

Financial Reporting Council

Third Country Auditors (Fees) Instrument 2020 – Public consultation

November 2020

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INTRODUCTION

Scope of the consultation

This consultation seeks views on the proposed Third Country Auditors (Fees) Instrument 2020, setting out periodical fees for registered Third Country Auditors in the UK.

This consultation is open to the public. This consultation was launched on 2nd November 2020 for a period of 4 weeks. It closes on 30th November 2020.

An impact assessment can be found in the second annex to this consultation.

How to Respond

Responses should be sent by email to thirdcountryauditors@frc.org.uk

After this consultation closes the responses will be analysed and a response to consultation document will be published.

Background to the third country auditor regime

UK law requires the registration and regulation of auditors that audit the accounts of companies from third countries that issue securities on regulated markets in the UK (“third country auditors” or “TCAs”). During the period when the UK was an EEA member state, “third country auditors” were defined as auditors who were based outside one of the EEA member states. However, at the end of the transition period to EU Exit (i.e. 31 December 2020), all auditors from outside the UK will become TCAs, including those from EEA member states. Given this, we need to update the current fees instrument in order to reflect this change. The purpose of this consultation is to seek views on the proposed new fees instrument which will give effect to the consequential effect of leaving the EU, as set out further below.

The regulatory regime governing TCAs aims to establish a level of oversight similar to that required of the audits of listed companies incorporated within the UK. This is intended to enhance and safeguard public confidence in the annual and consolidated financial statements of companies listed on regulated markets in the UK that are audited by TCAs.

The United Kingdom has implemented and operates a regulatory regime governing TCAs. The policy behind the TCA regime is to ensure there are appropriate consistent standards being applied (together with monitoring where necessary and a register) of overseas auditors who are providing audit opinions on overseas companies listed on the main UK exchange, as their audit opinions are being relied on by UK investors. The arrangements for this regime are contained in Part 42 and Schedule 12 of the Companies Act 2006 (“the Act”), the Statutory Auditors and Third Country Auditors Regulations 2013 (“the 2013 Regulations”), and the Statutory Auditors and Third Country Auditors Regulations 2016. These arrangements include powers for the Secretary of State to prescribe periodical fees to be paid by every registered third country auditor for the purposes of operating the TCA regime.

The Secretary of State’s powers under the Act, in relation to TCAs, have been delegated to the Financial Reporting Council (“the FRC”) by the Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc.) Order 2012 (“the Delegation Order”). The FRC Board is responsible for the exercise of these powers and those for registration of TCAs under the 2013 Regulations.

Third Country Auditors (Fees) Instrument 2020

Section 1251(2)(d) of the Act provides the Secretary of State with a power to make regulations that require registered TCAs to pay periodical fees. This power has been delegated to the FRC, and the applicable fees are currently set out in the Third Country Auditors (Fees) Instrument 2018¹. As set out in our previous consultation² prior to making the 2018 Instrument, these fees cover the cost to the FRC of administering the TCA regime.”

In order to give effect to the UK’s departure from the EU, the UK Government has since made changes to the legislation governing the TCA regime. In light of this, it is necessary to update the 2018 Instrument to give effect to these changes.

The draft regulations that the FRC proposes to make are the Third Country Auditors (Fees) Instrument 2020 (“the 2020 Instrument”) which are set out in Annex 1 to this consultation document. The changes we are proposing are mainly in relation to updating the relevant definitions, although we have also made some further minor formatting and non-substantive changes to better streamline the language used. ***The 2020 Instrument does not alter the levels of the current fees.***

Once the current transition period has ended (11pm, on 31 December 2020), some aspects of the TCA regime which are currently carried out by the EU on behalf of all the member states will need to be carried out by the UK itself. It is expected that these activities may increase the cost of administering the regime. Moving forward, it is anticipated the FRC may need to consult again in 2021 on proposed changes to the TCA fee levels in order to incorporate this additional work.

The 2020 Instrument as currently drafted will:

- Reflect changes to legislation that will be made as a result of the UK’s exit from the European Union after the transition period has ended;
- Come into force immediately after the UK’s exit;
- Set out the level of fees required to be paid by various classes of TCA (which, as set out above, will remain unchanged from the levels set in the 2018 Instrument); and
- Revoke the Third Country Auditors (Fees) Instrument 2018.

¹ [https://www.frc.org.uk/getattachment/0a616201-9740-42d7-96f5-aecd9db2c0ca/Third-Country-Auditors-\(Fees\)-Instrument-2018.pdf](https://www.frc.org.uk/getattachment/0a616201-9740-42d7-96f5-aecd9db2c0ca/Third-Country-Auditors-(Fees)-Instrument-2018.pdf)

² <https://www.frc.org.uk/getattachment/d8801ddb-9b4b-4906-8117-48e49c696ac9/-;.aspx>

Groups affected by this consultation

During the initial development of this consultation, the FRC has given due consideration to the impact it will have on different groups. It does not consider that the proposals in this consultation highlights any specific issues in relation to:

- Age
- Disability
- Gender Reassignment
- Marriage and Civil Partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

We will take account of the evidence gathered through this consultation in developing final policy proposals and any potential impacts on the protected characteristics.

How responses to the consultation will be treated

The FRC's usual policy is to make publicly available responses received to our consultations. Please do not include your personal data (e.g. your name, title and contact details) - or your personal signature in your response document if you do not wish that information to be published or otherwise disclosed. If you do not wish for all or part of the substance of your response to be published, please tell us and explain why. (An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.)

Please note that even where we do not publish your response alongside others, we cannot guarantee absolute confidentiality; information you provide us may be subject to disclosure in accordance with applicable access to information frameworks (e.g. the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

We will process your personal data in accordance with all applicable data protection laws. Please see our [privacy policy](#).

Respondent information

1. Are you responding as an individual or a business?
2. Have you trained as or do you practice as, an auditor?
3. Are you a registered third country auditor with the FRC?
4. Is your employer registered as a third country auditor with the FRC?
5. Do you operate, own or otherwise participate in the direction of the business affairs of an auditor that is registered as a third country auditor with the FRC?
6. Re you responding on behalf of a business that will require its accounts to be audited by a registered third country auditor either now or following the UK's departure from the European Union³?
7. Are you primarily resident of the United Kingdom/an EEA state /other? (please delete as applicable)

³ Note that this will include companies registered outside of the United Kingdom whose securities are issued on UK-regulated markets.

Policy questions

1. Do you agree with the changes the FRC has made to the instrument to reflect the legislative changes?
2. Do you have any other comments regarding the draft 2020 Instrument?

Next steps

This consultation runs for 4 weeks, from the 2nd November 2020 to 30th November 2020.

The FRC will carefully consider all submissions received in response to this consultation before finalising its policy approach.

This instrument, if made, will be approved by the Secretary of State, prior to the approval by the FRC Board.

ANNEX 1 THE THIRD COUNTRY AUDITORS (FEES) INSTRUMENT 2020

Powers exercised

- A. The Financial Reporting Council (“FRC”) makes this instrument in exercise of the power conferred by section 1251(2) of the Companies Act 2006 (“the Act”)⁴ to make regulations prescribing periodical fees to be paid by amongst others every registered third country auditor.
- B. This power was transferred from the Secretary of State to the FRC by Article 7(1) of the Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc) Order 2012 (S.I. 2012/1741) (“the Delegation Order”)⁵.
- C. This instrument is made by the FRC in accordance with the relevant the provisions of the Delegation Order and section 1252 and Schedule 13 to the Act, and with the approval of the Secretary of State.

1. Citation, commencement and interpretation

- (1) This instrument may be cited as the Third Country Auditors (Fees) Instrument 2020.
- (2) This instrument comes into force on IP completion day.
- (3) In this instrument:
 - “audit client” means a UK-traded third country company to which a registered third country auditor is appointed as auditor on the relevant date.
 - “equivalent third country” has the meaning set out in section 1240A(1) of the Act⁶.
 - “equivalent registration” means the registration of a third country auditor established in an equivalent third country as a registered third country auditor, in accordance with FRC requirements.
 - “full registration” means the registration of a third country auditor established in a country other than an equivalent third country or a transitional third country as a registered third country auditor, in accordance with FRC requirements.
 - ““FRC requirements” means the requirements for registration as a registered third country auditor, as set out in the Statutory Auditors and Third Country Auditors

⁴ 2006 c. 46

⁵ S.I. 2012/1741.

⁶ Section 1240A was inserted by the Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/177).

Regulations 2013⁷ and any directions made by the FRC under sections 1239(7) and 1242(4) of the Act⁸.

- “IP completion day” has the same meaning as in section 39(1) of the European Union (Withdrawal Agreement) Act 2020⁹.
- “registered third country auditor” has the same meaning as in section 1241(1) of the Act.
- “relevant date” means the date of the registration of a registered third country auditor and each annual recurrence of that date.
- “third country auditor” has the same meaning as in section 1261(1) of the Act.
- “transitional registration” means the registration of a third country auditor established in a transitional third country as a registered third country auditor, in accordance with FRC requirements.
- “transitional third country” has the meaning set out in section 1240A(1) of the Act.
- “UK-traded third country company” has the same meaning as in section 1241(2) of the Act.

2. Fees payable by registered third country auditors

- (1) A registered third country auditor must pay an annual fee to the FRC no later than that auditor’s relevant date.
- (2) The fee payable is that fee specified in the Schedule to this instrument as appropriate to the nature of that auditor’s registration and number of audit clients.

3. Revocation

- (1) The Third Country Auditors (Fees) Instrument 2018 is revoked.

By Order of the FRC Board

[Date TBC]

7 S.I. 2013/1672

8 As amended by the Statutory Auditors and Third Country Auditors Regulations 2016 (S.I. 2016/649) and the Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/177).

SCHEDULE

Annual fee payable by a registered third country auditor			
Number of audit clients	Type of registration as a third country auditor		
	Equivalent registration	Transitional registration	Full registration
0 - 9	£1,136		£2,272
10+	£2,840		£5,680

ANNEX 2 Preliminary Impact Assessment

The fee will be paid by an audit firm periodically, for its registration as a TCA. Currently there are 95 firms registered as TCAs by the FRC in the UK. As a result of the UK's exit from the EU, if EEA auditors of non-UK companies whose securities are admitted to trading on a UK regulated market are also required to register as third country auditors with the FRC, we estimate that between 60 to 70 auditors would need to seek registration¹⁰.

The current fee levels are not changed by this instrument. In any case, the FRC understands that the fee charged is a small proportion of the fees charged by an auditor to a non-UK incorporated client listed on a regulated market in the UK. The increased scope of the registration requirement so as to include EEA auditors of non-UK companies is a result of the UK's exit from the EU and of the amendments made in the Statutory Auditors Third Country Auditors (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/177) and Statutory Auditors Third Country Auditors (Amendment) (EU Exit) Regulations 2020 (2020/108). We understand that the increased scope of the registration requirement was considered in the work of the Department for Business, Energy and Industrial Strategy to assess the impact of those regulations.

Accordingly, this Instrument does not lead to any significant impact on business.

¹⁰ This assumes that the current auditors of the estimated 290 EEA businesses that have securities admitted to trading on UK regulated markets will register as third country auditors for financial years beginning on or after 1 January 2021, and does not include any other EEA auditors that audit non-EEA companies with securities admitted to trading on a UK regulated market.