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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

**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.

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(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.

**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.

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