

## EXPLANATORY MEMORANDUM TO

### THE VALUE ADDED TAX (REFUND OF TAX TO THE ESSEX POLICE, FIRE AND CRIME COMMISSIONER FIRE AND RESCUE AUTHORITY) ORDER 2018

2018 No. 16

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (“HMRC”) on behalf of Her Majesty’s Treasury and is laid before the House of Commons by Command of Her Majesty.

#### 2. Purpose of the instrument

- 2.1 This instrument specifies the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority for the purpose of section 33 of the Value Added Tax Act 1994 (“section 33”). The effect is that this authority will be entitled to claim a refund of VAT charged on supplies, acquisitions and importations even though those supplies, acquisitions and importations are not used for the purpose of any business carried on by it.

#### 3. Matters of special interest to Parliament

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

- 3.1 None.

##### *Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### 4. Legislative Context

- 4.1 This instrument is made under sub-section 3(k) of section 33.
- 4.2 Section 33 provides that certain local government bodies are able to recover the VAT that they are charged when they purchase goods or services in pursuance of their non-business activity. Section 41 of the Value Added Tax Act 1994 (VATA) has a similar effect in relation to the Crown or government departments but only where they contract-out certain qualifying services. In the absence of section 33 or 41, this VAT would not be recoverable as local government bodies or the Crown do not usually make business supplies as defined in the VATA. Section 33(3)(k) enables the Treasury to make an order specifying additional bodies to which section 33 is to apply.
- 4.3 The Essex Police, Fire and Crime Commissioner Fire and Rescue Authority was established by The Police, Fire and Crime Commissioner for Essex (Fire and Rescue Authority) Order 2017 with effect from 1 October 2017.

#### 5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

### *What is being done and why*

7.1 Input VAT is recoverable on purchases, acquisitions and importations made to support taxable business activities. Ordinarily, public bodies are not able to recover VAT paid on purchases, acquisitions and importations which support their statutory duties, because these are not business activities.

7.2 However, certain bodies, mainly local authorities, are able to recover VAT under a special refund scheme provided for in section 33. This scheme ensures that irrecoverable VAT does not become a cost that has to be met from local taxation.

7.3 To qualify for VAT refunds a body must be named in section 33(3), either generically or individually. The Treasury has the power under section 33(3)(k) to add new bodies to the list.

7.4 The Policing and Crime Act 2017 provides for elected Police and Crime Commissioners (PCCs) to take on governance of the fire and rescue services in their local area, as a separate organisation. It also contains provisions to abolish the London Fire and Emergency Planning Authority and for it to be replaced by the London Fire Commissioner.

7.5 Currently, PCCs (although not those who become FRAs) and fire and rescue organisations in common with other types of local authority fall within section 33 of VATA, and are therefore permitted to reclaim any VAT that they incur on expenditure for their non-business activities. In 2015-16, fire and rescue organisations reclaimed more than £60m under section 33 of the Act, equivalent to five per cent of their overall budgets.

7.6 It is essential for PCCs who become FRAs to be able to reclaim the VAT paid on their non-business expenditure, and for this facility to also be available to the new London Fire Commissioner, which will provide parity of treatment with other types of fire and rescue organisations.

7.7 Before any such new FRA can be established it needs to be approved by the Home Secretary and be named in a negative Statutory Instrument. At present in order to reclaim the VAT each such FRA will require a separate SI until such time as the Act can be amended to cover all FRAs.

### *Consolidation*

7.8 There is no intention to consolidate.

## **8. Consultation outcome**

8.1 As the purpose of the instrument is to ensure that the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority will have the same tax treatment as other similar bodies, and will not bring about a substantive change to the tax code, it is considered that this measure falls within one of the exceptions (“other minor

measures”) to the requirement to consult set out in paragraph 8 of the Tax Consultation Framework.

## **9. Guidance**

- 9.1 Existing guidance is being updated to name this body. No further guidance is required at this stage.

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

## **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

- 12.1 For reasons of consistency, the VAT issues relating to the public sector are dealt with by a dedicated unit within HMRC. Normal audit activity will encompass the change. Additionally, the measure will be kept under review through communication with affected taxpayer groups.

## **13. Contact**

- 13.1 David Smith at HM Revenue and Customs, telephone: 03000 593922 or email: [david.smith7@hmrc.gsi.gov.uk](mailto:david.smith7@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.