

EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX (REFUND OF TAX TO MUSEUMS AND GALLERIES)
(AMENDMENT) ORDER 2020

2020 No. 1167

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 Value Added Tax (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 six new bodies and their respective museums and galleries (six in total), four relevant museums and galleries to three existing bodies and updates the reference to two existing museums. This instrument also omits eight bodies and their respective museums and galleries (nine in total) and omits five other specified museums and galleries for five bodies that remain in the 2001 Order. This is because they are no longer eligible for inclusion.

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 section 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.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Section 33A of the Act, which was inserted by section 98 of the Finance Act 2001, 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.
- 6.2 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.
- 6.3 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").
- 6.4 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).
- 6.5 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. This does not cause a breach of the 21-day rule. Eight Orders which previously amended the Schedule to the 2001 Order also included such an element of retrospection.
- 6.6 Refunds are limited to 4 years prior to the date this instrument comes into effect. Eight of the relevant museums and galleries will be able to reclaim VAT from the date the instrument comes into effect, and two listed below will be able to claim from an earlier date.
- 6.7 With regards to The Wilson Art Gallery & Museum, the specified date, 17 November 2017, is to enable it the maximum time to claim refunds as it has been offering free entry for several years.
- 6.8 With regards to The Museum of Military Medicine, the specified date, 1 January 2017, is to enable it the maximum time to claim refunds in relation to the relocation to a new site in Cardiff Bay.

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 or which act as storage for main collections.
- 7.3 This instrument adds six new bodies to those listed in Column 1 together with their relevant museum or gallery to Column 2. These are:
- Congleton Museum, whose specified museum has been allowing free admission to the public since 2016;
 - The Museum of Military Medicine, whose specified museum has been allowing free admission to the public since 1952;
 - The National War Museum of Scotland, whose specified museum has been allowing free admission to the public since it opened in 1933.
 - The Royal Scots (The Royal Regiment) Regimental Museum, whose specified museum has been allowing free admission to the public since it opened in 1950;
 - Wellcome Collection, whose specified museum has been allowing free admission to the public since 2007;
 - The Wilson Art Gallery & Museum, whose specified museum has been allowing free admission to the public since 2014.
- 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 following museums to Column 2:
- Museum of London, site bound by Charterhouse Street, which is a site of the Museum of London;
 - The Polar Museum, which is a site of the University of Cambridge;
 - V&A East Museum and V&A East Storehouse, which are sites of the Victoria and Albert Museum.
- 7.5 This instrument also makes changes to Column 2 of the Schedule to the 2001 Order to amend a post code entry for Museum of London and amend the name for a specified museum of University of St Andrews.
- 7.6 This instrument omits the following bodies and their respective entries that are no longer eligible for inclusion in the 2001 Order:

- Keele University;
- London Metropolitan University;
- University College Chichester;
- University of Northumbria at Newcastle;
- National Football Museum;
- University of Bath;
- London School of Economics and Political Science;
- Pittencrieff House Museum.

7.7 This instrument also omits the entries for the following relevant museums and galleries that are no longer eligible for inclusion in the 2001 Order:

- Collections Management Division/Development office for the body National Museums and Galleries on Merseyside;
- Museum of London Archaeological Service for the body Museum of London;
- Segontium Roman Fort Museum for the body The National Museum of Wales;
- The John Rylands Library for the body University of Manchester;
- Gateway Galleries for the body University of St Andrews.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 This instrument does not consolidate any other legislation.

10. Consultation outcome

10.1 The consultation resulted in a change to the names of the two V&A museums listed at 7.4 above and the name of a specified museum of the University of St Andrews at 7.5 above. Three museums were removed from the list of bodies at 7.6 above.

11. Guidance

11.1 The VAT Refund Scheme for museums and galleries, VAT Notice 998 <https://www.gov.uk/guidance/vat-refund-scheme-for-museums-and-galleries-notice-998> will be updated to include the changes legislated for in this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific mitigating action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that only those that are included in the 2001 Order are affected.

14. Monitoring & review

- 14.1 The regulation does not include a statutory review clause as it is exempt under section 28(3)(a)(ii) of the Small Business, Enterprise and Employment Act 2015 because it varies a provision that itself varies a tax.
- 14.2 The contents of the 2001 Order are regularly reviewed by the Department for Digital, Culture, Media and Sport (DCMS).

15. Contact

- 15.1 Alec Tasker at HM Revenue and Customs Telephone: 03000 586047 or email: alec.tasker@hmrc.gov.uk can answer any queries regarding the instrument.
- 15.2 Eileen Patching, Deputy Director for Indirect Tax Policy at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.