

## **The Value Added Tax (Refund of Tax to Museums and Galleries) (Amendment) Order 2004 No.1709**

This explanatory memorandum is laid before the House of Commons by Command of Her Majesty. This memorandum contains information for the House of Commons Select Committee on Statutory Instruments. It is submitted by H M Customs and Excise

This Order is made by the Treasury in exercise of their powers in section 33A(9) of the Value Added Tax Act 1994 (c.23; “the Act”). By section 97(5) of the Act, this Order is subject to the negative resolution procedure and is required to be laid before the House of Commons only.

### **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 two new museums. 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. 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.

### **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.

### **Legislative background**

Section 33A of the Act, which was inserted by section 98 of the Finance Act 2001 (c.9), requires 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.

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.

Only certain bodies are allowed to claim: those specified in the 2001 Order. Subsection (9) of section 33A allows the Treasury to specify the bodies to which section 33A applies, as well as the particular museums and galleries operated by them that are to attract the entitlement to refunds (“relevant” museums and galleries). The 2001 Order was made under this power. In addition, subsection (9)(c) allows the Treasury to specify additional relevant museums and galleries. That is effectively what this new Order does.

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).

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.

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.

The Committee will have noted that the dates specified in articles 5 and 6 of the Order for the two new museums are 10 February 2003 (Shildon) and 18 October 2001 (Swansea). Were it not for this, the date in each case from which supplies would qualify for refund would be that in subsection (1)(c): 1 April 2001 (although, by subsections (3) and (4), bodies have to make their claim within 3 years in any event). The retrospective effect is thus reduced from what it would otherwise be.

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. However, the Committee may wish to know the reason why these particular dates for insertion in column 3 of the Schedule were chosen.

These are the dates from which the two museums started incurring VAT on their planning and construction costs. As with VAT incurred after a museum is opened to the public, where a body intends to grant the free right of admission to its collections any VAT incurred on such costs would normally be irrecoverable. This Order was not made earlier because there was a number of technical issues that required resolution before the museums could be added to the refund scheme.

This Order applies to the whole of the United Kingdom, as VAT does generally.

### **Policy background**

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. 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.

Most of the bodies listed in column 1 of 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 2001 Order to also list, in column 2, those sites which are committed to free public access.

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. The National Waterfront Museum Swansea is a new site of the National Museums and Galleries of Wales, and Locomotion, the National Railway Museum at Shildon is a new site of the Science Museum. Both will admit the public without payment.

### **Impact**

The inclusion of both the Swansea and Shildon museums in the section 33A refund scheme is at the request of their parent institutions, the National Museums and Galleries of Wales and the Science Museum respectively. Both these institutions are already registered for VAT and claim recovery of VAT in relation to other museums and galleries specified in the 2001 Order. This VAT is claimed when they furnish their periodic VAT returns, and they will use this existing procedure to claim VAT in relation to the two new museums as well.

Consequently, there will be no additional compliance cost to be borne by the two 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).

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.

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