

**COMMISSIONER OF TAXATION v CONSOLIDATED MEDIA HOLDINGS LTD**  
**(S228/2012)**

Court appealed from: Full Court of the Federal Court of Australia  
[2012] FCAFC 36

Date of judgment: 20 March 2012

Special leave granted: 17 August 2012

Consolidated Media Holdings Ltd (“CMH”) held all of the issued shares (“the shares”) of Crown Melbourne Ltd (“Crown”). On 28 June 2002 Crown and CMH agreed to a buy-back of many (approximately 29%) of those shares at a price of \$1 billion. On that date, Crown recorded a \$1 billion credit entry in its Inter-company Receivables Account (“ICR A/c”). It also created a Share Buy-Back Reserve Account (“SBBR A/c”), in which it made a debit entry of \$1 billion. On 25 July 2002 Crown recorded a \$1 billion debit in its ICR A/c and a corresponding credit in its Inter-company Loan (Payable) Account, with effect from 30 June 2002. On 6 August 2002 CMH transferred the relevant shares to Crown (which then cancelled them), in return for the assignment to CMH of a \$1 billion debt owed to Crown (by a third company). No entry was made in the Shareholders Equity Account (“SE A/c”), in which Crown generally kept share capital.

The Commissioner of Taxation (“the Commissioner”) assessed the income of CMH to include a large capital gain arising from the buy-back. CMH objected to that assessment. CMH claimed that pursuant to s 159GZZZP of the *Income Tax Assessment Act 1936* (Cth) (“the Act”) the \$1 billion was deemed a dividend, which attracted a full rebate under s 46 of the Act. The Commissioner disallowed CMH’s objection. CMH then appealed to the Federal Court.

On 14 April 2011 Justice Emmett dismissed CMH’s appeal. His Honour found that the cancelled shares were part of Crown’s share capital and that the SBBR A/c was (along with the SE A/c) part of CMH’s “share capital account” as deemed under s 6D of the Act. Justice Emmett held that \$1 billion had been debited against amounts standing to the credit of Crown’s share capital account within the meaning of s 159GZZZP of the Act. Accordingly no dividend had been deemed and a capital gain had arisen.

On 20 March 2012 the Full Court of the Federal Court (Stone, Greenwood & Logan JJ) unanimously allowed CMH’s appeal. Their Honours held that the deeming of a single “share capital account” under s 6D of the Act did not extend to deem a debit in one account (the SBBR A/c) to have occurred against an amount standing to the credit of another (the SE A/c) in which share capital was kept. Consequently no amount was to be subtracted from the purchase price in the calculation made under s 159GZZZP of the Act. The Full Court therefore found that \$1 billion was deemed a dividend paid by Crown to CMH, entitling CMH to a rebate under s 46.

The grounds of appeal include:

- The Full Court erred in concluding that s159GZZZP deemed to be a dividend that part of the share buy-back purchase price of \$1,000,000,000 which was a return of share capital, namely the whole of it [paragraph 42 of the Full Court's reasons].

The Full Court erred in holding that the sum of \$1,000,000,000 returned as excess share capital was not debited against amounts standing to the credit of the share capital account of Crown for the purposes of s 159GZZZP.