FEDERAL COURT OF AUSTRALIA

Travelex Limited v Commissioner of Taxation [2018] FCA 1051

File number: NSD 2089 of 2016

Judge: **WIGNEY J**

Date of judgment: 12 July 2018

Catchwords: **TAXATION** – determination of period of interest for RBA surplus pursuant to s 12AD of the *Taxation (Interest on Overpayments and Early Payments) Act 1983* (Cth) – ascertainment of RBA interest day as defined in s 12AF of the Overpayments Act – whether taxpayer had given the Commissioner of Taxation a notification which was required for the refund under s 8AAZLG of the *Taxation Administration Act 1953* (Cth) (Administration Act) – whether the taxpayer was required by s 31-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) to give the Commissioner of Taxation an amended or revised GST return – whether the administrative practice of the Commissioner of Taxation of accepting or processing amended or revised GST returns has a legal or statutory basis – held that the taxpayer was not required by any provision in the GST Act or Administration Act to amend or revise its GST return

STATUTORY INTERPRETATION – interpretation of the expression "RBA interest day" as defined in paragraph (b) s 12AF of the *Taxation (Interest on Overpayments and Early Payments) Act 1983* (Cth) – whether the taxpayer was required to give a notification of the refund to the Commissioner under s 8AAZLG of the *Taxation Administration Act 1953* (Cth) – whether an entity is required by s 31-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) to amend or request an amendment of a GST return if the original GST return was inaccurate – whether a requirement to amend, or request an amendment, of a GST return is implicit in the statutory scheme in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)

Legislation: *Acts Interpretation Act 1901* (Cth), s 15AB

A New Tax System (Goods and Services Tax) Act 1999 (Cth), Divs 19, 25, Subdiv 48A, ss 9-2, 17-5, 19-10, 19-40, 19-70, 31-5, 31-8, 31-10, 31-15, 31-20, 33-3, 33-5, 35-5, 38-190, 105-5, 105-10, 105-15, 195-1

	Income Tax Assessment Act 1997 (Cth), ss 995-1
	Indirect Tax Laws (Assessment) Act 2012 (Cth)
	Taxation Administration Act 1953 (Cth), Pts IIB, IVC, Div 3, ss 8AAZA, 8AAZC, 8AAZLF, 8AAZLG, Sch 1, s 284-90
	Taxation (Interest on Overpayments and Early Payments) Act 1983 (Cth) Pt IIIAA, ss 12AA, 12AB, 12AD, 12AF
	Tax Laws Amendment (2009 GST Administration Measures) Act 2010 (Cth)
	Tax Laws Amendment (2011 Measures No. 9) Act 2012 (Cth)
	A New Tax System (Tax Administration) Bill 1999 (Cth)
Cases cited:	*Alcan (NT) Alumina Pty Limited v Commissioner of Territory Revenue (Northern Territory)* (2009) 239 CLR 27; [2009] HCA 41
	Brooks v Commissioner of Taxation (2000) 100 FCR 117; [2000] FCA 721
	Charara v Commissioner of Taxation [2009] NSWSC 730
	Cooper Brookes (Wollongong) Pty Limited v Commissioner of Taxation (1981) 147 CLR 297; [1981] HCA 26
	Commissioner of Taxation v Consolidated Media Holdings Limited (2012) 250 CLR 503; [2012] HCA 55
	Dixon v Federal Commissioner of Taxation (2008) 167 FCR 287; [2008] FCAFC 54
	Federal Commissioner of Taxation v Consolidated Media Holdings Limited (2012) 250 CLR 503; [2012] HCA 55
	Federal Commissioner of Taxation v Multiflex Pty Limited (2011) 197 FCR 580; [2011] FCAFC 142
	Federal Commissioner of Taxation v Unit Trend Services Pty Limited (2013) 250 CLR 523; [2013] HCA 16
	Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355; [1998] HCA 28
	Sunchen Pty Ltd v Commissioner of Taxation (2010) 264 ALR 447; [2010] FCA 21
	Travelex Limited v Commissioner of Taxation [2008] FCA 1961
	Travelex Limited v Federal Commissioner of Taxation (2009) 178 FCR 434; [2009] FCAFC 133
	Travelex Limited v Federal Commissioner of Taxation (2010) 241 CLR 510; [2010] HCA 33
Date of hearing:	8 June 2017
Registry:	New South Wales

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ORDERS

NSD 2089 of 2016

BETWEEN:	**TRAVELEX LIMITED** Applicant
AND:	**THE COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA** Respondent

JUDGE: **WIGNEY J**

DATE OF ORDER: **12 JULY 2018**

THE COURT ORDERS THAT:

1. A declaration be made that interest was and is payable by the respondent to the applicant, at the rate fixed by s 12AE of the *Taxation (Interest on Overpayments and Early Payments) Act 1983* (Cth) and for the period from 31 December 2009 to 6 July 2012, on the amount of $149,020 refunded by the respondent to the applicant on 6 July 2012 as the RBA surplus arising on 16 December 2009 in respect of its tax period (within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) for the month of November 2009.
2. The respondent pay the applicant the sum of $17,265.15.
3. The respondent pay the applicant's costs.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

WIGNEY J:

1 On 29 September 2010, the applicant in this proceeding, **Travelex** Ltd, had a win in the **High Court** of Australia. The High Court held that Travelex's sale of foreign currency at Sydney Airport to a customer who had passed through to the departure side of the customs barrier was a GST-free supply pursuant to the provisions of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**). As a result of the High Court's decision, Travelex was effectively entitled to seek a refund of money it had earlier paid to the **Commissioner** of Taxation in respect of its liability under the GST Act for various tax periods. That is because it had calculated that liability on the basis that its relevant supplies were taxable supplies. Travelex in due course calculated the amount of the refund to which it was entitled and notified the Commissioner of that amount in a letter dated 8 June 2012. The Commissioner effectively paid the refund to Travelex on 6 July 2012. So far so good.

2 The rather arcane, but nonetheless important, dispute which is the subject of this proceeding concerns the calculation of interest payable by the Commissioner to Travelex in respect of the amount overpaid by it in respect of the relevant tax periods. There was no dispute that the Commissioner was required to pay interest on the overpayment amount under the *Taxation (Interest on Overpayments and Early Payments) Act 1983* (Cth) (**Overpayments Act**). The question concerns the period for which interest was payable; specifically, the day on which the period commenced.

3 To find an answer to that question, it is necessary to embark on a somewhat tortuous journey through a labyrinth of obscure provisions in the GST Act, the Overpayments Act, the *Taxation Administration Act 1953* (Cth) (**Administration Act**) and the *Income Tax Assessment Act 1997* (Cth) (**Tax Act**). As will be seen, the answer to the question ultimately turns primarily on whether Travelex was required to give the Commissioner a notification in respect of the refund by any provision in the GST Act or the Administration Act. Travelex contended that it was not required by any provision in either Act to notify the Commissioner of its entitlement to the refund. The Commissioner contended, in effect, that to obtain the refund, Travelex was required to revise or amend its GST returns under the GST Act. The Commissioner's case was that Travelex did not amend its GST returns until the Commissioner received Travelex's letter dated 8 June 2012. Which was the correct construction of the relevant provisions?

RELEVANT FACTS

4 There was no dispute about the relevant facts. While Travelex read and relied on an affidavit with voluminous annexures, the material facts were effectively reduced to a short statement of agreed facts which annexed six documents. Neither party took the Court to any part of the affidavit. Nor did the parties place any significant reliance on any of the annexures to the affidavit, other than those that were also annexed to the agreed statement of facts.

5 Following is a summary of the facts derived from the statement of agreed facts and the documents annexed thereto.

6 It should be noted that, while the agreed facts relate to only one tax period, the November 2009 tax period, the dispute between Travelex and the Commissioner in relation to the amount of interest payable on the overpayments no doubt extended beyond that single tax period. The November 2009 tax period was selected and utilised as, in effect, a "test case". The Court's decision in relation to the November 2009 tax period will no doubt determine the approach that should be taken to other relevant tax periods.

7 Travelex is a company incorporated in Australia. It has been registered under Division 25 of the GST Act with effect from 1 July 2000.

8 Travelex is the representative member of a GST Group for the purposes of Subdivision 48A of the GST Act.

9 The tax periods applicable to Travelex for the purposes of the GST Act are monthly. Travelex has given the Commissioner a GST return as defined in s 195-1 of the GST Act for each month since 1 July 2000.

10 The Commissioner represents the Commonwealth of Australia and has the general administration of the GST Act, the Administration Act and the Overpayments Act.

11 On 1 October 2002, the Commissioner established for Travelex an account described as an "Integrated Client Account" (**ICA**). Travelex's ICA is a Running Balance Account (**RBA**) for the purposes of Part IIB of the Administration Act.

12 Travelex conducted an enterprise (as defined in s 9-20(1) of the GST Act) in the course of which it has for consideration supplied foreign currency from premises on the departure side of the customs barrier at international airports in Australia.

13 On 19 December 2008, the Court refused to make a declaration sought by Travelex that the sale of foreign currency at Sydney Airport to a passenger who had passed through to the departure side of the customs barrier was a GST-free supply by reason of item 4(a) of the table to s 38-190(1) of the GST Act: *Travelex Limited v Commissioner of Taxation* [2008] FCA 1961. On 29 September 2009, the Full Court dismissed Travelex's appeal: *Travelex Limited v Federal Commissioner of Taxation* (2009) 178 FCR 434; [2009] FCAFC 133.

14 On 16 December 2009, Travelex lodged its Business Activity Statement for the November 2009 tax period (the **November 2009 BAS**). The November 2009 BAS included a GST return for the November 2009 tax period. The net amount payable that was reported by Travelex in the November 2009 BAS was $37,751, payable on 21 December 2009 (pursuant to ss 17-5 and 33-5(1) of the GST Act) and calculated as follows:

1A	GST on sales or GST instalment	$	698,348
1B	GST on purchases	$	660,697
9	Your payment amount	$	37,751

15 The November 2009 BAS was prepared by Travelex having regard to the Full Court's decision that its relevant supplies of foreign currency were not GST-free.

16 By an entry made on 17 December 2009, "effective" on 21 December 2009, the Commissioner allocated to Travelex's ICA a debit amount of $37,751 (the **November 2009 BAS net amount**). The November 2009 BAS net amount was a "BAS amount" for the purposes of Part IIIAA of the Overpayments Act.

17 On 17 December 2009, Travelex paid to the Commissioner an amount equal to the November 2009 BAS net amount. On 18 December 2009, the Commissioner allocated that amount to Travelex's ICA as a credit amount, with an effective date of 17 December 2009.

18 On 29 September 2010, the High Court allowed Travelex's appeal from the Full Court's decision: ***Travelex*** *Limited v Federal Commissioner of Taxation* (2010) 241 CLR 510; [2010] HCA 33. The High Court held, in effect, that Travelex's sale of foreign currency at Sydney Airport to passengers who had passed through to the departure side of the customs barrier were GST-free supplies by reason of item 4(a) of the table to s 38-190(1) of the GST Act.

19 It should be emphasised that the appeal before the High Court concerned declaratory relief. It was not an appeal arising from the determination of a proceeding pursuant to Part IVC of the Administration Act. The outcome was that the High Court made a declaration concerning a single supply by Travelex. The High Court did not make any order that determined Travelex's net amount for the November 2009 tax period, or any other period, and did not, in terms, order the Commissioner to refund any amount to Travelex in respect of past tax periods.

20 Following the High Court's decision, Travelex no doubt determined that it was entitled to a refund from the Commissioner on the basis that the net amounts included in its past GST returns had been calculated on the basis that its sale of foreign currency to passengers who had passed through to the departure side of the customs barrier were taxable supplies. It would appear, however, that it took Travelex and its advisers some considerable time to work out the precise amount of the refund. That was no doubt in part because, as noted earlier, the exercise did not involve only the November 2009 tax period.

21 On 24 June 2011, Travelex, though its accountants, KPMG, wrote to the Commissioner seeking "an extension in relation to finalising the entitlement to a GST refund of under-claimed input tax credits" under the GST Act. The letter also noted that "[d]ue to the difficulty in quantifying Travelex's overall entitlement to claim GST credits" in respect of all the relevant tax periods, it was intended to "stagger the amendments" across two segments.

22 On 8 June 2012, Travelex, again through KPMG, wrote to the Commissioner setting out the amount of the refund for, *inter alia*, the November 2009 tax period. That letter was received by the Commissioner on 12 June 2012. Travelex calculated that it was entitled to a refund of $149,020 for the November 2009 tax period.

23 As will be seen, the letter dated 8 June 2012 is of some considerable importance. In it, Travelex notified the Commissioner of its entitlement to a "GST refund for under claimed input tax credits" arising from the High Court's decision. Travelex stated that it had undertaken a review to determine the extent of the unclaimed input tax credits and referred to a "total refund" calculated for the period 1 January 2008 to 31 December 2009. Details of that calculation were provided in an annexure. The annexure recorded that the refund for November 2009 was $149,020. The letter then stated: "[w]e ask that you please amend the

BAS returns for the periods 1 January 2008 to 31 December 2009 in accordance with appendix A".

24 Travelex was required by s 31-10(1)(a) of the GST Act to give the Commissioner a GST return for the tax period ended 31 May 2012 on 21 June 2012. The Commissioner did not allow a further period for lodgement of the GST return pursuant to s 31-10(1)(b) of the GST Act.

25 On 28 June 2012, the Commissioner allocated the amount of $149,020 to Travelex's ICA as a credit amount (the **November 2009 Amount**). The effective date of the allocation of the November 2009 Amount was 16 December 2009. One of the Commissioner's business records includes the following notation in relation to that allocation: "Amended self assessed amount(s) for the period ended 28 Feb 09".

26 The November 2009 Amount constituted part of an RBA surplus for the purposes of Part IIB of the Administration Act and Part IIIAA of the Overpayments Act. That part of the RBA surplus constituted by the November 2009 Amount arose on 16 December 2009. Other than that allocation, no part of the November 2009 Amount was otherwise allocated or applied under Division 3 of Part IIB of the Administration Act. Section 12AB of the Overpayments Act did not apply in respect of the November 2009 Amount.

27 On 28 June 2012, the Commissioner's computer system recorded a note on Travelex's client file with the subject "Auto ILN letter" in respect of the GST return for the May 2012 tax period. The notation 'ILN' was a reference to an Insufficient Lodgement Notice. The text of the note read: "Auto ILN letter issued – potential refund held because of outstanding AS lodgement/s".

28 On 3 July 2012, the Commissioner sent Travelex a document entitled "Confirmation of revised activity statement" for the period 1 November 2009 to 30 November 2009. The document stated that the total amount of the activity statement had been changed from $37,751Dr to $111,269Cr and that this had resulted in a credit adjustment of $149,020 for that period.

29 On 3 July 2012, the Commissioner allocated to Travelex's ICA a debit amount equal to the November 2009 Amount.

30 On 3 July 2012, Travelex gave the Commissioner a GST return for the May 2012 tax period.

31 On 6 July 2012, the Commissioner paid Travelex an amount equal to the November 2009 Amount. That payment was made pursuant to s 8AAZLF(1) of the Administration Act.

32 On 19 September 2012, the Commissioner paid Travelex an amount of $2,791.82 as delayed refund interest pursuant to s 12AA of the Overpayments Act. That amount included interest in respect of the November 2009 Amount for the period 29 June 2012 to 6 July 2012.

THE GENERAL SCHEME OF THE GST ACT

33 The statutory provisions that are central to the resolution of the dispute between Travelex and the Commissioner are contained in the Overpayments Act and, perhaps to a lesser extent, the Administration Act. The operation of those provisions, however, must be considered in context. The relevant context includes the scheme of the GST Act in relation to the lodgement of GST returns and the respective liabilities of registered entities and the Commissioner as a consequence of the "net amounts" reported in lodged GST returns. In 2012, the GST Act was amended to introduce a self-assessment regime: *Indirect Tax Laws Amendment (Assessment) Act 2012* (Cth). The events in question in this proceeding occurred prior to those amendments taking effect. The relevant statutory scheme to consider is therefore the scheme that was in place before the 2012 amendments.

34 Under the general scheme in operation at the relevant time, each entity that was registered for GST was required to give to the Commissioner a GST return for each tax period: s 31-5 of the GST Act. The GST return was required to be given at a particular time after the end of each tax period: ss 31-8 and 31-10 of the GST Act. It was also to be in the approved form: s 31-15 of the GST Act.

35 The approved form of GST return, referred to as a Business Activity Statement (**BAS**), included details of the entity's net amount. The net amount was to be worked out by subtracting the entity's input tax credits (the sum of all input tax credits to which the entity was entitled for creditable acquisitions attributable to the tax period) from its GST (the sum of all the GST for which the entity was liable on the taxable supplies attributable to the tax period): s 17-5 of the GST Act.

36 An entity was also required to give the Commissioner "such further or fuller GST returns" as the Commissioner directed: s 31-20(1) of the GST Act. A further or fuller GST return was also required to be in the approved form: s 31-20(2) of the GST Act.

37 If the net amount in the BAS was greater than zero, the entity was required to pay that amount to the Commissioner by a particular date after the end of the relevant tax period: ss 33-3 and 33-5 of the GST Act. If the net amount in the BAS was negative, the Commissioner was obliged to pay that amount (expressed as a positive) to the entity: s 35-5 of the GST Act. The entity's entitlement to be paid an amount under s 35-5 arose when the entity gave the Commissioner a GST return: s 35-1 of the GST Act.

38 Importantly, the liability of the entity to pay a net amount to the Commissioner (if the net amount in the BAS was positive), and the Commissioner's obligation to pay a net amount to the entity (if the net amount in the BAS was negative) did not depend on the Commissioner making an assessment: s 105-15 of the Administration Act; see *Federal Commissioner of Taxation v Multiflex Pty Limited* (2011) 197 FCR 580; [2011] FCAFC 142 at [25]. The Commissioner could, however, at any time make an assessment of an entity's net amount for a tax period: s 105-5 of the Administration Act. An entity could also request the Commissioner in the approved form to make an assessment of the entity's net amount for a tax period: s 105-10(1) of the Administration Act. The Commissioner was required to comply with that request if it was made within four years after the end of the relevant tax period, or such further period as the Commissioner allowed: s 105-10(2) of the Administration Act.

39 No express provision was made in either the GST Act or the Administration Act for the amendment of a GST return for a tax period once it had been given to the Commissioner in accordance with ss 31-5 and 31-15 of the GST Act. The only provision of the GST Act that allowed for the correction of errors or omissions in working out net amounts was s 17-20, which provided as follows:

> **17-20 Determinations relating to how to work out net amounts**
>
> (1) The Commissioner may make a determination that, in the circumstances specified in the determination, a net amount for a tax period may be worked out to take account of other matters in the way specified in the determination.
>
> (2) The matters must relate to correction of errors made in working out net amounts for the immediately preceding tax period.
>
> (3) If those circumstances apply in relation to a tax period applying to you, you may work out your net amount for the tax period in that way.

40 It should be noted in this context that the Commissioner did not make any determination under s 17-20 of the GST Act in relation to the correction of any error made by Travelex in working out its net amounts for any tax period.

41 Division 19 of the GST Act also made provision for adjustments which arose as a result of certain events called "adjustment events". Adjustment events were any event which had the effect of cancelling a supply or acquisition; or changing the consideration for a supply or acquisition; or causing a supply or acquisition to become, or stop being, a taxable supply or creditable acquisition: s 19-10 of the GST Act. An entity had an adjustment for a supply if an adjustment event occurred during a tax period; GST on the supply was attributable to an earlier tax period; and, as a result of the adjustment event, the previously attributed GST amount for the supply no longer correctly reflected the amount of GST on the supply: s 19-40 of the GST Act. Similarly, an entity had an adjustment for an acquisition for which it was entitled to an input tax credit if an adjustment event occurred during a tax period; an input tax credit on the acquisition was attributable to an earlier tax period; and, as a result of the adjustment event, the previously attributed input tax credit amount for the acquisition no longer correctly reflected the amount of the input tax credit on the acquisition: s 19-70 of the GST Act.

42 The important point in relation to Division 19 adjustment events is that they did not have the effect of varying or amending the net amount for the tax period in which the relevant supply or acquisition occurred. Rather, the adjustment events gave rise to increasing or decreasing adjustments, as the case may be, which were then taken into account in calculating the net amount for a later tax period.

43 It should again be noted, in this context, that there was no suggestion that Division 19 was engaged in the particular circumstances of this case.

STATUTORY PROVISIONS RELATING TO INTEREST ON OVERPAYMENTS

44 The statutory provisions relevant to the Commissioner's obligation to pay interest in respect of the overpayment by Travelex, and the ascertainment of the relevant period in respect of which interest was payable, were labyrinthine and obscure. That was primarily a product of the fact that the main operative provisions included multiple defined terms. The definitions of those terms also frequently used further defined terms, some of which were defined in other Acts.

45 The relevant source of the Commissioner's obligation to pay interest on overpayments was s 12AA of the Overpayments Act, which provided as follows:

> **12AA Entitlement to interest for RBA surpluses after notification of BAS amount**
>
> If:
>
> (a) the Commissioner has allocated a BAS amount to an RBA of an entity; and
>
> (b) section 12AB does not apply (that section is about remission of penalties); and
>
> (c) under subsection 8AAZLF(1) of the *Taxation Administration Act 1953*, the Commissioner is required to refund to the entity the whole or part of an RBA surplus for that RBA; and
>
> (d) the refund takes place after the RBA interest day;
>
> then interest is payable by the Commissioner to the entity on the amount refunded.

46 To understand the meaning and scope of s 12AA, it is necessary to ascertain the meaning of the plethora of defined words or expressions employed in it. It is also necessary, for the purposes of s 12AA(c), to have regard to the terms of s 8AAZLF(1) and, ultimately, s 8AAZLG of the Administration Act.

47 In relation to s 12AA(a), the term "BAS amount" was defined as meaning any debt or credit that arises directly under the "BAS provisions": s 12AF of the Overpayments Act and s 995-1 of the Tax Act. The "BAS provisions" included the "indirect tax law": s 995-1 of the Tax Act. The "indirect tax law" relevantly included the "GST law": s 995-1 of the Tax Act. The "GST law" relevantly included the GST Act and the Administration Act: s 995-1 of the Tax Act and s 195-1 of the Administration Act.

48 An "RBA" was defined in the Administration Act as meaning a running balance account established under s 8AAZC of that Act.

49 In relation to s 12AA(b), it was common ground that s 12AB did not apply in the circumstances of this case.

50 In relation to s 12AA(c), s 8AAZLF(1) of the Administration Act relevantly provided that the Commissioner must refund to an entity so much of an "RBA surplus" of the entity as the Commissioner does not allocate or apply under Division 3 of that Act.

51 The expression "RBA surplus" was defined in the following terms in s 8AAZA of the Administration Act:

> ***RBA surplus***, in relation to an RBA of an entity, means a balance in favour of the entity, based on:
>
> (a) primary tax debts that have been allocated to the RBA; and
>
> (b) payments made in respect of current or anticipated primary tax debts of the entity, and credits to which the entity is entitled under a taxation law, that have been allocated to the RBA.

52 In relation to s 12AA(d), the "RBA interest day" was relevantly defined in s 12AF of the Overpayments Act in the following terms:

> ***RBA interest day*** for an RBA surplus means the 14th day after the latest of the following days:
>
> (a) either:
>
> (i) if section 12AA applies—the day on which the surplus arises;
>
> (ii) …
>
> (b) if, by the day applicable under paragraph (a), the person has not given the Commissioner a notification that is required for the refund under section 8AAZLG of the *Taxation Administration Act 1953* and that is accurate so far as it relates to the refund—the day on which that notification is given to the Commissioner;
>
> (c) …

53 The terms of the definition of "RBA interest day" are critical to the resolution of the dispute between Travelex and the Commissioner. That is because the period during which interest is payable, as provided in s 12AD of the Overpayments Act, hinges on the ascertainment of the RBA interest day. Section 12AD provided as follows:

> **12AD Period of interest for RBA surpluses**
>
> Interest under this Part is payable for the period from the end of the RBA interest day until the end of the day on which the refund takes place.

54 The final relevant provision to note is s 8AAZLG of the Administration Act, which specifies the circumstances in which the Commissioner may retain an amount that he or she would otherwise have to refund under s 8AAZZLF. Section 8AAZLG was in the following terms:

> **8AAZLG Retaining refunds until information or notification given**
>
> (1) The Commissioner may retain an amount that he or she otherwise would have to refund to an entity under section 8AAZLF, if the entity has not given the Commissioner a notification:

(a) that affects or may affect the amount that the Commissioner refunds to the entity; and

(b) that the entity is required to give the Commissioner under any of the BAS provisions (as defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997*).

(2) The Commissioner may retain the amount until the entity has given the Commissioner that notification or the Commissioner makes or amends an assessment of the amount, whichever happens first.

55 As will be seen, the terms of s 8AAZLG and, in particular, the apparent requirement, by reason of subparagraph (b) that the notification be one that the entity is required to give the Commissioner "under any of the BAS provisions", are critical to the resolution of the dispute between Travelex and the Commissioner.

THE CENTRAL ISSUE AND THE COMPETING CONTENTIONS

56 There was no dispute concerning the following matters.

57 First, the overpayment by Travelex of $149,020 in respect of the November 2009 tax period was a "BAS amount" because it was a debt or credit which arose under the GST Act.

58 Second, the Commissioner allocated that BAS amount to Travelex's ICA, which was an RBA, on 16 December 2009.

59 Third, it follows that the conditions in s 12AA(a) of the Overpayments Act were satisfied in relation to the overpayment.

60 Fourth, the overpayment was part of an RBA surplus which arose on 16 December 2009 and which the Commissioner was required to refund to Travelex pursuant to s 8AAZLF(1) of the Administration Act. Accordingly the condition in s 12AA(c) was satisfied.

61 The dispute between the parties concerns the ascertainment of the RBA interest day for the purposes of both s 12AA(d) and s 12AD of the Overpayments Act. The resolution of that dispute turns on whether, for the purposes of paragraph (b) of the definition of "RBA interest day" in s 12AF of the Overpayments Act, a "notification … [was] required for the refund under section 8AAZLG" of the Administration Act. If no such notification was required, paragraph (b) of the definition did not apply and the RBA interest day was the day ascertained by reference to paragraph (a)(i) of the definition. That day was 30 December 2009, being 14 days after the date on which the RBA surplus arose (16 December 2009). If such a notification was required, paragraph (b) of the definition was engaged, and the RBA

interest day was 14 days after the day on which the notification was given to the Commissioner.

62 Travelex contended, in short terms, that it was not required by s 8AAZLG of the Administration Act to give the Commissioner any notification of the refund. In its submission, it was not required by any of the BAS provisions to give the Commissioner any notification of the refund, and accordingly the condition in s 8AAZLG(1)(b) was not satisfied. While it did advise the Commissioner of its calculation of the amount of the refund in its letter dated 8 June 2012, which was received by the Commissioner on 12 June 2012, that advice or notification was not required by any of the BAS provisions. In those circumstances, Travelex contended that paragraph (b) of the definition of "RBA interest day" was not engaged.

63 The Commissioner contended, in short terms, that the RBA interest day was 26 June 2012, being 14 days after Travelex's letter dated 8 June 2012 was received by the Commissioner. In that letter, Travelex notified the Commissioner of the amount of the refund. In the Commissioner's submission, that notification was required under the GST Act to revise or amend the BAS which was initially lodged by Travelex in respect of the November 2009 tax period. The Commissioner contended that, without the notification, there would have been no overpayment, no RBA surplus, and Travelex would not have been entitled to a refund under s 8AAZLF of the Administration Act. That was because the net amount would have remained the amount initially reported or worked out by Travelex in the November 2009 BAS.

64 There was a fundamental proposition which appeared to lie at the heart of the Commissioner's case in relation to the ascertainment of the RBA interest day in this matter. That proposition was that the terms of the GST Act effectively required an entity to revise or amend a BAS that had earlier been lodged by the entity in respect of a particular tax period if it turned out that the net amount reported in the BAS was incorrect.

65 The Commissioner contended that if an entity gave the Commissioner a BAS which contained errors or omissions, or otherwise miscalculated its net amount for a tax period, the entity was required by s 31-5 of the GST Act to amend that BAS. Until it did so, the Commissioner was, by reason of s 8AAZLG of the Administration Act, entitled to retain any refund that would otherwise have been payable to the entity. In the Commissioner's

submission, the RBA interest day was the day that the BAS was amended as required by s 31-5 of the GST Act. In that context, the Commissioner characterised Travelex's letter dated 8 June 2012 as an amended BAS for the November 2009 tax period.

66 The Commissioner also contended that the RBA interest day was "further deferred" until 17 July 2012, being 14 days after 3 July 2012. That was the date that Travelex gave the Commissioner its BAS for the May 2012 tax period. The BAS was required to be given to the Commissioner on 21 June 2012, and was therefore two weeks late. In the Commissioner's submission, Travelex's BAS for the May 2012 tax period was a notification which was required to be lodged under the BAS provisions. It was also a notification that may have affected the amount that the Commissioner was to refund to Travelex. That was said to be because, if the May 2012 BAS reported a positive net amount, the Commissioner would allocate the refund otherwise payable to Travelex to Travelex's liability to the Commissioner arising from the positive net amount. It was therefore, in the Commissioner's submission, a notification which was required for the refund under s 8AAZLG of the Administration Act. The result was that RBA interest day was deferred to 14 days after that notification was given.

WHAT WAS THE RELEVANT RBA INTEREST DAY?

67 As has already been noted, the answer to this question hinges on whether, for the purposes of paragraph (b) of the s 12AF Overpayments Act definition of "RBA interest day", a "notification … [was] required for the refund under section 8AAZLG of the [Administration Act]" before Travelex was entitled to receive it. That in turn hinges on whether, for the purposes of s 8AAZLG(1)(b) of the Administration Act, Travelex was required "under any of the BAS provisions", to give the Commissioner a notification relating to the refund.

68 The fundamental problem for the Commissioner is that he was unable to point to any provision in the GST Act, the Administration Act, or any other relevant Act, which clearly or expressly required Travelex to give the Commissioner a notification of the refund amount.

69 It may readily be accepted that, as a practical matter, Travelex could not have received the refund in respect of the November 2009 tax period unless, and until, it provided the Commissioner with information that allowed the Commissioner to calculate, or confirm the calculation of, the correct amount of the refund. That was not done until Travelex sent, and the Commissioner received, the letter dated 8 June 2012.

70 The critical question, however, is whether the letter dated 8 June 2012 was a notification which was required "under any of the BAS provisions". The question is not whether the notification was required for practical reasons.

71 It may also be accepted that, at the time of the events in question, both Travelex and the Commissioner approached the letter dated 8 June 2012 as if it was a request to amend the BAS that Travelex had given the Commissioner in relation to, relevantly, the November 2009 tax period. The Commissioner's business records also reveal that the Commissioner administratively processed the refund in respect of the November 2009 tax period on the basis that it was an amendment to the BAS which had been lodged in respect of that tax period.

72 The question arises, however, whether there was any statutory basis for either an amendment of a BAS, or a request for an amendment of a BAS. Did any provision in the GST Act require Travelex to amend, or request the amendment of, its BAS for the November 2009 tax period? If not, it is difficult to see how the letter dated 8 June 2012 could be said to be a notification required by "any of the BAS provisions", including s 31-5 of the GST Act, even if both Travelex and the Commissioner considered it to be an amendment, or a request for an amendment, of the BAS for the November 2009 tax period.

73 The problem for the Commissioner is that he was unable to point to any provision in the GST Act, the Administration Act, or any other relevant Act, which expressly provided for, let alone required, an entity to amend, or request an amendment of, a BAS in any relevant circumstance. Can it be concluded, however, that a requirement to amend an incorrect BAS is implicit in, or recognised by, the relevant statutory scheme?

Is there a statutory basis for an amended BAS?

74 As has already been discussed in some detail, the relevant statutory scheme for GST at the time of the events in question in this matter did not depend on the Commissioner making or issuing assessments. An entity's liability to pay the Commissioner, and the Commissioner's liability to pay a refund to an entity, was based on an entity's reporting of its net amount for a tax period in a GST return for that tax period. The Commissioner could make an assessment under s 105-5 of the Administration Act and an entity could, pursuant to s 105-10 of the Administration Act, request the Commissioner to make an assessment for a tax period. There was, however, no provision in the GST Act that expressly allowed or required an entity to

amend, or request an amendment of, a GST return for an earlier tax period if it became aware of errors or omissions in that return, or if it became aware of changed circumstances.

75 The Commissioner contended that, despite the absence of any express provision in the GST Act or Administration Act which allowed for, or required, an entity to give the Commissioner an amended GST return for a tax period, the GST Act nevertheless "recognise[d] the concept of an amended GST return". That could be seen, in the Commissioner's submission, from the fact that Acts which had amended the GST Act in 2010 and 2012 included transitional provisions that referred to "amendments of … GST returns" and a "GST return (as amended)": see, respectively, *Tax Laws Amendment (2009 GST Administration Measures) Act 2010* (Cth), Schedule 1, Part 3 item 19(c); *Tax Laws Amendment (2011 Measures No. 9) Act 2012* (Cth), Schedule 4 item 12(2)(d) (collectively, the **Amending Acts**). It should be noted, however, that the substantive amendments made by those Acts had nothing to do with the amendment of GST returns, or the lodgement of amended BAS returns.

76 The Commissioner also relied on references to amended returns in various cases (in particular ***Dixon*** *v Federal Commissioner of Taxation* (2008) 167 FCR 287; [2008] FCAFC 54 at [7]) and on the single judge decision of the Supreme Court of New South Wales in ***Charara*** *v Commissioner of Taxation* [2009] NSWSC 730.

77 None of the Commissioner's submissions concerning the recognition of the concept of amended GST returns have any merit.

78 The existence of transitional provisions in the Amending Acts which appear to assume that an entity can give the Commissioner an amended return provide no real support for the Commissioner's construction of the statutory scheme, particularly in circumstances where the Commissioner is unable to point to a single provision in the GST Act which refers to, or provides for, an amended GST return. Even if it is accepted that the transitional provisions in the Amending Acts are relevant contextual considerations in construing the GST Act (cf. *Brooks v Commissioner of Taxation* (2000) 100 FCR 117; [2000] FCA 721 at [63]-[68]; *Federal Commissioner of Taxation v Consolidated Media Holdings Limited* (2012) 250 CLR 503; [2012] HCA 55 at [39]; *Federal Commissioner of Taxation v Unit Trend Services Pty Limited* (2013) 250 CLR 523; [2013] HCA 16 at [47]), it is an extremely flimsy and unconvincing contextual consideration in all the circumstances.

79 It might have been different if the relevant Amending Acts inserted substantive provisions into the GST Act which referred to the existence of amended GST returns. In those circumstances, it would have been necessary to attempt to reconcile those new provisions with the absence of any other provisions allowing for or requiring amended GST returns. There is no question that the meaning of any provision in an Act must be determined by reference to the language of the Act as a whole, and in that regard consistency is important: *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355; [1998] HCA 28 at [69]. Where, however, the transitional provisions simply provide for the time from which the relevant amendments take effect, or the circumstances where the amendments are taken to have applied, they perhaps reveal no more than that the drafters of the transitional provisions in the Amending Acts may have made erroneous assumptions concerning the operation of the substantive provisions of the GST Act.

80 As for the authorities relied on by the Commissioner, the reference to an amended BAS in the Full Court's judgment in *Dixon* is not determinative, or even persuasive. The decision in *Dixon* concerned the exercise of the discretion to remit penalties imposed pursuant to s 284-90 of Schedule 1 to the Administration Act. In issue was whether the existence of special circumstances was a prerequisite to the exercise of the discretion, and whether the decision-maker had had regard to irrelevant considerations. The penalties related to a false or misleading statement contained in a document which was referred to as an "amended BAS". The false statement was detected by the Commissioner before the document was acted on. The accuracy of the description of the document was, however, not in issue. The Court accordingly gave no consideration to the statutory scheme or to the question whether the GST Act relevantly provided for or required the lodgement of amended GST returns.

81 The decision in *Charara* is also not persuasive. In that case, Mr Charara claimed, amongst other things, that the Commissioner was required to pay him interest in respect of an overpayment made by him. He contended that, having regard to "first principles", the interest was to be calculated from the date that the overpayment was made. His claim, which was not based on the Overpayments Act, was rejected in light of the provisions in ss 12AA and 12AF of the Overpayments Act.

82 In determining the RBA interest day under s 12AF of the Overpayments Act, Forster J proceeded on the basis that Mr Charara had not given the Commissioner a notification that was required for the refund under s 8AAZLG of the Administration Act until he filed what

was referred to as a "revised BAS". There does not appear to have been any argument in relation to whether the GST Act allowed for, let alone required, a "revised BAS". Forster J's reasons do not include any discussion of the statutory scheme in the GST Act in relation to GST returns and refunds. His Honour seems to have simply assumed that the GST Act provided for revised GST returns. Mr Charara was not legally represented.

83 The Court is not bound to follow the decision of a single judge of a State Supreme Court. As a matter of comity, however, the Court would ordinarily not depart from such a decision unless satisfied that it is plainly wrong, particularly where difficult issues of statutory construction are in issue: *Sunchen Pty Ltd v Commissioner of Taxation* (2010) 264 ALR 447; [2010] FCA 21 at [20]-[21].

84 The difficulty for the Commissioner, however, is that while *Charara* might, on one view, have concerned a difficult question of statutory construction, as has already been noted, Forster J appears to have simply proceeded on the basis that there was a proper statutory basis for Mr Charara's lodgement of what was said to be a "revised BAS". There was plainly no argument on that issue. Rather, it was simply assumed. Neither the Commissioner nor Mr Charara had any reason to, or interest in, contesting that issue. That no doubt explains why Forster J's reasons contain no discussion of the statutory scheme in the GST Act in relation to the lodgement of GST returns. His Honour does not identify the provision of the GST Act that required Mr Charara to file the "revised BAS".

85 To the extent that *Charara* is authority for the proposition that, at the relevant time, the GST Act provided for, or required the lodgement of, amended GST returns in certain circumstances, it should not be followed. Forster J's finding in that regard was not the subject of argument, nor the subject of detailed reasoning, and was plainly wrong.

86 It would appear that the Commissioner had a long-standing administrative practice of allowing entities to lodge documents purporting to be amended or revised GST returns or BAS, and an equally long-standing administrative practice of "processing" such documents as if they amended the net amounts reported in the GST returns lodged pursuant to s 31-5 of the GST Act. It was common ground that that is what occurred here. It is reflected in the Commissioner's business records in respect of the relevant refund sought by, and ultimately allocated to, Travelex, which notated the credit entry to Travelex's ICA on 28 June 2012 as

an "[a]mended self assessed amount(s)", and which included a "[c]onfirmation of revised activity statement".

87 The difficulty for the Commissioner, however, at least in this case, is that the administrative practice lacked any proper legal or statutory basis.

Was the notification in the letter dated 8 June 2012 required by "any of the BAS provisions"?

88 The Commissioner's contention that the letter from Travelex's accountants to the Commissioner dated 8 June 2012 was an amended BAS or GST return which Travelex was required by s 31-5 of the GST Act to give to the Commissioner is misconceived and must also be rejected for a number of reasons.

89 First, for the reasons already given, at the relevant time neither the GST Act, nor the Administration Act, allowed for, let alone required, an entity to give the Commissioner an amended BAS. An entity was required to give the Commissioner a GST return, in the approved form, for each tax period, at a specified time after the end of the tax period. The prescribed form, the BAS, included the entity's net amount for the tax period. The reported net amount, and, in particular, whether it was positive or negative, determined whether the entity was required to pay an amount to the Commissioner, or whether the Commissioner was required to pay a refund to the entity. The respective liabilities of the entity and the Commissioner did not depend on an assessment. Once a GST return had been given in respect of a tax period, neither the GST Act nor the Administration Act made provision for, or required, the entity to give the Commissioner another BAS for that tax period, which included a different net amount, even if the BAS that had been lodged for that tax period contained an error or omission.

90 Second, the letter dated 8 June 2012 could not be an amended GST return for the purposes of s 31-5 of the GST Act because it was not in an approved form as required by s 31-15 of the GST Act.

91 Third, the letter dated 8 June 2012 did not purport to be an amended GST return or BAS. It was stated to be a request to the Commissioner to amend Travelex's BAS for certain tax periods, including the November 2009 tax period.

92 Fourth, it is immaterial that, as a practical matter, the Commissioner was not able to pay Travelex a refund in respect of the November 2009 tax period (or any other tax period) unless, and until, Travelex notified the Commissioner of the amount of the refund. Administrative difficulties or practicalities cannot compel a particular construction of a statutory provision if that construction is not otherwise open having regard to the text, context and purpose of the provision. That point was made by French CJ and Hayne J in *Travelex*, albeit in a different context, where their Honours said (at [36]):

> It may be accepted that, as the Solicitor-General submitted, there may be practical difficulties in administering the relevant provisions of the Act where the use to be made of the rights turns on the recipient's intention. Those difficulties, however, do not provide any basis for reading down those provisions, or for reading the connecting expression "in relation to" in a way that departs from the construction which has been identified. Difficulties in deciding whether the supply is "for use outside Australia" do not bear upon what is meant by a supply "in relation to" rights.

93 Practical considerations may perhaps play a role, as a relevant contextual consideration, in construing a provision that is reasonably open to different meanings or interpretations, or where one interpretation may lead to bizarre or absurd results: cf. *Cooper Brookes (Wollongong) Pty Limited v Commissioner of Taxation* (1981) 147 CLR 297; [1981] HCA 26 at 320-321. This, however, is not such a case.

94 It is by no means bizarre or absurd that the Commissioner was required to pay interest on a refund which was required to be made as a consequence of Travelex's ultimately successful court action. Nor is it absurd that interest should be paid effectively from the time of the overpayment, particularly in circumstances where Travelex was not required by any of the BAS provisions to notify the Commissioner of the refund. The fact that, as a practical matter, the Commissioner could not have paid the refund until Travelex provided it with information about the amount of the refund does not make the requirement to pay interest bizarre or absurd. The Commissioner had use of the overpaid amount from the time it was paid.

95 In any event, even if the notification contained in the letter dated 8 June 2012 was required for practical purposes before the refund could be paid, the point nevertheless remains that the notification was not one which was required "under any of the BAS provisions" as was necessary if the notification was to be one that was required by s 8AAZLG of the Administration Act. The text of s 8AAZLG, at least to that extent, is relevantly intractable.

96 Fifth, it is equally immaterial that the Commissioner administratively processed the notification in the letter dated 8 June 2012 as if it was an amended BAS. As has already been

noted, the fact that the Commissioner may have had an administrative practice of permitting entities to amend their GST returns does not mean that entities could be or were required "under any of the BAS provisions" to give the Commissioner amended GST returns in circumstances where they wanted a refund. The ascertainment of the relevant RBA interest day must be approached on the basis of the relevant statutory provisions, not on the basis of the Commissioner's administrative practices.

97 Sixth, it may also be accepted that, if the Commissioner had not, in accordance with his administrative practice, treated the 8 June letter as if it was an amended BAS return, strictly speaking there may have been no overpayment. That is because Travelex's net amount, and consequential liability under the GST Act, would have remained as reported or worked out in, relevantly, the November 2009 BAS. The fact remains, however, that the Commissioner accepted that he was liable to pay Travelex a refund as a result of the High Court judgment, and chose to administratively process or deal with that refund as if it arose from an amendment to the November 2009 BAS. It does not follow that Travelex was required by any of the BAS provisions to amend its November 2009 BAS before it received the refund. As noted in the next point, the Commissioner could perhaps have approached the basis upon which a refund was payable to Travelex in a different manner.

98 Seventh, to the extent that there were any practical or administrative issues in relation to the payment of the refund to Travelex, they could have been overcome by the Commissioner making an assessment pursuant to s 105-5 of the Administration Act, as opposed to processing a purported amendment of Travelex's BAS, once it received the information from Travelex in the letter dated 8 June 2012. Five points should perhaps be noted or emphasised in this context: first, the letter dated 8 June 2012 was not stated to be a request by Travelex pursuant to s 105-10 of the Administration Act for the Commissioner to make an assessment; second, no provision in either the GST Act or the Administration Act required Travelex to request an assessment in the circumstances; third, if the Commissioner had made an assessment, that would have constituted a notification by the Commissioner, not a notification by Travelex for the purposes of s 8AAZLG of the Administration Act and the definition of "RBA interest day" in s 12AF of the Overpayments Act; fourth, as events transpired, the Commissioner did not make an assessment, and Travelex did not request the Commissioner to make an assessment, in relation to Travelex's net amount for the November 2009 tax period; and fifth, had the Commissioner made an assessment, instead of

administratively processing the refund as arising from an amended GST return, the position in relation to interest would undoubtedly have been different.

99 There could be little doubt that the approach that was in fact taken by the Commissioner, which was to administratively process the letter dated 8 June 2012 as if it was an amendment to Travelex's GST return for the November 2009 tax period, turned out to be clearly beneficial for Travelex. That, however, is not to the point.

100 Eighth, the Commissioner's submissions tended to confuse and conflate the statutory requirement for an entity to give the Commissioner a GST return for a tax period (s 31-5 of the GST Act), with the requirement that a notification for a refund required under s 8AAZLG of the Administration Act be "accurate so far as it relates to the refund": see paragraph (b) of the definition of "RBA interest day" in s 12AF of the Overpayments Act. The Commissioner argued that the BAS that Travelex gave to the Commissioner in relation to the November 2009 tax period was not accurate, and that it therefore did not satisfy paragraph (b) of the s 12AF definition of "RBA interest day". It followed, so it was submitted, that a further notification of the refund was required.

101 Two points may be made about that argument. First, it is perhaps not right to say that the BAS for the November 2009 tax period was not accurate. It was accurate in accordance with the judgment of the Full Court at that time. It was also given to the Commissioner in accordance with s 31-5 of the GST Act. Second, and more significantly, the BAS for the November 2009 tax period was not, and did not purport to be, a notification of a refund. The net amount reported in the BAS was positive and required Travelex to pay $37,751 to the Commissioner. If a notification was required for the refund payable to Travelex, it had to be something other than the BAS given to the Commissioner in respect of the November 2009 tax period. The Commissioner's argument that the BAS that had been lodged for the November 2009 tax period was not a notification for the purposes of s 12AF was, therefore, rather beside the point.

102 Ninth, while the Commissioner relied on what was said in the Explanatory Memorandum to the Bill which inserted Part IIIAA into the Overpayments Act (Explanatory Memorandum to the *A New Tax System (Tax Administration) Bill 1999* (Cth)), ultimately that extrinsic material provides little assistance in resolving the particular issue in this case. Paragraph 7.35 of the Explanatory Memorandum stated:

> These amendments in ***Schedule 13*** to this Bill will create an entitlement to interest where a refund of an RBA surplus or voluntary payment is not made within 14 days from the lodgement of a correct BAS, a request for refund of the voluntary payment or the remission of a penalty.

103 Paragraph 7.42 also relevantly stated:

> However, if there is an outstanding BAS or inaccurate information which may affect the amount of the refund, the RBA interest day does not commence until the BAS or the correct information is given to the Commissioner…

104 It may be accepted that those statements were capable of providing some assistance in construing the relevant provisions in the Overpayments Act, in particular the definition of "RBA interest day" in s 12AF. It could perhaps fairly be said that those provisions, and s 12AF in particular, were ambiguous or obscure: cf s 15AB(1)(b)(i) of the *Acts Interpretation Act 1901* (Cth). The statements also provided some assistance and support for the Commissioner's contention that the RBA interest day does not commence to run until a "correct BAS" or "correct information" is provided to the Commissioner.

105 That assistance and support, however, is fairly limited. Ultimately, the task of statutory construction must begin and end with a consideration of the text itself: *Alcan (NT) Alumina Pty Limited v Commissioner of Territory Revenue (Northern Territory)* (2009) 239 CLR 27; [2009] HCA 41 at [47]; *Commissioner of Taxation v Consolidated Media Holdings Limited* (2012) 250 CLR 503; [2012] HCA 55 at [39]. The Explanatory Memorandum cannot supplant the text of the relevant provisions. It is also the case that sometimes Explanatory Memoranda misstate the law.

106 Section 12AF does not use the expressions "correct BAS" or "correct information", those being the expressions used in the Explanatory Memorandum. Perhaps more significantly, those expressions appear to have been an attempt to describe or summarise the requirement in s 12AF that the relevant notification must be one that is "accurate so far as it relates to the refund". That, however, is only one of the two requirements in s 12AF. The other is that the notification is "required for the refund under section 8AAZLG" of the Administration Act. The statements in the Explanatory Memorandum do not appear to deal with that requirement. It, however, is the critical requirement in issue in this matter.

107 That points to an even more significant weakness in the Commissioner's reliance on what was said in the Explanatory Memorandum. That weakness is that the Explanatory Memorandum cannot properly be used as an aid in interpreting provisions in other earlier

enactments. Here, that includes, relevantly, the GST Act and the Administration Act. The critical question of construction in this matter concerns s 8AAZLG of the Administration Act, and specifically the requirement that the relevant notification is one that the entity is "required to give the Commissioner under any of the BAS provisions". That in turn raises questions of construction concerning provisions in the GST Act, in particular whether, as the Commissioner contended, the GST Act included a requirement that an entity give the Commissioner an amended GST return. The Explanatory Memorandum is incapable of shedding any relevant light on the interpretation of those provisions.

108 Ninth, and finally, to the extent that *Charara* is authority for the proposition that a "revised BAS" can be a notification that is required to be given to the Commissioner "under any of the BAS provisions" for the purposes of s 8AAZLG of the Administration Act, for the reasons already given that decision is plainly wrong and should not be followed.

109 The letter dated 8 June 2012 from Travelex's accountants to the Commissioner was not an amended BAS and was not a notification that Travelex was required to give the Commissioner under s 31-5 of the GST Act or any of the other BAS provisions. It follows that the letter was not a notification that was required for the refund under s 8AAZLG of the Administration Act, and that paragraph (b) of the definition of "RBA interest day" in s 12AF of the Overpayments Act was therefore not engaged. The result is that the RBA interest day was the fourteenth day after the day on which the relevant surplus arose. It was common ground that the surplus arose on 16 December 2009. The RBA interest day was accordingly 30 December 2009.

110 The result is that, by reason of s 12AD of the Overpayments Act, interest was payable for the period 31 December 2009 to 6 July 2012, being the day the refund took place.

Was the RBA interest day "further deferred" until 17 July 2012?

111 The Commissioner in fact paid Travelex interest for the period from 26 June 2012 to 6 July 2012. It would appear that the contention that the RBA interest day was in fact "further deferred" until 17 July 2012 was something that was thought up at some stage after the interest was calculated and paid. In any event, the contention was premised on the acceptance of the proposition that the letter from Travelex's accountants dated 8 June 2012 was a notification that Travelex was required to give the Commissioner under s 31-5 of the GST Act (or some other BAS provision), and that the RBA interest day was initially deferred

until 26 June 2012. Since that proposition has been rejected, the Commissioner's contention that the RBA interest day was "further deferred" by reason of the late lodgement by Travelex of its BAS for the May 2012 tax period does not arise and must be rejected.

CONCLUSION AND DISPOSITION

112 Travelex sought a declaration in the following terms:

> A declaration that interest was and is payable by the Respondent to the Applicant, at the rate fixed by s 12AE of the *Taxation (Interest and Overpayments and Early Payments) Act 1983* and for the period from 31 December 2009 to 6 July 2012, on the amount of $149,020 refunded by the Respondent to the Applicant on 6 July 2012 as the RBA surplus arising on 16 December 2009 in respect of its tax period (within the meaning of *A New Tax System (Goods and Services Tax) Act 1999*) for the month of November 2009.

113 The Commissioner did not submit that a declaration in those terms should not be made if it was found that the relevant RBA interest day was 31 December 2009.

114 Travelex also sought an order that the Commissioner pay it the sum of $17,265.15, being the amount of interest payable in accordance with the declaration. The Commissioner did not dispute that calculation.

115 Travelex also sought an order for costs. There was also no dispute that if Travelex succeeded in its claim relating to the interest payable, the Commissioner, as the unsuccessful party, should pay Travelex's costs.

116 It follows that the declaration and orders sought by Travelex should be made.

I certify that the preceding one hundred and sixteen (116) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Wigney.

Associate:

Dated: 12 July 2018