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NEWSLETTER JANUARY 2008

THE OFFICE OF FAIR TRADING V THE HIGH STREET BANKS – LET BATTLE COMMENCE

On Monday 14th January the Office of Fair Trading (OFT) squared up to the high street banks in the courtroom to establish whether charges levied by the banks on customers who have unauthorised overdrafts are too high. In a test case brought by the OFT it is argued that unauthorised bank charges are controlled by the Unfair Terms of Contracts Regulations (the Regulations) and that any such charges must be fair. The banks, on the other hand, argue that any overdraft facility provided for customers, whether authorised or unauthorised, is a service provided by the bank and is therefore not subject to the Regulations.

It is important for both the banks and their customers that clarification is obtained from the court in relation to charges levied on unauthorised overdrafts as at present the law is unclear and this has resulted in a number of private actions being brought by customers against their banks. Some of these cases have resulted in success for the banks and some for the customer and so the position still remains unclear. In addition, some cases that have been brought by customers against their banks have been settled out of court by the banks at the last moment thus resulting in the legal position not being clarified. This unclear position has also resulted in a logjam of complaints being made to the Financial Ombudsman.

The court's judgement will not be made until April and at this time the judge will rule as to whether the charges levied by the banks are subject to a fairness rule (as required by the Regulations). If the ruling is made in favour of the OFT then the OFT will return to the court and argue that the charges made by the banks in the past (and which are still being made now) are disproportionate to the service which the banks are providing. If the court rules in favour of the OFT at this time this could result in billions of pounds worth of compensation being paid by the banks to customers for past charges. (Such claims can go back for up to six years.)

The majority of customers will argue that the banks are in the wrong and should be stopped from levying disproportionate charges on unauthorised overdrafts. But there is a paradox in that, should the OFT be successful in its argument, this will undoubtedly result in the end of free banking for many services provided by the banks. The banks will have to get income from other sources or reduce costs and the end of free banking for those customers who have current accounts that are not overdrawn may be on the cards.

Others are of the opinion that the banks are perfectly entitled to levy high charges for unauthorised overdrafts and indeed the banks argue that if customers were to approach them in advance of going overdrawn and the overdraft authorised, then any charges would be considerably reduced.

PROTECTING YOUR INVESTMENTS

The majority of our readers will be aware of the considerable concern, alarm and distress caused by the run on the Northern Rock bank last year. Following this debacle, the government changed its deposit protection scheme as, under the existing scheme, many thousands of savers could lose considerably more than the amount guaranteed under the scheme. This was £2000 plus 90% of the next £33,000 (ie £31,700)

After the scheme was changed, from 1 October 2007 savers are guaranteed 100% of the first £35,000. (However, it should be noted that those who save with the Northern Rock are guaranteed for all their savings, with no upper limit – a move which has caused much criticism in some quarters and which means, somewhat paradoxically, that at present it is probably safer to save with the Northern Rock than with other institutions!)

We would remind readers that the government is shortly to make further changes to the current rules relating to guarantees.

The above points relate specifically to the government's deposit protection scheme. However, readers may be interested to know that they may be able to obtain assistance in claiming compensation from financial services firms for other forms of investment and not just on deposits made with banks. These could include pensions and mortgage endowments.

The body that deals with these matters is the Financial Services Compensation Scheme (FSCS) which is the UK's statutory fund of last resort for customers of authorised financial services firms. The FSCS can pay compensation if a firm is unable, or likely to be unable, to pay claims against it. FSCS is an independent body, set up under the Financial Services and Markets Act 2000 (FSMA). The service provided by the FSCS is free to consumers.

It is important to remember that the FSCS can only pay compensation in relation to authorised firms and only when such compensation cannot be paid by anyone else.

If an authorised firm is still trading, you should first contact the firm itself to obtain compensation. If you get no redress by doing this then you should contact the Financial Ombudsman Service.

It is only when an authorised firm has ceased to trade that the FSCS may be able to assist.

You should consider the following questions and, dependant on the answers you receive, take the appropriate action.

Is the firm you are dealing with still in business?

If YES you should contact the Financial Ombudsman Service whose website is at www.financial-ombudsman.org.uk. You will find further contact information of this website. If NO see below.

If the firm is not in business, was the firm authorised by either the Financial Services Authority or a previous regulator?

If YES then you should contact the FSCS at www.fscs.org.uk and access the "How to claim" section on the Consumer page.

If NO then you cannot use the FSCS and may need to consider other forms of action.

There are a number of compensation limits, dependant on the type of business conducted and we have alluded to the limit concerning bank deposits at the beginning of this article (ie 100% up to £35,000 from 1 October 2007 onwards).

DELAYS IN PROCESSING VAT REGISTRATIONS

Those businesses that have applied to be registered for VAT or contemplating registering should be aware that HM Revenue & Customs (HMRC) has announced delays in the processing of both online and paper VAT registration applications. We set out below an extract from an announcement recently made on the HMRC website:

"There are delays with the processing of both online and paper VAT registration applications. Providing good service is a top priority and we are taking steps to improve the situation as quickly as possible. In the meantime, please try to avoid contacting us to see how your application is progressing as this may further extend processing times. Thanks for your co-operation and we apologise for any inconvenience."

HMRC was set a target of processing 70% of applications within a 14 day period by January 2008 but it is unlikely that it will meet this target. Indeed, if further checks need to be carried out in relation to an application, these checks may take up to 5 weeks to complete and in some instances up to 14 weeks.

In view of the above delays, it is important that those businesses that have applied for registration are aware as to the regulations governing the accounting for VAT before a business is registered. The basic rule is that a business is required to account for and pay any VAT due from the date the business was required to be registered. This date should be distinguished from the date the business applied for registration or the date when it received its certificate.

In practice a business is not able to charge VAT before it is registered. In addition, a business is not allowed to show VAT as a separate item on any invoice that it issued before registration.

So what must a business do that is required to be registered for VAT but is still awaiting its VAT certificate? In these cases the business should include VAT on its prices but not show the VAT separately. Any invoice raised by the business in this way will not be a VAT invoice and the business will have to inform its customers that they will be receiving a VAT invoice (with the amount of VAT shown separately) at a later date (ie once the registration certificate has been received).

Once the registration certificate has been received, the business must within 30 days send a VAT invoice to all those customers referred to above.

PLANNING AHEAD FOR RETIREMENT – PENSION CONTRIBUTIONS

It is important that individuals consider a number of points concerning pensions as they approach retirement age. Some of the more important matters are set out below.

Nearing retirement

For many people, the idea of a fixed retirement age no longer exists. There is usually a great deal of choice in this matter, although this choice can sometimes be affected by taxation regulations. Currently, Her Majesty's Revenue & Customs start giving age-related benefits at age 65 for men and women. This is despite the present state retirement age for women (60), which will disappear over the coming years as the women's pension age moves upwards to 65. This affects women born between 6 April 1950 and 5 April 1955. For all women born after 5 April 1955, the state retirement age is 65.

Individuals approaching retirement age should start thinking about whether they are going to carry on working past retirement age, cut down on the number of hours they work, or stop working completely. If stopping work completely is the chosen option, an alternative form of income - usually a pension - is going to be required to fund a new lifestyle. The key to almost all successful pension planning is to start early and plan well ahead.

Maximising the pension pot

From 6 April 2006 a new single set of simplified rules came into effect concerning pensions. The rules are designed to make things simpler and make saving for retirement more flexible. For instance, since 6 April 2006 it has been possible to save in more than one pension scheme at a time.

Tax relief is available on contributions up to 100 per cent of annual earnings, up to an annual allowance set at £235,000 for 2008/09. Non-taxpayers are also entitled to tax relief on pension contributions. They can invest up to £2,808 in any one tax year and receive tax relief of £792, so the total amount saved in their pension pot with tax relief will be £3,600 gross per annum.

The amount that could be paid into a pension used to be capped according to annual earnings and age. This is no longer the case and it is now usually possible to pay in much more. However, everyone has a lifetime allowance (£1,650,000 for 2008/09), which is the maximum amount on which they can get tax relief. There is also an annual allowance, which means tax relief is available on contributions up to £225,000 for 2007/08 and £235,000 for 2008/09.

Working past retirement age

It is not compulsory to stop working to claim the state pension. Once state pension age is reached, individuals no longer have to pay national insurance in any shape or form, so anyone working on past retirement age should see an increase in their net pay. A "certificate of exemption" should be obtained from HMRC, which the individual gives to his or her employer. Employers however, have to carry on paying NICs until the employee finally stops work. For employed people, the saving in the 2008/09 tax year from not paying national insurance will be worth 11p in each £1 earned between £105 and £770 a week. For any amount over £770 per week the saving is 1p in each £1.

Self-employed people will save £2.30 per week on earnings over £4,825 for 2008/09 because they will not have to pay Class 2 NICs. There will be no Class 4 contributions either, so this will save a further eight per cent on profits between £5,435 and £40,040 compared to someone under state retirement age.

LOST CHILD BENEFIT DATA

All our readers will be aware of the loss of data by HM Revenue & Customs (HMRC) when two data discs, containing personal details of some 25 million individuals claiming Child Benefit, were lost in the post.

Naturally there has been a great deal of concern, especially in view of the fact that the data has still not been recovered, and it could be that if the data has been stolen, criminals might not take immediate action to carry out frauds but wait until the dust has settled. It is therefore especially important that action is considered now and kept under regular review.

We set out below an extract from the advice given by HMRC and which has been posted on its website. This information takes the form of a number of questions and answers.

"Is data about me and my family involved in this incident?"

Only people who were receiving Child Benefit on 30 September 2007 are affected.

Will this affect my Child Benefit?

No.

What can I do to ensure that lost data about me is not used fraudulently?

You should remain watchful:

- if you receive bills, invoices or receipts or see entries in your statements for goods or services which you have not ordered you should contact your bank or building society immediately
- be aware of anybody who contacts you unexpectedly by phone or email and asks for personal information or account details, whatever company or organisation they claim to represent. If you are at all suspicious contact your bank or building society
- if your password uses any of your personal data, for example your child's name or date of birth, you may also wish to consider changing any passwords you use.

There is no need to contact your bank as a matter of routine. You can get further information from www.identitytheft.org.uk or specific advice about protecting your bank account from www.cifas.org.uk.

What happens if data about my family is misused anyway?

You should contact the organisation where the fraud has taken place.

As is usual in these circumstances, if you are the innocent victim of banking fraud you will not have to pay.

If, as a direct result of this incident, you incur costs we will consider compensating them.

Should I consider changing my bank account to prevent fraud?

The British Banking Association advice is not to change bank or building society accounts unless you have evidence that your account has been used fraudulently.

The banking industry has also told customers that the data contained on the lost discs is not enough for an ID fraudster to access their bank account – as additional security information and passwords are always required.

Is it safer to go back to getting Child Benefit by Cashcheque (Giro)?

As we have no evidence to suggest the data is in the possession of anyone else, we strongly recommend that you should continue to get paid into your Bank or Building Society because:

- it is more secure
- payments are received more quickly (usually 3 to 5 days earlier)
- you do not have to go to the Post Office to collect your money.

Can I change my National Insurance Number to protect me from fraud?

No, it is not possible to change your National Insurance Number. The National Insurance number is not an ID number. While it is used as a convenient reference for many Government systems it will not, in itself, provide access to financial accounts or information in either the public or private sector."

ADVISORY FUEL RATES ANNOUNCED

Her Majesty's Revenue & Customs has announced the advisory fuel rates which are to apply to all journeys on or after 1 January 2008 until further notice:

| Engine size | Petrol | Diesel | LPG |
|--------------------|---------------|---------------|------------|
| 1400cc or less | 11p | 11p | 7p |
| 1401cc to 2000cc | 13p | 11p | 8p |
| Over 2000cc | 19p | 14p | 11p |

HMRC advises as follows:

"With effect from the January 2008 change, the rates will be reviewed twice a year. Any changes will take effect on 1 January and 1 July but will be published on the HMRC website about 1 month in advance.

HMRC will also consider changing the rates if fuel prices fluctuate by 5 per cent during each six month period.

Employers should make themselves aware of any changes by referring to this page regularly. It is the primary source of information because it can be updated quickly if necessary."

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