

EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX (REFUND OF TAX TO MUSEUMS AND GALLERIES)
(AMENDMENT) ORDER 2017

2017 NO. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Valued Added Tax (Refund of Tax to Museums and Galleries) Order 2001 (S.I 2001/2879; "the 2001 Order") specifies the bodies that are entitled to claim a refund of VAT under section 33A of the Value Added Tax Act 1994 ("the Act"). Such refunds are of VAT incurred by the bodies on goods and services used in providing free admission to specific museums and galleries they operate. This instrument amends the Schedule to the 2001 Order to add 29 new bodies to Column 1 and add two relevant museums and galleries to Column 2.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument does not come into force before it is laid, nor is it laid fewer than 21 days before it comes into force. However, this instrument does involve an element of retrospection (the vires for such retrospection is provided for in paragraph (d) of subsection 33A(9) of the Act) in that once the Order comes into force taxpayers are permitted to claim a refund of VAT for periods prior to the Order coming into force. This is explained in the following section.

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 33A of the Act, which was inserted by section 98 of the Finance Act 2001 (c.9), requires the Commissioners for Revenue and Customs (at that time the Commissioners of Customs and Excise) to refund VAT incurred by certain bodies operating museums and galleries on supplies of goods and services, and acquisitions and importations of goods, that are attributable to their provision of free admission of the public to their museums and galleries.
- 4.2 Such VAT is not deductible as input tax (which can be set off against a person's output tax liability) because it is not attributable to taxable supplies made by the

bodies (see section 26(2) of the Act). This is because the provision of free admission is not a taxable supply.

- 4.3 Before the enactment of section 33A, bodies operating museums and galleries providing free admission for the public would therefore have borne the full burden of this VAT. Subsection (9) of section 33A allows the Treasury to specify the bodies to which section 33A applies and those museums and galleries which they operate which are to attract the entitlement to refunds ("relevant museums and galleries").
- 4.4 Although paragraph (c) of subsection (1) requires the supply of goods or services to the body (or the acquisition or importation of goods) to have been made on or after 1 April 2001, paragraph (d) of subsection (9) allows the Treasury to specify a later date. This applies to an order made under either paragraph (b) or (c) of subsection (9). Where dates are indicated in Column 3 of the Schedule to the 2001 Order they are substituted for 1 April 2001 in paragraph (c) of subsection 33A(1).
- 4.5 Royal Assent to the Finance Bill 2001 was given on 11 May 2001. This meant that, unless the power in paragraph (d) of subsection 33A (9) was exercised in order to specify a date significantly later than 1 April 2001, the first order made under subsection (9) would inevitably have contained an element of retrospection, in that it would allow bodies to claim VAT refunds in respect of VAT incurred from 1 April 2001, before the Order was made and laid.
- 4.6 The 2001 Order specified some dates that were later, but not in relation to all of the relevant galleries and museums that were specified. Consequently, there were more than thirty museums and galleries in respect of which retrospective claims could legitimately be made.
- 4.7 Because of the way paragraph (c) of subsection (1) and subsection (9) were framed, this retrospection must have been clearly contemplated by Parliament. There is nothing in section 33A to require it to be construed as allowing retrospection only in relation to orders made shortly after Royal Assent was given to the Finance Act 2001. When the Treasury makes an Order and specifies a date under paragraph (d) of subsection (9) that date may not be earlier than 1 April 2001, but it may predate the making of the Order, thus allowing an element of retrospective VAT recovery for the benefit of the taxpayer.
- 4.8 This instrument does not come into force before it is laid, and it is not laid less than 21 days before coming into force. It does however involve an element of retrospection in that it will allow claims for refunds of VAT incurred before it has been made and laid in relation to the additional museums and galleries specified. It is understood that this does not cause a breach of the 21-day rule. The seven Orders which previously amended the Schedule to the 2001 Order (S.I. 2004/1709, S.I. 2005/1993, S.I. 2008/1339, S.I. 2010/608, S.I. 2012/2731, S.I. 2014/2858 and S.I. 2016/235) also included such an element of retrospection.
- 4.9 Refunds are limited to 4 years prior to the date this statutory instrument comes into effect. 21 of the museums and galleries will be able to reclaim VAT from the date the SI comes into effect, and 10 listed below will be able to claim from earlier dates.
- 4.10 However, the Committee may wish to know the reason why these particular dates for insertion in Column 3 of the Schedule to the 2001 Order were chosen.

- 4.11 With regards to Athelstan Museum, the specified date, XX XXXX 2013, is to enable them the maximum time to claim refunds as they've been offering free entry for a number of years.
- 4.12 With regards to Callendar House, the specified date, XX XXXX 2013, is to enable them the maximum time to claim refunds as they've been offering free entry for a number of years.
- 4.13 With regards to The Royal Academy of Arts, the specified date, 1 January 2014, is 4 years prior to the date they plan to open their new building to the public. This allows them to reclaim VAT on capital building costs when it is incurred.
- 4.14 With regards to The Royal College of Music, the specified date, 5 August 2015, relates to the date that a capital build project started.
- 4.15 With regards to the Regimental Museum of Highland Fusiliers, the specified date, 1 September 2014, relates to a capital build project.
- 4.16 With regards to Stirling Smith Art Gallery and Museum, the specified date, XX XXXX 2013, is to enable them the maximum time to claim refunds as they've been offering free entry for a number of years.
- 4.17 With regards to the University of Edinburgh's relevant museum St Cecilia's Hall, the specified date, 1 October 2014, relates to a capital build project.
- 4.18 With regards to the University of Glasgow's relevant museum The Hunterian Collections Study Centre, the specified date, 1 August 2014, relates to a capital build project.
- 4.19 With regards to Towner Art Gallery, the specified date, 1 June 2014, relates to the date they became a charitable trust and wish to claim from.
- 4.20 With regards to West Highland Museum, the specified date, XX XXXX 2013, is to enable them the maximum time to claim refunds as they've been offering free entry for a number of years.

5. Extent and Territorial Application

- 5.1 The extent of this instrument applies to all of the United Kingdom.
- 5.2 The territorial application of this instrument applies 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 Section 33A of the Act supports the government's commitment to free public access to the principal collections displayed in national museums and galleries. These are operated by the bodies listed in column 1 of the schedule to the 2001 Order. Section 33A allows the refund to these bodies of the VAT incurred on the goods and services purchased to display, house, maintain and publicise the collections on free display. Ordinarily this VAT would be irrecoverable for the reasons already explained.

7.2 Most of the bodies listed in Column 1 of the Schedule to the 2001 Order display their collections in several buildings or sites. For various reasons, not every one of these buildings or sites admits the public free of charge. However, section 33A is confined exclusively to VAT incurred in connection with collections that the public can view without payment. Consequently, it was necessary for the Schedule to the 2001 Order also to list, in Column 2, those sites which are committed to free public access.

7.3 This instrument adds 29 new bodies to those listed in Column 1 together with their relevant museum or gallery to Column 2. These are:

- Athelstan Museum, whose specified museum has a long standing policy of free admission to the public;
- Burns House Museum, whose specified museum has been allowing free admission to the public since it opened;
- Callendar House, whose specified museum, has been allowing free admission to the public since 2005;
- Cumbernauld Museum, whose specified museum has been allowing free admission to the public since 1996;
- Dean Castle, whose specified museum has been allowing free admission to the public since it opened;
- Dick Institute, whose specified museum has been allowing free admission to the public since it opened;
- Elgin Museum, whose specified museum has been allowing free admission to the public since 2013;
- The Fergusson Gallery, whose specified gallery has been allowing free admission to the public since it opened;
- Glasgow Women's Library, whose specified museum has a long standing policy of free admission to the public;
- Kilsyth Heritage, whose specified museum has been allowing free admission to the public since 1996;
- Kings Own Royal Regiment Museum, whose specified museum has a long standing policy of free admission to the public;
- Kirkcaldy Museum and Art Gallery, whose specified museum has been allowing free admission to the public since it opened;
- The Library and Museum of Freemasonry, whose specified museum has a long standing policy of free admission to the public;
- North Lanarkshire Heritage Centre, whose specified museum has been allowing free admission to the public since 1996;
- Perth Museum and Art Gallery, whose specified museum has been allowing free admission to the public since it opened;
- The Pier Arts Centre, whose specified museum has been allowing free admission to the public since it opened;

- Pittencrieff House Museum, whose specified museum has been allowing free admission to the public since it opened;
- The Royal Academy of Arts, whose new specified museum will allow free admission to the public when it opens in 2018;
- Royal College of Music, whose specified museum made the decision to allow free admission to the public in 2015;
- The Regimental Museum of The Royal Highland Fusiliers, whose specified museum has been allowing free admission to the public since it opened;
- Shotts Heritage Centre, whose specified museum has been allowing free admission to the public since 1996;
- Stirling Smith Art Gallery and Museum, whose specified museum has been allowing free admission to the public since it opened;
- Stockwood Discovery Centre, whose specified museum has been allowing free admission to the public since it opened;
- Summerlee Museum of Industrial Life, whose specified museum has been allowing free admission to the public since 1988;
- Towner Art Gallery, whose specified gallery has a long standing policy of free admission to the public;
- The University of Nottingham, whose specified museum has been allowing free admission to the public since it opened;
- Wardown Park Museum, whose specified museum has been allowing free admission to the public since it opened;
- West Highland Museum, whose specified museum has been allowing free admission to the public since 2011; and
- Yorkshire Sculpture Park, whose specified museum will allow free admission to the public when it opens.

7.4 The Government's policy is that any new site of a body listed in Column 1 should be eligible for inclusion in Column 2, provided that it offers free access to the principal collections on display. This instrument adds The Hunterian Collections Study Centre at Kelvin Hall, which is a site of the University of Glasgow, to Column 2.

7.5 The Government's policy is that any new site of a body listed in Column 1 should be eligible for inclusion in Column 2, provided that it offers free access to the principal collections on display. This instrument adds St Cecilia's Hall, which is a site of the University of Edinburgh, to Column 2.

8. Consultation outcome

8.1 To be completed after the four week technical consultation period.

9. Guidance

9.1 The VAT Refund Schemes for National Museums and Galleries, Notice 998 will be updated to include the changes legislated for in the Statutory Instrument.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is negligible.
- 10.2 The impact on the public sector is negligible.
- 10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.
- 10.4 The measure provides a real benefit to those institutions newly admitted to the scheme but will involve negligible compliance costs.
- 10.5 Adding new bodies, museums and galleries to the VAT Refund Scheme for Museums will assist in enabling free public access to collections.

11. Regulating small business

- 11.1 Some of the museums and galleries involved are small businesses but the net impact on them is believed to be insignificant.

12. Monitoring & review

- 12.1 The policy objective of this measure is that irrecoverable VAT should not become a disincentive to museums providing free admission to their collections. Allowing the bodies named in this instrument a refund of the VAT incurred in carrying out their duties and activities will ensure this does not happen. The measure does not require further monitoring, beyond HM Revenue and Customs' normal risk-based assurance of VAT repayment claims.

13. Contact

- 13.1 Kerry Smith at the HM Revenue and Customs Telephone: 03000 566007 or email: <mailto:kerry.smith1@hmrc.gsi.gov.uk> can answer any queries regarding the instrument.