

# Commissioners for Her Majesty's Revenue and Customs (Appellant) v Tooth (Respondent)

Case ID: UKSC 2019/0136

## Case summary

### Issue

The issues are, in the context of the Taxes Management Act 1970, section 29, in circumstances where Mr Tooth, in his self-assessment tax return for 2007-08, entered a loss he claimed was an employment loss as a partnership loss but informed HMRC that the loss was, in fact, an employment loss: (1) whether (and if so, how and when), on the facts of the case, HMRC made a "discovery" of an insufficiency of tax in Mr Tooth's income tax self-assessment return for 2007-08; (2) whether a concept of "staleness" exists and, if so, how it applies in this case; (3) whether Mr Tooth's return contained an "inaccuracy" (in that the loss claimed was entered as a partnership loss, rather than an employment loss; HMRC say that Mr Tooth's explanation in his return that the loss was, in fact, an employment loss does not prevent the entry of the loss in the partnership box from being an "inaccuracy", whereas Mr Tooth says that his explanation that the loss claimed was an employment loss prevents there being an inaccuracy in his return at all) and (4) if so, was that inaccuracy "deliberate". It is common ground that the discovery assessment is valid if (and only if) the answer to each and every issue is determined in HMRC's favour. Otherwise the discovery assessment is invalid.

### Facts

Mr Tooth entered into an arrangement to obtain an employment loss ("Romangate"). Whether or not the arrangement achieved its objective at the time it was entered into, it was in any event nullified by retrospective legislation. Mr Tooth had submitted his tax return claiming the loss (before the retrospective legislation was enacted) but as a partnership loss, rather than an employment loss (because he wanted to use the loss immediately against his tax liability for that year, and the software in the electronic tax returns would not permit the entry of the relevant figures into the box for employment losses). Mr Tooth had informed HMRC in the "white space" to the return that the loss he claimed was an employment related loss. HMRC issued a discovery assessment on Mr Tooth (after the enactment of the legislation which nullified the arrangement) on the basis that:

- (1) HMRC had discovered an insufficiency in Mr Tooth's return;
- (2) Mr Tooth's return contained an inaccuracy (in that the loss was entered on the partnership pages of the return and Mr Tooth's explanation as to why he had done this did not alter the nature of what HMRC consider to be an inaccuracy); and
- (3) this inaccuracy was deliberate.

### Judgment appealed

[\[2019\] EWCA Civ 826](#)

### Parties

#### Appellant(s)

Commissioners for Her Majesty's Revenue and Customs

## **Respondent(s)**

Tooth

## **Appeal**

## **Justices**

Lord Reed, Lord Briggs, Lord Sales, Lord Leggatt, Lord Burrows

## **Hearing start date**

2 March 2021

## **Hearing finish date**

3 March 2021

### **Watch hearing**

02 Mar 2021 [Morning session](#) [Afternoon session](#)

03 Mar 2021 [Morning session](#)

## **Judgment details**

### **Judgment date**

14 May 2021

### **Neutral citation**

[2021] UKSC 17