

EXPLANATORY MEMORANDUM TO
THE [TITLE OF INSTRUMENT]

[Year] No. [XXXX]

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 activities. 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(3)(k) the Treasury may specify additional bodies to whom section 33 is to apply.

4.2 The London Legacy Development Corporation (LLDC) has been established under The London Legacy Development Corporation (Establishment) Order 2012¹ for the purpose of ensuring a sustainable legacy for the Olympic and Paralympic Games by transforming the Olympic Park. The LLDC will assist the Mayor of London in fulfilling some of the legacy promises made in the bid to host the Olympic and Paralympics games by developing the site and providing social, economic and environmental benefits for local communities.

4.3 LLDC is responsible for certain landscaping and infrastructure works which are not regarded as business activities for VAT purposes. Under the normal VAT rules it is unable to recover the VAT incurred on purchases made in relation to these works. This Order will include the LLDC under section 33(k) of the VAT Act which

¹ S.I. 2012/310

will allow them to recover VAT incurred on purchases made to support their non-business activities.

5. Territorial Extent and Application

5.1 This instrument extends to the whole of the United Kingdom

6. European Convention on Human Rights

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 has to be met from local taxation.

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

7.3 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(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 LLDC is not currently named under section 33(3), and nor does it fall within any of the generic categories listed. However as they carry out a function of local government in the redevelopment of the Olympic Park and receive funding from the Greater London Authority (GLA) precept on local taxes; they satisfy both HM Treasury published criteria and it is considered appropriate to specify the LLDC under section 33(k).

8. Consultation outcome

8.1 As the purpose of the measure is to ensure that the LLDC 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 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 business, 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 has been published 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 small business.

12. Monitoring & review

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

12.2 The VAT issues of the LLDC are dealt with by a dedicated unit within HMRC and normal audit activity will encompass these changes.

13. Contact

Jo Turner at the HMRC Tel: 03000 589470 or email: jo.turner@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

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