

January 2019

Third Country Auditors (Fees) Instrument 2019 – Public consultation

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Scope of the consultation

This consultation seeks views on the proposed periodical fees for registered Third Country Auditors in the UK.

This consultation is open to the public. This consultation was launched on 10/01/2019 for a period of 4 weeks. It closes on 07/02/2019.

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 or in writing to:

Third Country Auditor Consultation
Professional Oversight Team
Financial Reporting Council
8th Floor
125 London Wall
London EC2Y 5AS

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

The EU Audit Directive¹ requires the registration and regulation of auditors that audit the accounts of companies from outside the EEA that issue securities on regulated markets in the EEA (“third country auditors” or “TCAs”)

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 EU. This is intended to enhance and safeguard public confidence in the annual and consolidated financial statements of companies listed on regulated markets in the EEA that are audited by TCAs.

The United Kingdom has implemented and operates a regulatory regime governing TCAs. 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.

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

The UK will leave the European Union on 29 March 2019. After this date, if no withdrawal agreement is in place between the UK and the EU providing for an implementation period,

¹ Directive 2006/43/EC on Statutory Audits of Annual and Consolidated Accounts.

the UK will apply the TCA regime² to non-UK auditors that audit the accounts of companies from outside the UK that issue certain securities on a UK regulated market.

Third Country Auditors (Fees) Instrument 2019

Section 1251 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 was most recently exercised by the Third Country Auditors (Fees) Instrument 2018. In order to give effect to the UK's departure from the EU, the UK Government will make changes to the legislation governing the TCA regime. In light of this, it is necessary to update the Instrument to give effect to these changes.

The draft regulations that FRC proposes to make are the Third Country Auditors (Fees) Instrument 2019 ("the 2019 Instrument") which are set out in Annex 1 to this consultation document. *The instrument does not alter the levels of the current fees.*

The FRC charges fees to recover the costs of administering the TCA regime. The fees are based on the costs to administer the regime and are determined by the anticipated cost of processing applications for registration and renewal of registration. The costs include staff salaries (including employer pension and national insurance contributions), and overheads such as accommodation, IT and HR services.

To calculate the cost attributable per registration, applications were split into the types set out in the schedule in the fee instrument, based on difference in the time taken to process them. An estimate of the time taken for each step of the process was obtained and used to calculate an estimate of the FRC resource required to process each application type.

Due to the UK leaving the EU, 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 will increase the cost of administering the regime. However, the FRC also expects that there will be an increase in the number of audit firms registering as TCA audit firms. This means that there will be economies of scale and the costs can be shared between more firms.

From our calculations and estimates on the expected levels of work going forward, it has been decided not to change the level of fees required to be paid. We will continue to review the costs incurred, on a regular basis, to ensure that they remain appropriate.

The 2019 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 without a withdrawal agreement or implementation period being in place;
- Come into force immediately after the UK's exit in these circumstances;
- Set out the level of fees required to be paid by various classes of TCA; and
- Revoke the Third Country Auditors (Fees) Instrument 2018.

² The Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2018 (which has been laid before Parliament) will amend the legislation set out above in order to facilitate the continued operation of the TCA regime if the UK leaves the EU without a withdrawal agreement or implementation period being in place.

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 will process any personal data provided by you in accordance with the General Data Protection Regulation and the Data Protection Act 2018. More information about how we handle the personal data of stakeholders is contained in our Stakeholder Engagement Privacy Notice, available here: <https://www.frc.org.uk/getattachment/1bd76348-7e4d-488b-a89b-11959b0d1f6a/Stakeholder-Engagement-Privacy-Notice-Final-1-July-2018.pdf>

Information provided in response to this consultation may be subject to publication or disclosure in accordance with applicable access to information frameworks, primarily the Freedom of Information Act 2000 (FOIA) (which only applies to information held by us in relation to the exercise of some of our functions), the General Data Protection Regulation, the Data Protection Act 2018 and the Environmental Information Regulations 2004.

If you want certain information you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this you should explain to us why you regard any information you have provided as confidential. If we receive a request for disclosure of the information we will take due account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the FRC.

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 as a 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. Are 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 a resident of the United Kingdom / an EEA state / other? (please delete as applicable)

Policy questions

1. Do you agree that the FRC should not alter the fee levels at this time? Please give reasons for your response.
2. Do you have any other comments regarding the draft 2019 Instrument?

Next steps

This consultation runs for 4 weeks, from the 10/01/2019 to 07/02/2019.

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.

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

ANNEX 1 – The Third Country Auditors (Fees) Instrument 2019

Powers exercised

- A. The Financial Reporting Council Limited (“the 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 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 (“the Delegation Order”)⁵.
- C. This instrument is made by the FRC in accordance with relevant provisions of the Delegation Order and section 1252 and Schedule 13 to the Act, and with the approval of the Secretary of State.

Citation, commencement and interpretation

- (1) This instrument may be cited as the Third Country Auditors (Fees) Instrument 2019.
- (2) This instrument comes into force at 11pm on 29 March 2019.
- (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 an auditor established in an equivalent third country as a registered third country auditor, in accordance with FRC requirements;
 - “full registration” means the registration as auditor 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.

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 2018 (S.I. XXXX/XXXX).

- “FRC requirements” means the requirements for registration as a registered third country auditor, as set out in the Statutory Auditors and Third Country Auditors Regulations 2013⁷ and any directions made by the FRC under sections 1239(7) or 1242(4) of the Act⁸;
- “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;.
- “transitional registration” means 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.

Fees payable by registered third country auditors

- (1) A registered third country auditor must pay a fee to the FRC by 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.

Revocation

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

By Order of the FRC Board

Signed on behalf of the Board

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 2018 (S.I. XXXX/XXXX).

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 98 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 around 77 auditors would need to seek registration⁹.

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 draft Statutory Auditors Third Country Auditors (Amendment) (EU Exit) Regulations 2018. 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.

⁹ This assumes that the current auditors of the estimated 291 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 29 March, and does not include any other EEA auditors that audit non-EEA companies with securities admitted to trading on a UK regulated market.



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