



TC07952

Appeal number: TC/2019/09213

Soft Drinks Industry Levy - Schedule 55 Finance Act 2009 - fixed penalty for late filing of SDIL return - Appellant unaware of obligation to file return - whether reasonable excuse - no - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

FORTUNE FOODS UK LIMITED

Appellant

- and -

**THE COMMISSIONERS FOR HER
MAJESTY'S
REVENUE & CUSTOMS**

Respondents

TRIBUNAL: JUDGE MICHAEL CONNELL

The Tribunal determined the appeal on 27 May 2020 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 7 December 2019 and HMRC's Statement of Case received by the Tribunal on 22 January 2020.

DECISION

The appeal

1. This is an appeal by Fortune Foods UK Limited (“the appellant”) against a Soft Drinks Industry Levy (“SDIL”) penalty in the amount of £100 (“the penalty”), imposed by the Respondents (“HMRC”). The penalty was issued to the appellant on 5 December 2019.
2. The appellant has been registered for the SDIL since 1 March 2019 and is required to submit quarterly returns for accounting periods ending 31 March, 30 June, 30 September and 31 December.
3. Submission dates are shown on Gov.uk in the SDIL guidance and all businesses registered for the levy are required to submit returns in the same accounting period.
4. For each accounting period a liable person must make a return to HMRC and do so within the period 30 days beginning with the last day of the accounting period. Returns are submitted online through the Government Gateway Portal.
5. The Return for 31 March 2019 should have been submitted by 30 April 2019 and was not submitted by the appellant until 13 June 2019.
6. The Return for 30 June 2019 should have been submitted by 30 July 2019 and was not submitted by the appellant until 5 September 2019.
7. The Return for 30 September 2019 should have been submitted by 30 October 2019 and was not submitted by the appellant until 6 November 2019.
8. HMRC’s computer system automatically generates the penalty if the return is not received by the due date and a penalty letter is then issued manually.
9. A late filing penalty was issued to the appellant on 5 December 2019 in respect of the late filed return for the accounting period ending 30 September 2019.
10. On 7 December 2019 the appellant submitted a Notice of Appeal to the Tribunal.

Relevant Legislation

11. Soft Drinks Industry Levy Regulations 2018 states as follows:

Accounting periods

19. - (1) A liable person must make payments of soft drinks industry levy in respect of each accounting period.

(2) The accounting periods are the three-month periods ending with 31st March, 30th June, 30th September and 31st December.

Payment

20.(1) A liable person must pay the total amount of soft drinks industry levy payable in respect of an accounting period within the period of 30 days beginning with the last day of the accounting period.

(2) The total amount is the amount required to be stated in the return in respect of the period (1).

(3) Payment must be made by the method prescribed.

Returns

21 (1) For each accounting period, a liable person must make a return to the Commissioners and do so within the period of 30 days beginning with the last day of the accounting period.

(2) A return must be dated and made in the form and manner prescribed by the Commissioners, including electronically, subject to such exceptions as they may prescribe.

(3) A return must include the matters prescribed by the Commissioners.

12. Schedule 55 of the Finance Act 2009 states as follows:

Penalty for failure to make returns etc.

1(1) A penalty is payable by a person (“P”) where P fails to make or deliver a return, or to deliver any other document, specified in the Table below on or before the filing date.

(2) Paragraphs 2 to [13- 13J] set out -

(a) the circumstances in which a penalty is payable, and

(b) subject to paragraphs 14 to 17, the amount of the penalty.

(3) If P's failure falls within more than one paragraph of this Schedule, P is liable to a penalty under each of those paragraphs (but this is subject to paragraph 17(3)).

(4) In this Schedule-

“filing date”, in relation to a return or other document, means the date by which it is required to be made or delivered to HMRC [(or, in the case of a return mentioned in item 7AA or 7AB of the Table, to the tax authorities to whom the return is required to be delivered)];

“penalty date”, in relation to a return or other document falling within any of items 1 to 3 and 5 to [13A) in the Table], means the date on which a penalty is first payable for failing to make or deliver it (that is to say, the day after the filing date).

[(4A)The Treasury may by order make such amendments to item 4 in the Table as they think fit in consequence of any amendment, revocation or re-enactment of the regulations mentioned in that item.]

(5) In the provisions of this Schedule which follow the Table -

(a) any reference to a return includes a reference to any other document specified in the Table, and

(b) any reference to making a return includes a reference to delivering a return or to delivering any such document.

Tax to which return relates	Return or other document
Soft Drinks Industry Levy	Return under regulations under s52 of FA 2017

13. Section 52 of the Finance Act 2017 states as follows:

Payment, collection and recovery

(1) The Commissioners may by regulations make provision about the payment, collection and recovery of soft drinks industry levy.

(2) Regulations under subsection (1) may -

- (a) require persons who are or are liable to be registered under this Part to keep accounts for the purposes of the levy in the specified form and manner;
 - (b) require persons who are or are liable to be registered under this Part to make returns for the purposes of the levy;
 - (c) make provision for determining the periods ("accounting periods") by reference to which payments of the levy are to be made;
 - (d) make provision about the times at which payments of the levy are to be made and methods of payment;
 - (e) require the amounts payable by reference to accounting periods to be calculated by or under the regulations;
 - (f) make provision for the correction of errors made in accounting for the levy.
- (3) Provision may be made by or under regulations under subsection (2)(b) about -
- (a) the periods by reference to which returns are to be made,
 - (b) the information to be included in returns,
 - (c) timing, and
 - (d) the form of, and method of making returns.

The Appellant's case

14. The appellant's grounds of appeal as stated in its notice of appeal are:

“We have never received any information from HMRC regarding filing of a Soft Drinks Industry Levy return. As a small company we are not able to check as frequently as big companies do. We have never received any reminder or information regarding when and how to file. We have tried our best to file and pay the tax on time. It is not fair to penalize honest small businesses.”

The Respondent's Case

15. The requirements for the filing and payment of SDIL returns are set out in the Soft Drinks Industry Levy Regulations 2018.

16. All registered traders, irrespective of the size of their company, must make themselves aware of the requirements and must comply with the Soft Drinks Industry Levy Regulations 2018.

17. The appellant's SDIL return for the period 1 July 2019 to 30 September 2019 was not filed by the due date of 30 October 2019.

18. As the appellant did not file its return on time, HMRC started a penalty period for SDIL. The penalty date is the day after the due date for filing of the return which in this case is 31 October 2019.

19. The penalty period starts on the penalty date and ends 12 months after the due date for the return. Therefore, the penalty period starts on 31 October 2019 and will end on 30 October 2020. The appellant must file all returns on time during this period or they will be subject to further penalties up to a maximum of £400. The penalty period would also be extended.

20. The appellant has not provided any reasonable excuse for the late filing of its SDIL return.

Conclusion

21. When a person appeals against a penalty, they are required to have a reasonable excuse which existed for the whole period of the default. There is no definition in law of reasonable excuse, which is a matter to be considered in the light of all the circumstances of the particular case.

22. A reasonable excuse is normally an unexpected or unusual event, either unforeseeable or beyond the person's control, which prevents him or her from complying with an obligation which otherwise they would have complied with.

23. Ignorance of the law can only exceptionally be a reasonable excuse. There is no reason why the proprietors of the appellant company could not have acquainted themselves of their obligations under the SDIL legislation.

24. Accordingly, no reasonable excuse has been shown for the appellant's failure to file its SDIL return for the period ending 30 September 2019 on or before the due filing date.

25. The late filing penalty has therefore been charged in accordance with legislation.

26. The appeal is therefore dismissed and the late filing penalty of £100 is confirmed.

27. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

MICHAEL CONNELL

TRIBUNAL JUDGE

RELEASE DATE: 27 NOVEMBER 2020