FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 61 and Schedule 30: Financial Arrangements Avoidance

Details of the Schedule

Paragraphs 2 and 3: amounts not fully recognised for accounting purposes

17. Paragraph 2(1) amends section 311 of the Corporation Tax Act 2009 (CTA) (loan relationships: amounts not fully recognised for accounting purposes). Section 311 deals with cases where a company is, or is treated as being party to a creditor loan relationship as respects which the company does not fully recognise all amounts in its accounts. Where the section applies the company is required to recognise for tax purposes the full amount of the credits and debits on the loan relationship.

18. Sub-paragraph (2)(a) inserts a new Condition C into section 311 so that it now applies where Condition A, B or C (not just A or B) is met.

19. Sub-paragraph (2)(b) amends section 311(2) so that it applies where an amount is not fully recognised as a result of the application of generally accepted accounting practice (GAAP) to the creditor relationship and either the relevant debtor relationship (Condition A), relevant capital contribution (Condition B) or relevant securities (new Condition C).

20. Sub-paragraph (3) amends section 311(3)(b) (Condition A) so that it refers to “the creditor relationship and debtor relationship”. This is to put it beyond doubt that non-recognition of amounts in respect of the creditor relationship must be the consequence of the non-recognition of amounts in respect of the linked debtor relationship. Thus, the fact that in accordance with GAAP an amount is not recognised in respect of an unrelated debtor relationship – for instance, one used in a hedging arrangement – would not result in amounts in respect of that unrelated relationship having to be fully recognised. This reflects existing practice.

21. Sub-paragraph (4) amends section 311(4)(b) so that a similar linkage is required in respect of Condition B (capital contribution) cases.

22. Sub-paragraph (5) inserts new Condition C. This is that the company has issued securities that form part of its capital (whether or not the issuer has received cash for their issue) and an amount is not fully recognised in respect of the application of GAAP to the securities and the creditor relationship. Condition C responds to new avoidance disclosures that seek to work around section 311.

23. Sub-paragraph (6) makes a consequential amendment to section 311(6) so that in determining whether an amount is fully recognised for the purposes of section 311 regard can now be had to any securities issued by the company within sub-paragraph (5).

24. Sub-paragraph (7) provides that section 311 and 312 (amounts not fully recognised for accounting purposes) are added to the list of tax provisions that must be taken into

account in calculating the carrying value of a loan relationship for the purposes of section 317(5).

25. Sub-paragraph (8) contains the commencement rule: except where sub-paragraph (9) applies the amendments have effect in relation to periods of account beginning on or after 22 April 2009.

26. Sub-paragraph (9) provides that where a period of account begins before but ends on or after 22 April the amendment operates as if one period of account ended just before that date and the other commenced on that date. This means the amendments made by paragraph 2 apply immediately in relation to the new deemed period of account (so that an immediate credit may crystallise).

27. Paragraph 3 inserts new sections 599A and 599B into Part 7 of CTA (derivative contracts). These largely reproduce for derivative contract purposes the loan relationship rules in section 311 and 312 of CTA. They thus require full tax recognition of profits and losses in respect of a company's derivative contracts.

28. New section 599A is modelled on section 311. Section 599A(1) states that section 599B will apply for determining the debits and credits to be brought into account by a company in respect of its derivative contracts where the circumstances are as set out in section 599A(2).

29. New section 599A(2) sets out the case. A company is or is treated as party to a derivative contract and an amount is not fully recognised in respect of the derivative contract as a result of the application of GAAP to the contract and either a relevant capital contribution (Condition A) or securities issued by the company (Condition B).

30. New section 599A(3) specifies that Condition A is that an amount has been contributed to the company that forms part of its capital and an amount is not fully recognised in respect of the contribution as a result of the application of GAAP to the contribution and the contract in question.

31. New section 599A(4) is similar to section 311(5) and provides it is not necessary for an amount to form part of a company's share capital for it to be treated as a contribution to the capital of the company.

32. New section 599A(5) specifies that Condition B is that the company has issued securities that form part of its capital and an amount is not fully recognised in respect of the securities as a result of the application of GAAP to the securities and contract.

33. Section 599A(6) states that an amount is not fully recognised in respect of a contract, contribution or securities if no amount is recognised in respect of it or if amounts in respect of it are only partially recognised.

34. New section 599B(1) provides that where section 599A applies, the debits and credits to be brought into account must be determined in accordance with subsection (2).

35. Subsection (2) says that an amount in respect of the whole of the contract must be brought into account.

36. Subsection (3) provides that the debits and credits brought into account by virtue of section 599B must be determined on a fair value basis of accounting.

37. Subparagraph (2) provides that sections 599A and 599B (amounts not fully recognised for accounting purposes) are added to the list of tax provisions that must be taken into account in calculating the carrying value of a derivative contract for the purposes of section 702(3).

38. Sub-paragraph (3) contains the commencement rule: except where sub-paragraph (4) applies the amendments have effect in relation to periods of account beginning or after 22 April 2009.

39. Sub-paragraph (4) provides that where a period of account begins before but ends on or after 22 April the amendment operates as if one period of account ended just before that date and the other commenced on that date. This means the amendments made by paragraph 3 apply immediately in relation to the new deemed period of account (so that an immediate credit may crystallise).