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**Base Maintenance Issue in Relation to Section CG 2 and Group Loss Offsets**

**Introduction**

1. The Society welcomes the opportunity to comment on the proposals set out in the consultation paper *Base maintenance issue in relation to section CG 2 and group loss offsets* dated 10 June 2010 (Consultation Paper). The Consultation Paper claims that "an unintended consequence" (described as a "policy gap") arose from policy changes made when the Income Tax Act 2004 (2004 Act) was enacted, and from the consequential omission of the content of sIG 2(9) of the 2004 Act from the Income Tax Act 2007 (2007 Act).

2. This "unintended consequence" is described as arising where a company with tax losses (LossCo) incurs deductible expenditure or loss, another company in the same group (ProfitCo) takes the benefit of those tax losses, and the expenditure or loss is remitted or cancelled and LossCo is liquidated. LossCo cannot then be assessed for the remitted or cancelled expenditure or loss, and under current law, there is no provision by which ProfitCo can be reassessed to negate the benefit it indirectly received (by way of group loss offset) from that expenditure or loss.

3. The Consultation Paper proposes the following options for legislative amendment (p3):

   (a) the extension of sCG 2 of the 2007 Act to apply to potentially assess income to ProfitCo in the above scenario *in the year LossCo is liquidated*; or

   (b) the reinstatement of a reassessment provision "unlimited in retrospectivity" permitting the Commissioner to reassess ProfitCo and reduce or remove (*in the year of offset*) the tax losses made available by LossCo.

4. Secondly, and whichever of the above options may be adopted, the Consultation Paper proposes as an option introducing an anti-avoidance measure such that (p3):

> if a group profit company is liquidated before that company satisfies its income tax obligation in relation to the remission adjustment, the tax liability for the remission liability would be a joint and several liability of the shareholders and/or directors of the group profit company.

5. Finally, as regards application date, there is a suggestion that the relevant amendments could take effect from when amending legislation is introduced to the House of Representatives. This is in contrast to the usual rule that statutory amendments should take effect only subsequent to enactment.

**Summary of submissions**

6. Putting to one side the question of the application date of any amendment, the Society notes that the two options summarised in paragraphs 3(a) and (b) above will have in very broad terms the same effect: that an adjustment is made against ProfitCo reversing out the effect of the loss previously transferred to it, to the extent deductible expenditure or loss of LossCo has been remitted, and LossCo has been liquidated. The Society notes, however, that the first option (sCG 2 to apply to ProfitCo in the year LossCo is liquidated) is more direct in its effect, and more consistent with the way sCG 2 currently applies (ie, income arises in the year the relevant obligation is remitted), and for those reasons may be preferable.

7. The more significant questions, and the focus of the Society's submission, concern the question of application date of any amendments, and Inland Revenue's suggested new anti-avoidance provision which would create a new exception to the principle that shareholders and directors are not liable for debts of the company, and in doing so, create a new class of preferential claim for Inland Revenue. In summary, this submission states that:

    (A) the relevant provisions as they stand in the 2007 Act reflect a change in policy consciously adopted when the content of sCE 2 and sIE 1(4) of the Income Tax Act 1994 (1994 Act) was altered for the 2004 Act. This is not a case where the rewrite process has resulted in an amendment that is inconsistent with established and well understood policy. Here, the relevant provisions are consistent with the policy, but that policy, when formulated, did not recognise the desirability of a special rule to address the possibility that LossCo, in the above example, might be liquidated;

    (B) accordingly, any amendment (whichever of the two forms summarised above it may take) should be made on a strictly prospective basis (or, failing this, an appropriate savings provision should be included). Further, the context in which these possible reforms will apply is such that there is a real risk the proposals could retrospectively alter the basis on which shareholders and financiers have assessed the risks of investing in or lending to entities in the position of ProfitCo, in the scenario described in the Consultation Paper. Accordingly, the Government should take particular care in this case to ensure that the proposals, if implemented, do not have retrospective consequences; and

    (C) the proposed anti-avoidance provision is unnecessary and inappropriately broad, and should not proceed.

## (A) Section CG 2 and the omission of section IG 2(9) reflect a conscious change in policy

*Overview*

1. Set out below is a summary of the background to sCG 2 of the 2007 Act (including the background to sIG 2(9) of the 2004 Act). This background is important, because it demonstrates that the omission from the 2007 Act of a provision equivalent to sIG 2(9), while now considered undesirable from Inland Revenue's perspective, was a logical consequence of a conscious policy decision taken in conjunction with the rewrite of the 1994 Act to the 2004 Act. The situation is far removed from situations in which the rewrite, or some other amendment to the relevant provisions, results in the provisions not reflecting a well understood policy.

*Background - 1994 Act provisions*

2. Under the 1994 Act, if LossCo incurred deductible expenditure or loss which was later remitted or cancelled:

   (a) sCE 2 could potentially deem income to arise to LossCo in the year that the deduction for the expenditure or loss was originally claimed, thereby offsetting any deduction claimed (this section could have applied regardless of whether LossCo was in a tax loss position or not);

   (b) sIE 1(4) could potentially reduce or remove LossCo's tax losses in the year that the deduction for the expenditure or loss was originally claimed (this section could only have applied if LossCo was in a tax loss position).

3. Therefore, the policy of sIE 1(4) may be seen to be to reverse out expenditure or loss incurred by LossCo by altering the tax losses that arose from them. In this context, sIG 2(9), which allowed for the same reversal to occur to ProfitCo, was a natural extension. In order to reverse out LossCo's expenditure or loss via amendments to tax losses, it was necessary for the Commissioner to have authority to alter the assessment of whatever entity in fact made use of those tax losses for deduction purposes (see *Hotdip Galvanisers (Christchurch) Ltd v CIR* (1999) 19 NZTC 15,337 (CA) at [16]).

*New policy identified when the 1994 Act was rewritten as the 2004 Act*

4. The policy behind the drafting of sCG 2 in the 2004 Act and the omission of sIE 1(4) of the 2004 Act was set out in "Rewriting the Income Tax Act: Parts C, D and E: Issues Paper 2", produced by the Policy Advice Division in June 1998 (Issues Paper 2). Issues Paper 2 describes the following as a "[p]olicy issue" (p8):

   > It is unclear whether section IE 1(4) or section CE 4 has priority in a given situation…
   >
   > […]
   >
   > **It makes sense,** therefore, **to have only one provision. The new general rule should be located as a gross income provision**, as it will

not be limited to cases where there is a net loss. The appropriate portions of both sections should be gathered into the one new rule.

The timing of the gross income should also be altered. Rather than being taken back to the year of the original deduction, the remission income should simply be gross income in the year it is remitted. **It is preferable in the interests of simplicity and compliance and administrative cost reduction to remove retrospective alterations to assessments. Further, this change would bring the treatment into line with the accruals rules.**

**[Emphasis added]**

5. The paper then provides the following as a "[s]uggested resolution" to that policy issue (p8):

**Section IE 1(4) should be repealed and the general rule of section CE 4 relied on instead.**

The effect of the ordering rule in section IE 1(4)(d) should be relocated to section CE 4 and the deduction for post-remission payments in section IE 1(4)(g) should be relocated to Part D.

**The amount remitted should be allocated to the year in which the remission occurs**, and should not be backdated to the year the original deduction was taken.

**[Emphasis added]**

6. Commentary published when the 1994 Act was redrafted supports the conclusion that the above policy changes were to be proceeded with. *Rewriting the Income Tax Act: Exposure Draft* (2001) states that (Volume 1, p39):

- **Issues paper 2, page 8, proposed that section IE 1 (4) should be repealed and the general rule in section CE 4 relied on instead**; the effect of the ordering rule in section IE 1 (4)(d) should be relocated to section CE 4 and the deduction for post-remission payments in section IE 1 (4)(g) should be relocated to Part D. **We have incorporated the proposal into draft sections CG 2 and DB 35.**

- **Issues paper 2, page 8, proposed that when amounts of expenditure or loss for which a deduction has been allowed in one year are remitted in a subsequent year, the remitted amount be treated as income and allocated to the year in which the remission occurs.** Currently, the remitted amount is treated as income but is backdated to the year the original deduction was taken, requiring an amendment to the tax return for that year. **We have incorporated the proposal into this draft. Therefore there is no need to refer to the Commissioner having a power to amend**

**returns to adjust for any remission amounts (current section CE 4 (3)).**

**[Emphasis added]**

7. The commentary to the Income Tax Bill 2002 (eventually enacted as the 2004 Act) also states that the proposals described above were incorporated into the Bill (p31 and p35), as "policy clarifications" (p29). Finally, Schedule 22A to the 2004 Act lists sCG 2(3) as containing an identified policy change, described as follows:

> The amount remitted is treated as income in the year it is remitted, rather than in the year the deduction was allowed.

8. From this published commentary it may be concluded that the following were intended consequences, and reflected the policy, of the 2004 Act rewrite:

   (a) where deductible expenditure or loss of LossCo is remitted or cancelled, the only consequence is for LossCo to be deemed to derive income under an equivalent to sCE 2 of the 1994 Act (ie; the reduction or removal of LossCo's tax losses should not be available as an additional or alternative tool to the Commissioner); and

   (b) where the equivalent to sCE 2 of the 1994 Act (ie; sCG 2) applies, it should apply to deem income to LossCo in the year of cancellation or remission of the relevant expenditure or loss. There is (in the general case) no need for, and hence no longer any provision authorising, the reversal of any tax consequences recorded in earlier years, including loss offsets which depend on the deductible item the subject of a subsequent cancellation or remission. The Consultation Paper identifies a liquidation of LossCo as a situation in which an exception to that general rule may be, in policy terms, desirable. But the desirability of an exception does not render the general rule now reflected in the 2007 Act any less clear, coherent, or consistent with the policy consciously adopted when the relevant amendments were made.

*2007 Act reflects policy stated in Issues Paper 2*

9. Under the stated policy that the Commissioner should not have the ability to directly reverse out LossCo's deductions from remitted or cancelled expenditure or loss by reducing LossCo's tax losses, it would be anomalous and inappropriate to then allow the Commissioner to still retain these broader powers in respect of a separate company that only utilised the deductions, and did not itself incur them (ie; ProfitCo). Although s IG 2(9) of the 1994 Act was technically retained in the 2004 Act, it is difficult to see this as being due to anything more than oversight.

10. Section IG 2(9) was a logical corollary of sIE 1(4) of the 1994 Act which ensured that the principle reflected in sIE 1(4) could operate in the situation in which the net loss arising from the remitted amount had been transferred by way of loss offset to a profit company. Section IG 2(9)'s verbatim inclusion in the 2004 Act, complete with reference to (and structural reliance on) a section the content of which had been specifically removed, meant that it never had any effect in the 2004 Act, and point to

its later omission in the 2007 Act as reflecting the original policy expressed in Issues Paper 2.

11. In other words, the omission of sIG 2(9) from the 2007 Act was a logical and deliberate consequence of a policy change. A good way to test this proposition is to consider what possible role sIG 2(9) could have following the adoption, in the 2004 Act, of sCG 2. Section CG 2 deems income to arise to a taxpayer that has previously claimed a deduction for expenditure or loss, to the extent the obligation associated with the expenditure or loss is remitted. The income arises in the year the obligation is remitted. Whether the deduction originally claimed formed part of a net loss that was transferred to a profit company is irrelevant to the operation of sCG 2, because sCG 2 deems income to arise *to the company that claimed the deduction*, not to any other company. If that company is not in a tax loss position in the year that sCG 2 applies to it, it will have additional income on which it will have tax to pay. If it (or a group of which it forms part) is in a tax loss position, then sCG 2 will have the effect of reducing available net losses.

12. In either case, there is no need for a provision equivalent to sIG 2(9) to make an adjustment against a different company that accessed a net loss from the company that originally claimed the deduction. Indeed, an adjustment against a different company would involve a "double up" of the adjustment made under sCG 2. The only situation in which sCG 2 does not work perfectly well on its own is where, at the time sCG 2 should apply to the company that originally claimed the deduction, that company no longer exists - which is the scenario the Consultation Paper addresses.

13. *Hotdip Galvanisers* (cited on p2 and p3 of the Consultation Paper) was decided on the law as enacted in the 1994 Act and relies on "Parliament's intention" in that Act (see [14]-[18]). This case can have no relevance where Parliament's intention has been shown to have changed in the period since (both through legislative amendments and the policy signalled in Issues Paper 2).

*Proposed legislative options would amount to a policy change*

14. Amending the legislation as proposed in the Consultation Paper would involve an exception to the policy of sCG 2 as described in Issues Paper 2:

    (a) extending sCG 2 (the first option suggested in the Consultation Paper) would allow the Commissioner multiple options to pursue the same tax liability, something which was seen as undesirable in Issues Paper 2. It would also be broader than anything allowed in the relevant provisions of the 1994 Act (notably, although the 1994 Act provided mechanisms for both further income to arise and tax losses to be reduced, only the second of those (which as noted above has been specifically excluded in later Acts) was able to be used against ProfitCo);

    (b) reinstating a reassessment provision (the second option suggested in the Consultation Paper) would go against the policy that any obligation should arise **in the year of remission or cancellation** of the expenditure or loss, which was stated to be in "the interest of simplicity and compliance and administrative cost reduction". As with the proposal to extend sCG 2, reinstating a reassessment provision would also allow the Commissioner

multiple options to pursue the same tax liability, contrary to the preference expressed in Issues Paper 2.

**(B) If the policy is to be changed, it should be strictly prospective in application**

15. Section CG 2 of the 2007 Act as it stands is clear and accurately reflects stated policy. If legislative amendments are required then that will constitute a change in this policy. Therefore the amendments should only apply prospectively, to expenditure or loss that is incurred (by LossCo) in income years starting on or after the date the amendments are enacted.

16. Examples of officials' published views regarding limitations on the use of retrospective legislation are set out in the Appendix to this submission. Those examples all support the view that the present proposals should not be implemented retrospectively.

17. There is another compelling consideration suggesting that retrospective implementation of the proposals would be inappropriate. The scenario affected by the proposals will frequently involve groups of companies, some or all of which are insolvent. Hence, the impact of retrospective law change must be considered not only from the perspective of taxpayers, but also from that of third party financiers.

18. Where a group of companies is insolvent, a restructure may involve a separation of more profitable parts of the business from the rest of the group, so as to ensure the survival of at least part of the group. Financiers lending to the restructured businesses will of course be concerned to ensure that there is a clean break from the insolvent companies that are not to continue in business. Financiers may have taken advice and made lending decisions on the strength of the law as stated in the 2007 Act. Imposing retrospectively a tax liability on ProfitCo could clearly have an adverse impact on such financiers who may have lent to ProfitCo.

19. **Alternatively**, if the above submission (that the amendments should apply prospectively, to expenditure or loss incurred (by LossCo) in income years starting on or after the date of enactment) is not accepted, there must be a savings provision to confirm that taxpayers (and their financiers) can rely on the finality of loss offsets complying with the law at the time those loss offsets were made. (See further the discussion of savings provisions at paragraph 0 of the Appendix.) The savings provision should be to the effect that the amendments do not apply if the relevant LossCo has been liquidated, or a tax return recording the relevant loss offset has been filed, prior to the date of enactment.

20. Even with a savings provision framed on the above basis, the amendments could still operate retrospectively. Tax returns are often not filed (and loss offsets not made) until many months after financial accounts are prepared for the relevant income year. As financiers and investors would often rely on those financial accounts, an amendment, even if subject to a savings provision such as that suggested above, could result in significant prejudice to taxpayers and their financiers, who will be hit with an additional tax liability relating to a prior income year, in circumstances where they have made decisions on the quite reasonable basis that the tax and other financial consequences of that prior year were stated in the financial accounts.

21. Accordingly, the Government should take particular care in connection with the application date of the reforms suggested in the Consultation Paper. Unless the Government adopts the option that amendments should apply prospectively, to expenditure or loss incurred (by LossCo) in income years starting on or after the date of enactment, further consultation should occur on the precise formulation of the application date provisions.

**(C) The proposed anti-avoidance provision is inappropriate and should not proceed**

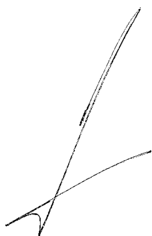
22. The anti-avoidance measure proposed in the Consultation Paper would inappropriately and unnecessarily broaden the reach of sCG 2, and should not proceed.

23. Current sHD 15 of the 2007 Act generally applies where an arrangement has the effect that a company cannot meet a tax liability and it is reasonable to conclude that this was a purpose of the arrangement, and can impose liability on directors and shareholders of the company. This is coupled with an ability to restore companies to the register. Further, the Commissioner also has relevant creditors' remedies at his disposal (for example, bringing proceedings for breach of directors' duties and seeking personal contribution from directors). To include a further anti-avoidance provision as described in the Consultation Paper would be unnecessary and would have the potential to allow the Commissioner to circumvent the liquidation rules and ignore the corporate veil where there is no justification for doing so.

24. For instance, if both ProfitCo and LossCo were put in liquidation by their creditors at the same time, the proposed anti-avoidance measure would apply to make the shareholders and/or directors of ProfitCo jointly and severally liable for income tax obligations in relation to any remission adjustment. However, there is no implication that liquidation involved any purpose of avoidance, and reaching directly for the shareholders and/or directors would severely curtail the limited liability nature of the group companies.

If you wish to discuss this submission further please contact the Taxation Committee Convener, Mr Casey Plunket, through the committee secretary, Julie Smith - phone (04) 463 2967 or email julie.smith@lawsociety.org.nz

Yours sincerely



Andrew Gilchrist
**Vice President**

## APPENDIX – STATEMENTS REGARDING RETROSPECTIVITY

### Introduction

1. It is axiomatic that laws, as a base presumption, should be prospective. Unjustified retrospective legislation offends the rule of law and undermines the legal system through creating uncertainty.

2. The presumption against retrospectivity is equally applicable in the tax context, where unjustified retrospective legislation damages the integrity of the tax system. In addressing whether an amendment to the Goods and Services Tax Act 1985 (GST Act) relating to non-registered offshore warrantors should have retrospective effect,[1] officials commented:

> The underlying presumption in law-making is that legislation should operate on a prospective basis. Prospective application ensures that taxpayers can make decisions on the basis of laws that are not unexpectedly altered. That is constitutionally proper, fair, and allows for rational economic decision-making.

3. Accordingly, officials generally only recommend retrospective legislation in “exceptional circumstances”.[2] This therefore sets the benchmark for determining whether any amendment to sCG 2 should take retrospective effect.

### Exceptional circumstances – examples

4. Some consider it is arguable that not all legislation that takes pre-enactment effect will undermine the integrity of the tax system. Officials have expressed the view that retrospective legislation only undermines the integrity of the tax system where it is contrary to the “rational and legitimate expectations of people”. On this approach, where retrospective legislation is not contrary to the rational and legitimate expectations of taxpayers, it may be justifiable.

5. For example, retrospective legislation may be acceptable where it corrects a simple cross-referencing or other obvious drafting error. In those circumstances, taxpayers can arguably be expected to have interpreted the law as if the cross-reference had already been corrected, or at least to have been on notice as to the risk of amendment, if relevant provision did not make sense on its face. Therefore, any retrospective legislation to correct the drafting error may not be contrary to the rational and legitimate expectations of taxpayers.

6. A further example may be where legislation is unclear, such that it might not be interpreted in line with its intended policy. In such circumstances, one view is that taxpayers may be expected to adopt a purposive interpretation of the legislation in line with its intended policy. For these taxpayers, enacting retrospective legislation to clarify the law may not be contrary to their rational and legitimate expectations.

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[1] Officials’ Report to the *Taxation (Relief, Refunds and Miscellaneous Provisions) Bill* at Part 7.

[2] Supplementary Report No. 2 to the *Taxation (Annual Rates, Taxpayer Assessment and Miscellaneous Provisions) Bill* at p5 and Officials’ Report to the *Taxation (Relief, Refunds and Miscellaneous) Bill* at Part 7.

7. In such instances, legislators often seek to balance the benefits and costs of the retrospective legislation through enacting a carve-out (often termed a "savings provision") to the application of the retrospective legislation. The savings provision ensures that the retrospective legislation does not apply to those taxpayers that on a rational and legitimate basis expected that the legislation would not change. Often, the savings provision will require the taxpayer to evidence their expectation that the existing legislation would remain unchanged through requiring the taxpayer to have filed their tax return(s) on the basis of the relevant existing legislation.

8. The circumstances surrounding the proposed legislative change to sCG 2 do not fall within any of the above-mentioned categories. The 2004 Act provisions relevant to profit companies using losses from other companies within a group were inoperative, and this was not an issue of obvious error or clarity. Their omission from the 2007 Act simply reflected stated policy. Accordingly, taxpayers filing their returns on the basis of sCG 2 would have had a rational and legitimate expectation that it would not apply to profit companies that receive loss offsets. This is discussed further below.

**Rational and legitimate expectation - clarification vs. fault-fixing**

9. As noted above, retrospective legislation may be justified where this would not be contrary to the rational and legitimate expectations of taxpayers. A common test adopted by officials in determining whether proposed retrospective legislation meets this criterion is whether the legislation seeks to "clarify" the existing legislation (which is viewed as an acceptable criterion for retrospectivity) or fixes a fault in the existing legislation (which is not).[3]

10. Generally, acceptable retrospective legislation clarifies the application of existing legislation, if it amends the existing legislation to reflect how taxpayers already understood that legislation to apply. For example, this may be where the policy intent of the legislation was clear but the relevant legislative provisions did not achieve that policy intent. Conversely, legislation fixes a fault in existing legislation where it changes the relevant provisions rather than simply clarifying their application. This is not an acceptable use of retrospective legislation.

11. The Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 GST Amendment Act) did not retrospectively apply amendments to the GST Act that addressed the GST treatment of supplies of services to a non-registered offshore warrantor.

12. In the Officials' Report to the bill relating to the 2002 GST Amendment Act, officials commented that[4]:

> Incorrect policy outcomes arising from **faults** in the legislation **should in general be corrected prospectively**.
>
> **[Emphasis added]**

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[3] Officials' Report (Volume 1) to the *Taxation (International Taxation, Life Insurance, and Remedial Matters) Bill* at p43; Officials' Report to the *Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Bill* at p183; Officials' Report to the *Taxation (Relief, Refunds and Miscellaneous Provisions) Bill* at Part 7.

[4] Officials' Report to the *Taxation (Relief, Refunds and Miscellaneous Provisions) Bill* at Part 7.

13. As the legislative amendments made by the 2002 GST Amendment Act corrected "faults" in the legislation, the Act did not apply retrospectively.

14. Certain taxpayer submissions had requested that the 2002 GST Amendment Act amendments to the GST treatment of warranties apply retrospectively in line with the precedent set by the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 GST Amendment Act), which enacted, with retrospective application, amendments to the GST treatment of services supplied by certain inbound tourism operators. In relation to these submissions officials made the following comments in relation to the 2001 GST Amendment Act:

> …there was wide consultation and full debate from the introduction of GST regarding the correct policy and tax treatment of inbound tourism. **Both taxpayers and the government understood that the effect of the law** was, as intended, that inbound tourism was subject to GST**.** This was seen as **justifying a retrospective change in the law** but **not to the extent that taxpayers had filed returns on the basis that no GST was payable**.
>
> **[Emphasis added]**

15. Consequently, as officials considered that the 2001 GST Amendment Act "clarified" the wording of the GST Act - to ensure that it achieved the policy outcome as understood and known by the government and taxpayers - retrospectivity (with a savings provision) was considered justifiable.

16. Conversely, in relation to the 2002 GST Amendment Act, officials commented as follows:

> While taxpayers may have interpreted the law as being that GST on warranty payments was not payable, **and while this may be the correct policy outcome, it is difficult to conclude that this was other than an interpretation of the law that was proved to be incorrect.**
>
> **[Emphasis added]**

17. This view emphasises that retrospective measures to align legislation with its intended policy is not appropriate where the existing legislation cannot be interpreted in line with that intended policy. Officials commented as follows:

> To see this as of itself a justification for retrospective application would create a new and expanded precedent for retrospective tax changes, both for and against taxpayers, creating considerable uncertainty as to the future stability of our tax laws.

18. From the above, it is apparent that the distinction between "clarifying" amending legislation and amending legislation that corrects a fault in the existing legislation depends on whether the existing legislation can be interpreted in line with its intended policy. Specifically, if on a purposive interpretation of the existing legislation it can be read in line with its intended policy, retrospective legislation may be justified.

19. Section CG 2 cannot be interpreted to apply to profit companies, and to attempt to do so would be inconsistent with its purpose. As discussed above, sIG 2(9) of the 1994 Act was omitted from the 2007 Act, such that there is no provision in the 2007 Act bringing profit companies within the ambit of the remission/recovery rules. The 2004 Act contains provisions that simply do not make sense and are inoperative as regards profit companies. This is clearly a situation where the proposed amending legislation is not seeking to simply clarify the legislation. A retrospective application date is therefore not justifiable.