



HIGH COURT OF AUSTRALIA

10 March 2021

THE COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA v
TRAVELEX LIMITED
[2021] HCA 8

Today, the High Court unanimously upheld an appeal from the Full Court of the Federal Court of Australia concerning the operation of the *Taxation Administration Act 1953* (Cth) ("TAA"), the *Taxation (Interest on Overpayments and Early Payments) Act 1983* (Cth) ("TIOEP Act") and the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("GST Act") as they each stood at the relevant time.

Under the TAA, the Commissioner can establish a Running Balance Account ("RBA") for a taxpayer. The Commissioner can allocate to an RBA amounts due to the Commonwealth under taxation laws and must allocate to an RBA certain amounts that the Commissioner must pay to the taxpayer under taxation laws. The resulting balance can be either an "RBA deficit debt", which the taxpayer must pay to the Commonwealth, or an "RBA surplus", which the Commissioner must pay to the taxpayer. The short question in the appeal was whether an RBA surplus can result from the Commissioner allocating to an RBA an amount that the Commissioner is not obliged to pay a taxpayer under a taxation law. The High Court held that it could not.

The background to this proceeding is that an earlier decision of this Court, *Travelex Ltd v Federal Commissioner of Taxation* (2010) 241 CLR 510, established that certain supplies made by Travelex were GST free. Following this decision, and on Travelex's request, the Commissioner amended Travelex's GST return for the relevant tax period, proceeding on the assumption that it was then permissible to amend a GST return. As a result, Travelex's RBA was credited with \$149,020. The present case commenced, in the Federal Court of Australia, as a dispute about the date from which a commonly assumed obligation to pay interest on the \$149,020 under the TIOEP Act arose. At first instance, the Federal Court held that neither Travelex nor the Commissioner had statutory authority to amend Travelex's GST return and concluded that the Commissioner was obliged to pay interest.. The Commissioner appealed to the Full Court, on grounds including that the Federal Court had erred in concluding that the Commissioner was obliged to pay interest on the \$149,020 to Travelex under the TIOEP Act at all. The Full Court unanimously agreed that Travelex and the Commissioner lacked statutory authority to amend the GST return but divided as to the consequence of that lack of authority. The majority held that the fact of the allocation to the RBA was enough to result in the amount having the legal status of an RBA surplus, with the consequence that the Commissioner had to pay Travelex the interest under the TIOEP Act.

By grant of special leave, the Commissioner appealed to the High Court. The High Court held that the efficacy of an allocation to result in an RBA surplus under the TAA depends on the amount allocated answering the objective description of an amount due to the Commonwealth under a taxation law. Because the Commissioner and Travelex lacked statutory authority to amend the GST return, the balance recorded in the RBA did not meet that objective description. As a result, no interest is payable by the Commissioner to Travelex under the TIOEP Act.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.