

EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX (REFUND OF TAX TO MUSEUMS AND GALLERIES)
(AMENDMENT) ORDER 2024

2024 No. 720

1. Introduction

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

2. Declaration

- 2.1 Nigel Huddleston MP, Financial Secretary to HM Treasury confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Eileen Patching, Deputy Director for Indirect Tax at HMRC confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 The section 33A VAT policy team at HMRC can be contacted with any queries regarding the instrument by email at s33avat.museumsandgalleriesconsultation@hmrc.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 This instrument amends The Valued Added Tax (Refund of Tax to Museums and Galleries) Order 2001 (S.I 2001/2879; "the 2001 Order") which 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 relate to VAT incurred by the bodies on goods and services used by them in providing free admission to specific museums and galleries which they operate. This instrument amends the Schedule to the 2001 Order to include an additional 19 new bodies along with their corresponding relevant museums or galleries. The instrument also removes 8 bodies along with their corresponding relevant museums or galleries from the Schedule and, updates the details for museums and galleries already admitted to the refund scheme.

Where does the legislation extend to, and apply?

- 4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

- 5.1 Section 33A of the Act supports the Government's commitment to free public access to the principal collections displayed in museums and galleries. It requires HMRC to refund VAT incurred by certain bodies operating museums and galleries that is attributable to their provision of free admission of the public.
- 5.2 Ordinarily the VAT that can be refunded under the scheme established by section 33A of the Act would be irrecoverable because relief from VAT expenditure is generally only recoverable under VAT law if the expenditure is to be used by a business for the purpose of generating its own business income. As the museums and galleries included in the refund scheme provide free admission to visitors, the relief would not otherwise be available to them.
- 5.3 The bodies that are eligible for admission to the refund scheme, together with the museums and galleries in respect of which the scheme applies, are specified in the 2001 Order pursuant to powers conferred on HM Treasury in section 33A of the Act.
- 5.4 These eligible bodies, together with their eligible museums and galleries are listed in the Schedule to the 2001 Order. From time to time it becomes necessary to update the Schedule to ensure that new eligible bodies and their associated museums and galleries are included, that other entries are omitted and, generally, that the details in the Schedule are up to date and correct. This instrument is part of that routine updating process.
- 5.5 Articles 3 to 5 of this instrument make provision for the omission of, and amendment to, the relevant existing entries in the Schedule and Article 6 adds 19 new bodies to those listed in Column 1 of the Schedule together with their eligible museums or galleries in Column 2. These bodies have been added as a result of the bodies being able to demonstrate that they have met the criteria to have their VAT refunded under section 33A of the Act.
- 5.6 The relevant criteria are published by the Government in VAT Notice 998, which can be found on GOV.UK ¹.

What was the previous policy, how is this different?

- 5.7 This instrument does not change the previous policy. Instead, it ensures that its administration is fully updated, adding new eligible bodies and removing those which no longer qualify. Without this legislation eligible bodies would be denied the ability to recover the VAT associated with the provision of free access to their museums and galleries.

6. Legislative and Legal Context

How has the law changed?

- 6.1 Under section 33A(9) of the Act, power is conferred on HM Treasury to make an Order specifying the bodies together with their relevant museums and galleries that qualify for the refund scheme. The power was exercised by HM Treasury by making the 2001 Order which includes, in a Schedule, a list of the qualifying bodies (in column 1), the relevant museums or galleries (in column 2) and the date from which the relief can be claimed (in column 3). The 2001 Order has been amended by HM

¹ Relevant criteria in VAT Notice 998: <http://www.gov.uk/guidance/vat-refund-scheme-for-museums-and-galleries-notice-998>

Treasury on nine previous occasions by amending instruments similar to the one that is the subject of the memorandum.

- 6.2 Section 33A of the Act also imposes a condition in subsection (1)(c) that refunds can only be claimed in relation to VAT incurred on or after 1 April 2001 but also confers power on HM Treasury, when making an Order under subsection (9), to substitute that date for a later one. This allows HM Treasury to ensure that claims for refunds are only admissible in relation to periods in which the relevant body meets the eligibility criteria. In the Schedule to the 2001 Order these specified dates are included in column 3.
- 6.3 When HM 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. Pursuant to the power to make such retrospective provision, HM Treasury includes in this instrument specified dates that arise prior to the date on which the instrument comes into force.

Why was this approach taken to change the law?

- 6.4 This is a routine amendment that coincides with the application period cycles for the refund scheme that is operated by HMRC on behalf of HM Treasury. Similar amendments have been enacted on nine previous occasions since 2001.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 A four-week consultation ran between 25 March 2024 to 19 April 2024. This was a technical consultation intended to allow bodies affected by the instrument to check the accuracy of the details to be inserted in the 2001 Order.
- 7.2 Changes required following the consultation included:
- The Science Group Museum entry for National Collections Centre Red Barn having “Science Museum” removed.
 - The Victoria and Albert Museum entry for Young V&A having “Bethnal Green Museum of Childhood” removed.
 - Durham University being named as a body with the Museum of Archaeology Durham University and Oriental Museum Durham University listed as relevant museums (as opposed to being individual bodies on the Order), along with an address update for Oriental Museum Durham University.
 - Glasgow Life named as a body with the Gallery of Modern Art, Kelvin Art Gallery, Riverside Museum, St Mungo Museum of Religious Life and Art and the Burrell Collection listed as relevant museums and galleries (as opposed to being individual bodies on the Order).
 - The addition of Provand’s Lordship as a relevant museum under the body of Glasgow Life, following the demonstration of a change of circumstance and update to their application which evidenced their eligibility to be added to the instrument.
 - St John Ambulance be named as the body for the Museum of the Order of St John.

8. Applicable Guidance

- 8.1 Guidance relating to the administration of the section 33A refund scheme is available in VAT Notice 998 (VAT Refund Scheme for museums and galleries) on GOV.UK². The Notice will be updated to include the changes made by this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A Tax Information and Impact Note covering this instrument will be published on GOV.UK³.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The policy objective of this measure is that irrecoverable VAT under the normal rules should not become a disincentive to museums and galleries providing free admission to their permanent collections. Allowing the bodies named in this instrument to recover the VAT incurred in carrying out these activities will ensure this does not happen. The measure does not require further monitoring, beyond HMRC's normal risk-based assurance of VAT repayment claims.
- 10.2 The instrument does not include a statutory review clause because it relates to tax and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 This instrument includes an element of retrospection. In Article 6, the new bodies and their relevant museums and galleries are listed alongside the date that establishes the beginning of the period in respect of which valid refund claims may be made. In some instances, such dates arise prior to the coming into force of this instrument. The power for HM Treasury to make such provision is conferred by section 33A(9)(d) of the Act. Under section 33A(1)(c) of the Act, a refund claim is only valid if made in respect of VAT incurred after 1st April 2001. The power conferred by section 33A(9)(d) of the Act enables HM Treasury to make provision for a later date to be substituted for the 1st April 2001. In relation to those bodies in respect of which provision is made in this instrument for claim dates arising before the coming into force of this instrument, valid refund claims for these earlier periods may be made but any such claim is subject to an overriding time limit of four years under section 33A(4) of the Act.

² Guidance for section 33A refund scheme: <https://www.gov.uk/guidance/vat-refund-scheme-for-museums-and-galleries-notice-998>

³ Tax Information and Impact Note: <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).