

**EXPLANATORY MEMORANDUM TO THE
VALUE ADDED TAX (REFUND OF TAX TO MUSEUMS AND GALLERIES)
(AMENDMENT) ORDER 2005**

2005 No. 1993

1. This explanatory memorandum has been prepared by HM Revenue & Customs on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2 Description

This Order amends the Schedule to the Value Added Tax (Refund of Tax to Museums and Galleries) Order 2001 (S.I.2001/2879; “the 2001 Order”) to include forty-eight university museums or galleries. 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.

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

This Order does not come into force before it is laid, nor is it laid less than 21 days before it comes into force. However, this Order does involve an element of retrospection. This is explained in the following section.

4. Legislative Background

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 claimed by certain bodies operating museums and galleries. The VAT that may be refunded is that incurred by the bodies on supplies of goods and services, and acquisitions and importations of goods, 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). In fact, the provision of free admission is not a business activity. Before the enactment of section 33A, therefore, bodies running museums and galleries providing free admission would have borne the full burden of this VAT. Subsections (9)(a) and (b) of section 33A allow the Treasury to specify the bodies to which section 33A applies and the particular museums and galleries operated by them that are to attract the entitlement to refunds (“relevant” museums and galleries). That is effectively what this new Order does.

4.3 Although subsection (1)(c) 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, subsection (9)(d) allows the Treasury to specify a later date. This applies both to an order made under (9)(b) and to one made under (9)(c). The dates indicated in column 3 of the schedule are substituted for 1 April 2001 in 33A(1)(c).

4.4 It may be noted that 1 April 2001 fell before Royal Assent to the Finance Bill 2001 (which was given on 11 May 2001). This meant that, unless the power in (9)(d) 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 times occurring before the order was made and laid. 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 indeed some galleries and museums in respect of which retrospective claims could legitimately have been made.

4.5 Because of the way subsections (1)(c) and (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 to the Finance Act 2001. Thus, the Treasury is not enjoined to exercise the power in subsection (9)(d) so as to specify, not only a date later than 1 April 2001 as the date from which supplies will qualify for the VAT refund, but a date later than the making of the order concerned.

4.6 Although it does not purport to come into force before it has been made and laid, this Order will allow claims for refunds in respect of VAT incurred before it has been made and laid. It is understood that this does not cause a breach of the 21-day rule.

4.7 This Order was not made earlier because there were a number of technical issues that required resolution before the museums could be added to the refund scheme.

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Ivan Lewis MP, the Economic Secretary to the Treasury, has made the following statement regarding Human Rights:

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Section 33A of the Act supports the Government's commitment to free public access to the principal collections displayed in the main national museums and galleries. These are operated by the bodies listed in column 1 of the 2001 Order.

7.2 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.

7.3 In the March 2004 budget the Chancellor stated that the Government would consider extending the original free access commitment, and the VAT refund scheme that delivers it, to certain university museums and galleries offering free access to the public. In the Spending Review White Paper 2004 the Government announced the extension of the refund scheme. 1 August 2004 was chosen as the entry date to the scheme for all but two of the museums/galleries included in the Order being the start of the 2004-2005 financial year for the universities concerned. The exceptions are the Hancock Museum at the University of Newcastle upon Tyne and the Sainsbury Centre at the University of East Anglia for which the dates of entry to the scheme are the dates from which these bodies met the eligibility criteria for joining the scheme.

8. Impact

8.1 The inclusion of the university museums and galleries in the refund scheme is at the request of their parent institutions. Most of the museums and galleries will already be registered for VAT under their parent university and claim recovery of VAT when the parent body makes a VAT return. Those bodies will therefore use their existing procedure for VAT recovery to claim VAT in relation to their museums and galleries included in S33A by this Order. Likewise where any museum or gallery is registered for VAT independently of its parent institution it will claim recovery of VAT on its periodic VAT returns. Any museum or gallery included in this Order that is not VAT registered will be able to use an existing procedure to recover VAT on qualifying supplies, acquisitions and importations occurring on or after the date of admission to the refund scheme.

8.2 Consequently, there will be no additional compliance cost to be borne by the institutions as a result of this measure. Therefore, a Regulatory Impact Assessment has not been prepared for this measure (and no RIA was regarded as necessary for the Finance Bill amendment that inserted section 33A or for the 2001 Order).

8.3 Similarly, there is no regulatory impact on the Exchequer as no additional resources will be required to ensure the correct application of the refund scheme to these additional museums.

9. Contact

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