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STATUTORY INSTRUMENTS

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**2003 No. 2682**

**The Income Tax (Pay As You Earn) Regulations 2003**

PART 10

COMMUNICATIONS

CHAPTER 3

ELECTRONIC PAYMENT BY LARGE EMPLOYERS

**Large employers required to make specified payments electronically**

**199.**—(1) A large employer to whom an e-payment notice in respect of a tax year has been issued must use an approved method of electronic communications to make specified payments.

(2) “Specified payments”, in this Chapter, means payments of tax under regulation 68 (periodic payments to and recoveries from the Revenue) in respect of tax months in the tax year to which the e-payment notice relates.

(3) The Board of Inland Revenue may give specific or general directions—

- (a) suspending, for any period during which the use of an approved method of electronic communications for the making of specified payments is impossible or impractical, any requirement imposed by these Regulations relating to the use of such methods,
- (b) substituting alternative requirements for the suspended ones, and
- (c) making any provision that is necessary in consequence of the imposition of the substituted requirements.

**E-payment notices and appeal**

**200.**—(1) “E-payment notice” means a notice issued by the Inland Revenue in respect of a tax year that the employer is a large employer and accordingly is required to use an approved method of electronic communications for the making of specified payments.

(2) An e-payment notice in respect of a tax year must be issued by 31st December following the specified date for that tax year.

(3) An employer may appeal against an e-payment notice by giving notice to the Inland Revenue within 30 days of the issue of the e-payment notice.

(4) The grounds of appeal are that the employer is not a large employer.

(5) If the appeal is successful the e-payment notice must be withdrawn.

(6) Regulation 217 (appeals: supplementary provisions) applies to appeals under this regulation.

**Employer in default if specified payment not received by applicable due date**

**201.**—(1) This regulation applies if an employer is required to make a specified payment by an approved method of electronic communications in accordance with regulation 199.

(2) The employer is in default if the specified payment is not received in full by the Inland Revenue (whether by an approved method of electronic communications or otherwise) on or before

the date by which that payment is required in accordance with regulation 69 (due date for payments of tax).

- (3) But the employer is not in default if—
  - (a) the employer had a reasonable excuse for failing to make the specified payment in a manner which secures that it is received in full by the Inland Revenue on or before the applicable due date, and
  - (b) the specified payment is received in full by the Inland Revenue without unreasonable delay after the excuse ceased.
- (4) Inability to pay is not a reasonable excuse for the purposes of paragraph (3)(a).

(5) A payment is not treated as received in full by the Inland Revenue on or before the date by which that payment is required in accordance with regulation 69 unless it is made in a manner which secures (in a case where the payment is made otherwise than in cash) that, on or before that date, all transactions can be completed which need to be completed before the whole amount of the payment becomes available to the Inland Revenue.

#### **Default notice and appeal**

**202.**—(1) The Inland Revenue must issue a default notice to any person who appears to be in default under regulation 201 in respect of a specified payment.

(2) A person may appeal against a default notice by giving notice to the Inland Revenue within 30 days of the issue of the default notice.

- (3) The grounds of appeal are—
  - (a) that the person is not in default, or
  - (b) that the person is not a large employer, subject to paragraph (5).

(4) If the appeal is successful the default notice must be withdrawn.

(5) Paragraph (3)(b) does not apply if, following an appeal under regulation 200, the e-payment notice was not withdrawn.

(6) Regulation 217 (appeals: supplementary provisions) applies to appeals under this regulation.

#### **Default surcharge**

**203.**—(1) An employer in default in respect of any specified payment to whom—

- (a) a default notice under regulation 202, and
- (b) a surcharge notice under regulation 204,

have been issued, is liable to a surcharge.

(2) The surcharge is the sum of the surcharges, calculated in accordance with paragraph (3), in respect of each default relating to the tax year in which were made the relevant payments to which the specified payment referred to in paragraph (1) relates.

(3) The surcharge in respect of each default is the specified percentage of (A – B).

(4) In paragraph (3)—

- (a) A is the total amount of tax due for the tax year in which the relevant payments to which the specified payment relates were made;
- (b) B is the total of the amounts deducted from A under—

- (i) rule 1 of regulation 7(2) of the Working Tax Credit (Payment by Employers) Regulations 2002(1);
  - (ii) regulations 4, 5 and 6 of the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations 1994(2),
  - (iii) regulations 3 and 5 of the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002(3), and
  - (iv) regulation 44B of the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993(4);
- (c) the specified percentage is determined by reference to the number of the default during a surcharge period in accordance with Table 8.

**Table 8**

Specified percentage for each default in a surcharge period

<i>1. Default number (within a surcharge period)</i>	<i>2. Specified percentage</i>
1st	0%
2nd	0%
3rd	0.17%
4th	0.17%
5th	0.17%
6th	0.33%
7th	0.33%
8th	0.33%
9th	0.58%
10th	0.58%
11th	0.58%
12th and subsequent defaults	0.83%

- (5) A surcharge period is a period which—
- (a) begins on the day following the date by which payment is required in accordance with regulation 69 for the first specified payment in respect of which the employer is in default, and
  - (b) ends at the end of a tax year in relation to which the employer has not been in default in respect of any specified payment.
- (6) A surcharge payable under this regulation is payable 30 days after the issue of the surcharge notice.

(1) S.I.2002/2172.

(2) S.I. 1994/1882, amended by S.I. 2003/672.

(3) S.I. 2002/2820.

(4) S.I. 1993/743, amended by S.I. 2003/536.

(7) Section 102 of TMA(5) (mitigation of penalties) applies to a surcharge payable under this regulation as if it were a penalty.

### **Surcharge notice and appeal**

**204.**—(1) The Inland Revenue must issue a surcharge notice to an employer who has been in default on three or more occasions during a surcharge period and consequently will be liable to a surcharge under regulation 203.

(2) The surcharge notice must show the total surcharge liability for the tax year.

(3) The surcharge notice must be issued within 6 years of—

(a) the end of the tax year, or

(b) if earlier, the date on which the employer delivered a return in accordance with regulation 73 (annual return of relevant payments liable to deduction of tax (Forms P35 and P14)).

(4) An employer may appeal against a surcharge notice by giving notice to the Inland Revenue within 30 days of the issue of the surcharge notice.

(5) The grounds of appeal are—

(a) that the number of defaults stated in the notice is incorrect, or

(b) that the amount of the surcharge is incorrect.

(6) But paragraph (5)(a) does not apply in respect of a disputed default which has already been the subject of an appeal under regulation 202, following which the default notice was not withdrawn.

(7) Parts 4, 5 and 6 of TMA (assessment, appeals, collection and recovery) apply to the surcharge notice as if it were an assessment and the amount of the surcharge was tax charged by the assessment, subject to paragraphs (4), (5) and (8).

(8) On an appeal section 50(6) to (8) of TMA (procedure) do not apply, but the Commissioners may—

(a) if it appears to them that no surcharge has been incurred, set the surcharge notice aside,

(b) if the amount of the total surcharge liability appears to them to be correct, confirm the surcharge notice, or

(c) if the amount of the total surcharge liability appears to them to be incorrect, increase or reduce it to the correct amount.

(9) Regulation 217(3) (appeals: supplementary provisions) applies to appeals under this regulation.