EST. 1998

McKIE &CO

THE RUDGE REVENUE REVIEW

ISSUE 28

DRAWING HMRC'S TEETH

'Inaccuracies' in returns

1.1 Even self-assessment returns made in good faith may, after HMRC has enquired into them, turn out to contain an 'inaccuracy'. They may do so for many different reasons. Sometimes it is because of the taxpayer's carelessness. Sometimes a client who exercises every care will be defeated by the Byzantine complexity of our tax system as will, from time to time, even competent professional tax agents. Sometimes clients accept HMRC's erroneous view of the law on a matter because it is less burdensome for them to concede than to establish the correct position.

Time limits

1.2 Fortunately time limits restrict HMRC's powers to make discovery assessments in respect of such 'inaccuracies'.

1.3 The ordinary time limit, where the return for the year concerned has been made on time, is that an assessment may not be made more than four years after the end of the year of assessment to which it relates.[1] This limit may be extended in certain circumstances. Under TMA 1970 s. 36(1), in a case *'involving a loss of Income Tax or Capital Gains Tax brought about carelessly'* by the taxpayer, the assessment *'may be made at any time not more than six years after the end of the year of assessment to which relates'*. Under s. 36(1A) if such a loss is *'brought about deliberately by the person'* that period is extended to twenty years.

1.4 TMA 1970 s. 29(4) also uses the concepts of carelessness and deliberateness. It sets out one of two conditions, of which one must be satisfied for s. 29(1), to apply where the taxpayer has made and delivered a return in respect of the

[1] TMA 1970 s. 34(1)

year of assessment for which a discovery assessment is made.[2] That condition is:

> *' … that the situation mentioned in subsection (1) above was brought about carelessly or deliberately by the taxpayer or a person acting on his behalf.'*

1.5 It will be noticed that whereas s. 36(1) and (1A) require that what must be brought about by the taxpayer assessed[3] carelessly or deliberately (as the case may be) is a loss of Income Tax or Capital Gains Tax, s. 29(1) requires that what must have been brought about carelessly or deliberately by the taxpayer assessed[4] is a situation of a sort defined in s. 29(1). Although it is likely that where the condition in s. 29(4) is satisfied the condition of either s. 36(1) or (1A) will be satisfied the legislation does not expressly tie the two provisions together.

1.6 In the remainder of this article we shall call both a situation within s. 29(4) and a loss of tax under s. 36 an 'under-assessment' although this is not a term used in the legislation.

TMA 1970 s. 118(7)

1.7 If the provisions of ss. 29 and 36 stood alone it would be clear that for the limitation period to be extended to twenty years the taxpayer must have intended the inaccuracy in his return to result in 'a loss of income Tax or Capital Gains Tax'. TMA 1970 s. 118(7) provides, however, that:

> *'In this Act references to a loss of tax or a situation brought about deliberately by a person include a loss of tax or a situation that arises as*

[2] TMA 1970 s. 29(3)
[3] This is then extended to a loss brought about by another person acting on behalf of the assessed taxpayer (TMA 1970 s. 36(1B)
[4] Or by 'a person acting on his behalf'

a result of a deliberate inaccuracy in a document given to Her Majesty's Revenue and Customs by or on behalf of that person.[5]

1.8 On the basis of this sub-section, some years ago HMRC began raising a rather bizarre argument which, had it been correct, would have extended the time limit applicable to raising assessments on many entirely innocent errors to the twenty year period provided by s. 36(1A). HMRC argued that in placing an inaccurate figure, or other inaccurate information, on a return, the conditions of TMA 1970 s. 118(7) would be satisfied if the taxpayer intended to place the figure or information on the return even if he did not know that that figure or information was incorrect; that to fall within s. 118(7) the matter in respect of which the taxpayer had to be deliberate was simply placing the incorrect figure or other information on the return and not doing so knowing the figures to be inaccurate.

1.9 In a refreshingly sensible decision, that argument has now been decisively rejected by the Supreme Court in *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)*.[6] At the same time the Court clarified a number of other issues in respect of discovery.

THE FACTS

2.1 The facts of the case which are relevant to the substantive technical matters at issue can be summarised briefly.

2.2 Mr Tooth entered into a tax avoidance scheme (the 'Scheme') promoted by NT Advisers (the 'Promoters') on which leading Counsel had given a favourable opinion.[7] It was designed to generate an employment-related loss which, in respect of Mr Tooth's implementation of the scheme, was 'suffered' in the tax

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5 TMA 1970 s. 118(7)

6 *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17

7 *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at para. 3

year 2008/09 and which he intended to use by setting it against the income of that year and of the previous year, 2007/08.[8]

2.3 The employment-related loss should have been entered on the return for the year on Box 3 of the Additional Information page 3 and '2008/09'[9] entered in Box 4.[10] Mr Tooth's tax agents (the 'Agent') submitted his tax return for 2007/08 using tax software (the 'Software'), approved by HMRC. There was a fault in the Software, however, so that it was impossible to make the entry in Box 3.[11] Instead, on the Promoter's advice, the Agent entered the loss as a partnership loss on the Partnership pages.[12] This required the Agent to give details of a fictional partnership with a fictional tax reference number.[13] In the 'white space' at Box 19 of page 6 of the main return the Agent entered:

> *'During the tax year ending 5 April 2009, I sustained an employment related loss for which relief is being claimed now in accordance with section 128 ITA 2007. Please refer to the partnership pages of my return. Full details of this loss will be reported on my 2008/09 tax return in due course.'*[14]

2.4 Extensive further information was given on the partnership (short) papers in Additional Information box 30.[15]

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[8] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at para. 8

[9] The case report says 2007-09 but this appears to be a typographical error. *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at para. 9

[10] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at para. 9

[11] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at para. 9

[12] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at paras. 10 & 11

[13] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at para. 12

[14] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at para. 10

[15] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at para. 11

2.5 In due course, the scheme both failed in the Courts and was nullified by retrospective legislation which had effect for years including the years relevant to Mr Tooth's implementation of it.[16]

2.6 In August 2009 HMRC opened an enquiry into Mr Tooth's return, for 2007/08, specifying that it was enquiring:

> *' … into what [it] described in the letter as his claim for relief in 2007/08 for employment losses incurred during 2008/09'.*[17]

2.7 The case report records:

> *' … By this the Revenue intended to protect their position as against Mr Tooth's use of the Romangate scheme, having by then promoted a provision in the 2009 Finance Bill to nullify the effect of the scheme retrospectively. By this time the Revenue had already formed the view that, even under the existing law, the Romangate scheme was ineffective, albeit they recognised there was doubt about this and in due course promoted retrospective legislation to ensure this result. In the letter the Revenue referred to an announcement made on 1 April 2009 that such legislation was to be introduced which would have the effect of refusing relief for losses under the Romangate scheme. By their letter they made it clear that, from their reading of Mr Tooth's 2007-08 return, they well understood that his Romangate-based losses had nothing whatever to do with a partnership, but rather related to employment, and involved a carry-back from 2008-9 to 2007-08.'*[18]

2.8 Mr Tooth and HMRC then agreed to put the matter on hold pending the outcome of related litigation.

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[16] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at paras. 2 & 14

[17] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at para. 14

[18] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at para. 14

2.9 In order to fall within the ordinary time limit,[19] an assessment in respect of 2007/08 had to be made by 5th April 2012 and in order to fall within the time limit relevant to carelessness, by 5th April 2014.[20] Although HMRC had known since 2009 that Mr Tooth's return included a claim for employment losses which, according to HMRC's position, was not valid and which had in any event been invalidated retrospectively by legislation, if Mr Tooth's claim to the loss had been carless but not deliberate, HMRC had missed the deadline to raise an assessment. It wasn't until July 2014 that an Inland Revenue Officer, Mrs Smith, gave notice of her intention of making a discovery assessment on Mr Tooth:

> *'on the basis that he had deliberately brought about a loss of tax by claiming an employment-related loss from 2008-9 in the partnership pages of his 2007-8 return'.*[21]

2.10 By characterising the loss of tax as having been brought about deliberately she, one presumes, hoped to repair HMRC's previous incompetence by bringing the assessment within the time limit stipulated by TMA 1970 s. 36(1A). Even then, however, Mrs Smith did not raise the assessment.

2.11 In October 2014, a Mr Williams, reviewed the case, and gave instructions for discovery assessments to be issued which was done on 24th October 2014.[22]

2.12 Mr Tooth appealed against the assessments and the case proceeded through the First Tier Tribunal (the 'FtT'), the Upper Tribunal ('UT') and the Court of Appeal to the Supreme Court. The FtT, UT and Court of Appeal all found for Mr Tooth although not all on the same grounds. In the Supreme Court there were two main issues:

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[19] See para. 1.3 above
[20] See para. 1.3 above
[21] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at para. 18
[22] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at paras. 19 - 21

(a) Did Mr Tooth's return for 2007/08 contain a deliberate inaccuracy within TMA 1970 s. 118(7) (the 'Deliberateness Issue')?

(b) Did an Officer of the Board, or the Board, discover, as regards Mr Tooth and the fiscal year 2007/08 … that Mr Tooth's self-assessment was insufficient within TMA 1970 s. 29(1) (the 'Discovery Issue')?[23]

2.13 We shall deal with first the Discovery Issue.

THE DISCOVERY ISSUE: DID AN OFFICER OF THE BOARD OR THE BOARD DISCOVER, AS REGARDS MR TOOTH AND THE FISCAL YEAR 2007/08 … THAT MR TOOTH'S SELF-ASSESSMENT WAS INSUFFICIENT WITHIN TMA 1970 S. 29(1)?

3.1 The UT and the Court of Appeal had accepted the taxpayer's argument that, where an HMRC officer has purported to raise a discovery assessment and the same matters that form the basis of that assessment have previously been discovered by other Revenue Officers, the assessment does not satisfy the discovery provisions of s. 29(1) because the discovery on which it is based has become 'stale'. Implicit in that view, therefore, is an assumption that the knowledge available to HMRC is to be imputed to the officer making the discovery assessment so that his discovery can be said to be the same discovery as that made by the other officer.

3.2 The Supreme Court firmly rejected the view that HMRC's knowledge could be attributed to the individual HMRC officer.[24]

3.3 In respect of 'staleness' it pointed that there were no specific provisions in s. 29 requiring a discovery assessment to be made within any specified period after the discovery and that the only relevant provisions providing a limitation of time,

[23] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at paras. 35 & 36

[24] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at paras. 65 - 86

being sections 34 and 36, set that limitation by reference to the year of assessment to which the purported discovery assessment relates and not by reference to the time at which the discovery is made.[25]

3.4 Supporting its analysis by reference to the decision in *Langham (Inspector of Taxes) v. Veltema* [2004][26] and succeeding applications of that decision in later cases,[27] it also pointed out that s. 29(1) refers to both 'an officer of the Board' and 'the Board' making a discovery, a distinction which would be redundant if the Board's collective knowledge were to be attributed to its officers. The Supreme Court therefore concluded that it was not to be so attributed.[28]

3.5 The Supreme Court's conclusion in relation to 'staleness' is clearly correct. If a discovery cannot become 'stale', attributing HMRC's knowledge to the individual officer would be to the taxpayer's disadvantage, rather than his advantage, because any discovery by any HMRC officer could then form the basis of a discovery assessment by any other officer.

3.6 Although the Supreme Court's interpretation of the construction of the legislation of this issue is clearly correct, however, it highlights once again a fault in the legislation, not in s. 29(1) but in s. 29(5) under which, the legislation's failure to attribute to a particular officer the knowledge of HMRC has the result that the taxpayer can be disadvantaged by HMRC's failure to organise the information it possesses efficiently and to disseminate it to its officers and by the inefficiency and incompetence of those of HMRC's officers who do not ensure that they access the information which is available to them.

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[25] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at para. 66

[26] *Langham (Inspector of Taxes) v Veltema* [2004] EWCA Civ 193. See *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at para. 68

[27] *Sanderson v Revenue and Customs Comrs* [2016] EWCA Civ 19; [2016] 4 WLR 67, at para 17(5); *Charlton v Revenue and Customs Comrs* [2013] STC 866. See *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 para. 68

[28] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at para. 68

THE DELIBERATENESS ISSUE: DID MR TOOTH'S RETURN FOR 2007/08 CONTAIN A DELIBERATE INACCURACY WITHIN TMA 1970 S. 118(7)

Must the taxpayer know the return is inaccurate?

4.1 We have seen that the provisions of s. 29(1) and of s. 36(1A) read on their own would require the taxpayer to have deliberately brought about what we have called an under-assessment.[29]

4.2 It would appear, however, that TMA 1970 s. 118(7)[30] extends both sections to cover situations where there is a deliberate inaccuracy in a document where the perpetrator of that inaccuracy does not know that it will lead to an under assessment.

4.3 In the Supreme Court, Counsel for Mr Tooth seems to have argued that, in spite of s. 118(7), in respect of deliberateness, s. 29(4) requires the taxpayer to have known that the inaccuracy would lead to an under-assessment.[31]

4.4 The Supreme Court's decision does not set out Mr Tooth's argument on this point in full and so its grounds are obscure. The Supreme Court, rightly, roundly rejected it summarising the effect of s. 29(4) as follows:

> *'Its effect is that where the conduct which (in the present context) brings about or "results" in a situation consisting of an insufficiency within section 29(1) consists of an inaccuracy in a document given to the Revenue by or on behalf of the taxpayer, then the section 29(4) condition is fulfilled even if the insufficiency itself was not deliberate, provided that the inaccuracy was. In short, it decouples the insufficiency from the*

[29] See para. 1.7 above
[30] See para. 1.7 above
[31] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at para. 37

requisite intention, provided that the deliberate inaccuracy causes it in fact.'[32]

4.5 The Supreme Court did, however, go on to make the following interesting observation:

'It may be, at least in theory, that section 118(7) does not cover the whole of the ground delineated by the "deliberate" limb of section 29(4). A taxpayer might bring about a relevant situation (here an insufficiency) by something said at a meeting with the Revenue. In such a case section 118(7) would have no application and the Revenue would have to show that the taxpayer intended by his statement to bring about the insufficiency, as section 29(4) would otherwise require.'[33]

4.6 Having disposed of this point on which one hardly supposes that Mr Ghosh expected to be successful, the Court went on to consider the crux of the Deliberateness Issue. That is whether an inaccuracy will be deliberate within s. 29(4) as extended by s. 118(7) only if the taxpayer knew that the figure or other information was inaccurate or whether it is sufficient merely that the taxpayer should have placed that figure or other information in the return intentionally even if he thought it accurate.

'But the Revenue seek to go further. Ms McCarthy submits that the requirement in section 118(7) that the documentary inaccuracy should be deliberate means only that the statement in the document constituting the inaccuracy was deliberately made: ie made intentionally rather than for example carelessly or by mistake. This would apparently extend to an intentional statement which was in fact inaccurate, even though genuinely believed by the maker to be true, and not intended to mislead.'[34]

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[32] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at para. 38

[33] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at para. 39

[34] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at para. 41

4.7 In rejecting Counsel for HMRC's contentions on this point, the Court's reasoning is so clear and concise that one cannot do better than to reproduce it verbatim:

> *'We have no hesitation in concluding that the … interpretation … [contended for by the taxpayer] … is to be preferred, for the following reasons. First, it is the natural meaning of the phrase "deliberate inaccuracy". Deliberate is an adjective which attaches a requirement of intentionality to the whole of that which it describes, namely "inaccuracy". An inaccuracy in a document is a statement which is inaccurate. Thus the required intentionality is attached both to the making of the statement and to its being inaccurate.*
>
> *Secondly, "deliberate inaccuracy" is the gateway to the taxpayer's exposure to a 20-year period for the making of a discovery assessment, because of the importation of that phrase from section 118(7) into section 29(4). If the first interpretation were to be preferred the taxpayer could incur that exposure by making an honest but in fact inaccurate statement, even after taking reasonable care as to its truth or falsehood. The taxpayer would not even need to be careless, and yet would incur a much longer exposure than if he had been.*
>
> *Thirdly, the penalty scheme in Schedule 24 to the Finance Act 2007 had, shortly before the relevant amendments were made to section 29 (including section 118(7)), used the same concept of deliberate inaccuracy for the purpose of triggering penalties more serious than those arising from carelessness, at altogether higher levels of blameworthy conduct (even though subdivided by reference to the presence or absence of concealment). It seems inconceivable that Parliament would have chosen the same language to serve as the gateway to the longest available period of exposure to a discovery assessment, if the phrase was to be interpreted as meaning only that the statement was intentionally made.*
>
> *Fourthly, as already noted, the phrase was introduced at the same time as a substantial shortening of the exposure period for carelessness,*

which leads to the clear inference that Parliament must have regarded "deliberate inaccuracy" as conduct substantially more blameworthy. It is to be noted that, as [Counsel for HMRC] Ms McCarthy submitted, there are other triggers for a 20-year time limit for an assessment which do not necessarily lie on a scale of blameworthiness between carelessness and fraud, but their existence does not displace the powerful inference as to Parliament's intention already described.'[35]

Does one construe the return as a whole?

4.8 Having drawn that conclusion the Court went on to consider whether in deciding whether a return contains an inaccuracy, one looks at the putative inaccuracy on its own or in the context of the document as a whole.

4.9 The figure which Mr Tooth had placed on the partnership pages of his return was, looked at in isolation, clearly inaccurate. Mr Tooth had made no partnership loss, and indeed he was not a member of a partnership, yet he had completed the partnership pages of the return in respect of a fictitious partnership and placed in the box reserved for partnership losses a figure for a loss, which was not a partnership loss. In the context of the document as a whole, however, it was perfectly plain that the figure inserted in Box 3 was not intended to be understood as being the amount of a partnership loss but of an employment-related loss.[36] As the Supreme Court said:

'Although the application of tunnel-vision to boxes 1, 7, 19 and 20 of the partnership pages might suggest at first blush that Mr Tooth was claiming to have incurred a partnership-related loss in the 2007-8 tax year (which was plainly inaccurate to his and his advisors' own knowledge) perusal by a reasonably well-informed and careful reader of the detailed explanations provided in box 19 on TR6 and box 30 on SP2 revealed, to the contrary, that he was claiming to carry back an employment-related loss from the 2008-9 tax year derived from participation in a tax avoidance scheme, and doing so by entering the

[35] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at paras. 43 - 46

[36] See paras. 2.3 and 2.4 above

relevant figure in the partnership box because the form failed to provide any employment-related box within which to do so, contrary to his interpretation of a requirement that it should do so in order to reflect section 128 of the Income Tax Act 2007. And he even invited the Revenue to open an enquiry into his return on the express basis that he expected that the Revenue would disagree with his understanding as to his right to do so.

It is no coincidence that, in the present case, the officials in the Revenue dealing with his case were under no misapprehension at any time once they had read the return about what Mr Tooth was seeking to do. It is plain from the correspondence between the parties that the Revenue understood perfectly well from their first (human) reading of Mr Tooth's return that he was seeking to carry back employment-related losses derived from his participation in the Romangate scheme in the 2008-9 tax year as a deductible against his 2007-8 income, and that what he was doing had nothing whatsoever to do with any partnership.[37]

4.10 As the Supreme Court said:

'It almost goes without saying that the meaning of particular words or phrases in a document of any kind is generally to be ascertained by a contextual approach, that is by appraising the critical passage in the light of its context as part of the document read as a whole. There is no reason in principle why the same should not be true of a tax return.'[38]

4.11 HMRC, however, sought to found an exception to this general principle on the fact that, on receipt, self-assessment returns are first processed by entering the information they contain on a computer:

'…the sheet anchor of the Revenue's case was the fact that, as the online tax return form clearly stated, the return would be read upon

[37] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at paras. 53 & 54

[38] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at para. 49

receipt at the Revenue by a computer rather than, initially at least, by a sentient, literate, human being. Computers, it was said, do not do contextual interpretation, but look at each part of, or box in, the return separately.'[39]

4.12 As the Supreme Court said:

'This is, with respect, a very unattractive argument. A document written in the English language (or any language other than computer language) does not have a different meaning depending upon whether it is read by a human being or by a computer. A choice by the recipient of such a document to have it machine-read cannot alter its meaning. Furthermore, the Revenue-approved online tax return form used by Mr Tooth and his advisors contained numerous "white spaces", that is, sections of blank white-coloured space, usually headed "Additional Information", within which the taxpayer is invited to add information using his own words and phrases, so as to ensure that the declaration required to be made and signed, namely that:

> *"The information I have given on this Tax Return is correct and complete to the best of my knowledge and belief"*

is actually true.

The Revenue cannot in our view have it both ways. If they sensibly include ample white spaces in their approved form of online returns so as to ensure that the taxpayer is not constrained by the limitations of the boxes for figures from making a correct and complete return, then they cannot thereafter assert, for the purpose of advancing a non-contextual interpretation of one or more boxes, that their computer cannot read what is written on the white spaces. This must be a fortiori true where, as in the present case, the white space used by Mr Tooth to provide a full and frank explanation of the true meaning of the supposedly

[39] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at para. 49

offending insertions in the partnership boxes was to be found immediately adjacent to those boxes.'[40]

4.13 The Supreme Court's conclusion of this issue, therefore, would seem to be inescapable:

'It follows that the task of interpretation required by the need for the Revenue to prove that there was a deliberate inaccuracy in Mr Tooth's tax return was to interpret the meaning of each relevant part of the document by reference to its place in the context of the document as a whole, just as is normally done when interpreting any other document. This is not to say that the word "in" as part of the phrase "deliberate inaccuracy in a document" is to be ignored. It simply means that, rather than concluding that there is an inaccuracy by applying tunnel-vision to a particular part of the document, and ignoring the rest, the true meaning of that part is ascertained from a reading of the document as a whole.

Applying that interpretation of section 29 and section 118 to Mr Tooth's 2007-8 tax return, we are satisfied that both the FtT and the UT were correct to conclude that there was no deliberate inaccuracy to be found in it, sufficient to fulfil the first condition for a discovery assessment.'[41]

AN UNETHICAL DETERMINATION TO MAXIMISE RECEIPTS

5.1 So this important case has put to rest HMRC's argument on this point which, had it been correct, would have made a nonsense of the whole structure of time limits given by ss. 34 and 36. The question that arises, though, is why HMRC attempted to raise this argument at all. In a sense, the answer is obvious. Had it been successful, HMRC would have been enabled to impose greater penalties

[40] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at paras. 50 & 51

[41] *Commissioners for Her Majesty's Revenue and Customs (Appellant) v. Tooth (Respondent)* [2021] UKSC 17 at paras. 52 & 53. Rather confusingly the Supreme Court's decision goes on, '… as Floyd LJ also held, … there was simply no inaccuracy at all, deliberate or otherwise.' This is clearly not true. The taxpayer eventually accepted that no deductible employment-related loss arose. The Supreme Court can only have meant here that although the figure proved to be inaccurate that was not a deliberate inaccuracy by Mr Tooth.

which, having lost the case, it is now able to do. If that is why HMRC took the decision, however, it was an unethical decision to maximise its monetary receipts at the expense of injustice to taxpayers and the wider coherence of the tax system.

5.2 Tax cases are often instructive in as to what they reveal of HMRC's behaviour and values. Taxpayers should be under no illusion that HMRC is concerned with fairness, equity or the long-term health of the British economy or even of our tax system. It is focused only on the political task of maximising short-term revenue raising. If taxpayers are to be protected from injustice they need advice which takes an unblinkered and realistic view of HMRC's motivation and likely behaviour.