



HIGH COURT OF AUSTRALIA

5 December 2012

COMMISSIONER OF TAXATION v CONSOLIDATED MEDIA HOLDINGS LTD

[2012] HCA 55

Today the High Court unanimously allowed an appeal from a decision of the Full Court of the Federal Court of Australia and upheld an assessment by the Commissioner of Taxation ("the Commissioner") that Publishing and Broadcasting Ltd ("PBL") (later called "Consolidated Media Holdings Ltd") made a capital gain when shares it held in Crown Ltd ("Crown") were bought back by Crown in an off-market share buy-back.

PBL owned all of the ordinary shares in Crown. On 28 June 2002, PBL and Crown entered into an agreement for PBL to sell some of its shares back to Crown for \$1 billion. Crown recorded a debit of \$1 billion in a new account labelled "Share Buy-Back Reserve Account". It also maintained a "Shareholders Equity Account", which had a credit balance and in which no entry was recorded in relation to the share buy-back.

In an off-market share buy-back, the difference between the purchase price and any part of the purchase price that is debited against amounts standing to the credit of the company's "share capital account" is treated for income taxation purposes as a dividend paid by the company. At the relevant time, "share capital account" was defined in s 6D of the *Income Tax Assessment Act 1936* (Cth) ("the ITAA 1936"). The Commissioner took the view that the \$1 billion purchase price was debited against amounts standing to the credit of Crown's "share capital account", so that no part of the purchase price was to be taken to be a dividend. The Commissioner therefore assessed PBL to have made a capital gain on the sale of its Crown shares. PBL objected to the Commissioner's assessment and the Commissioner disallowed the objection. PBL appealed to the Federal Court against the disallowance of its objection. The primary judge dismissed the appeal on the basis that Crown's "share capital account" comprised both its Shareholders Equity Account and its Share Buy-Back Reserve Account. The Full Court of the Federal Court allowed an appeal, holding that Crown's "share capital account" did not include its Share Buy-Back Reserve Account.

The High Court held that an account that is a record of a transaction into which a company has entered in relation to its share capital, or that is a record of a company's financial position in relation to its share capital, is a "share capital account" within the meaning of s 6D(1) of the ITAA 1936. It also held that s 6D(2) required all share capital accounts to be treated as a combined "share capital account". Accordingly, the \$1 billion consideration PBL received under the share buy-back agreement was debited against amounts standing to the credit of Crown's "share capital account" and the Commissioner was correct to have assessed PBL as having made a capital gain.

- *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.*

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