3)(k) to specify the Tees Valley Combined Authority and the West Midlands Combined Authority. This will provide these authorities with parity of treatment with local authorities.

Consolidation

7.8 There is no intention to consolidate.

[3] SI 2014/1112 The Value Added Tax (Refund of Tax) Order 2014.

8. Consultation outcome

8.1 As the purpose of the instrument is to ensure that the Tees Valley Combined Authority and the West Midlands Combined Authority will have the same tax treatment as other similar 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 these bodies. 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 Information and Impact Note covering this instrument will be published on the HMRC website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

11. Regulating small business

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

12. Monitoring & review

12.1 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.

13. Contact

13.1 Marie Williams at HM Revenue and Customs Telephone: 03000 543187 or email: marie.williams@hmrc.gsi.gov.uk can answer any queries regarding the instrument.