

**EXPLANATORY MEMORANDUM TO  
THE VALUE ADDED TAX (REFUND OF TAX TO CHARTER TRUSTEES AND  
CONSERVATORS) ORDER 2009**

**2009 No. 1177**

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.

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

2. **Purpose of the instrument**

2.1 The purpose of this instrument is to provide that “charter trustees”, who hold historic property of former local councils, and the Wimbledon and Putney Commons Conservators, who own and administer Wimbledon and Putney Commons, are able to reclaim VAT charged on supplies to, or acquisitions and importations of goods by, them.

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

3.1 None

4. **Legislative Context**

4.1 Under section 7 of the Local Government and Public Involvement in Health Act 2007 (c. 28) the Secretary of State may by order implement proposals for the reorganisation of the structure of local government, including the abolition or merging of councils. As part of an order making a reorganisation the Secretary of State may create bodies known as “charter trustees”. Charter trustees may be established for the whole or part of an area of a former council. The charter trustees are created to hold the historic property of a former council (charters, insignia, plate and other property of ceremonial or historic nature) and to exercise any rights conferred on the former council by charter. Charter trustees may also acquire historic or ceremonial property and accept gifts. Charter trustees may also execute works to maintain or improve the property they hold and carry out any work incidental or consequential on holding property. The Local Government (Structural Changes) (Miscellaneous Amendments and Other Provision) Order 2009 (S.I. 2009/837) created the charter trustees to which this Order relates.

4.2 The Wimbledon and Putney Commons Conservators were established by section 8 of the Wimbledon and Putney Commons Act 1871 (c. 24) and own and administer Wimbledon and Putney Commons. The Wimbledon and Putney Conservators perform a local government function in administering those Commons.

4.3 Section 33 of the Value Added Tax Act 1994 (c. 23) provides that bodies specified in that section may reclaim VAT charged in respect of supplies to, or acquisitions or importation of goods by, those bodies, if the supplies, acquisitions or importations are not for the purpose of any business carried on by the specified bodies. Section 33(3)(k) provides that the Treasury may by order specify additional bodies for the purposes of section 33.

4.4 This instrument provides that the charter trustees for the City of Chester, for Crewe, for the City of Durham, for Ellesmere Port and for Macclesfield are specified bodies for the purposes of section 33. It also provides that the Wimbledon and Putney Conservators are specified for the purposes of section 33. The effect of this instrument is that those charter trustees and the Wimbledon and Putney Conservators are able to reclaim VAT charged on supplies to, and acquisition or importation of goods by, them.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all 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**

7.1 What is now section 33 of the Value Added Tax Act 1994 honours a commitment, made by the government of the day when VAT was introduced in 1973, that what would otherwise be irrecoverable VAT should not fall as a burden on local taxation. Ordinarily, VAT can only be recovered on purchases made to support taxable business activities. Under section 33, named bodies can recover the VAT incurred on purchases of goods and services which are not used for any business purpose. These named bodies can, under section 33(2), also recover any insignificant amounts of VAT incurred on purchases made to support VAT-exempt business activities.

7.2 From the outset, the measure named specific bodies or types of bodies in what are now sections 33(3)(a) to 33(3)(j). Examples of these include local authorities and police authorities. It also allows for the inclusion of other bodies through a Treasury order made under section 33(3)(k). The Treasury has consistently applied two criteria to determine whether a body is eligible for inclusion in section 33 by virtue of such an order. These are that a body must undertake a function ordinarily carried on by local government, and it must have the power to draw its funding directly from local taxation.

7.3 Neither the charter trustees included in this instrument, nor the Wimbledon and Putney Conservators, are currently bodies specified in section 33. Both undertake functions that are ordinarily carried out at local government level, these being Civic ceremonial duties and conservation works, and both have a levying or a precepting

power. They are therefore eligible to be added to section 33 regime through an order made under section 33(3)(k).

7.4 The charter trustees named in the instrument are all newly created and they are to be included in section 33 with effect from 1 June 2009. The position regarding the Wimbledon and Putney Conservators is more complicated in that they have already set their council tax levy for the year 2009-10. Consequently they are to be included in section 33 with effect from 1 April 2010, the start of the 2010-11 financial year.

## **8. Consultation outcome**

8.1 No consultation on this instrument has been undertaken.

## **9. Guidance**

9.1 Guidance regarding the section 33 refund scheme is available in an HMRC public notice “Local Authorities and similar bodies” ([Notice 749](#)).

## **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 An Impact Assessment has not been produced for this instrument as it has no impact on business, charities or voluntary bodies.

## **11. Regulating small business**

11.1 The legislation will enable the named Charter Trustee and Conservator bodies to recover VAT incurred which is not for the purpose of any business activity. The measure therefore has no impact on business.

## **12. Monitoring & review**

12.1 The policy objective of this measure is that irrecoverable VAT should not fall as a cost on local taxation. Allowing the bodies named in this instrument to recover 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**

Richard Stokes at HM Revenue and Customs Tel: 020 7147 0733 or e-mail: [Richard.Stokes2@hmrc.gsi.gov.uk](mailto:Richard.Stokes2@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.