



## IT AIN'T NECESSARILY SO...

### WATCH OUT FOR ADVICE FROM HMRC'S MANUALS

HM Revenue and Customs are responsible for administering a bewildering variety of taxes, and to help them in their task they have a set of "Guidance Manuals". These can be found on HMRC's website at : <http://www.hmrc.gov.uk/thelibrary/manuals-a-z.htm> , neatly arranged in alphabetical order. Those patient enough to count them, as I have just done, will find there are nearly two hundred of them, ranging from the much-consulted "Business Income Manual" and "Employment Income Manual", to the obscure-sounding "Requesting AC-e Assistance from an OMS Under Administrative Cooperation in Excise Manual", and the intriguingly named "Beer Policy Manual".

The fact that the public have access to these Manuals is a great help when dealing with HMRC, but it is important to realise their limitations. These Manuals are HMRC's interpretation of the law, and cover their policy on how it is to be administered, but they are not law and do not have the force of law.

HMRC staff are trained to use these manuals, and are trained according to them – they seldom if ever look at the actual statutes themselves. There is a prevailing myth in HMRC that what the manual says must be correct.

This can of course be helpful in some circumstances. The manuals can provide reassurance that a particular strategy works. The practice of "flipping" your main residence (much practised by MPs but available to us ordinary mortals as well) is covered in the Capital Gains Manual. If you have more than one home, have a look at CG64510, which sets out exactly how to "flip" them in order to get at least some exemption from CGT on both properties. The important point is that this practice is more or less endorsed by this paragraph, so an inspector is not going to challenge you provided you get the paperwork correct.

If the Manual gives you the result you want, then, by all means agree with it, but if it does not, it can be worth going back to the actual legislation to see what that says. One of my clients had a member of staff who had been with them for many years and they wanted to acknowledge this in a more imaginative way than by giving them some hideous mantelpiece ornament, so they organised a slap-up party for the lady in question and her friends. For various reasons this did not fall within the exemption for staff parties (as my clients had thought it would), but when HMRC tried to charge tax on the benefit I pointed out that it fell within the exemption for "long service awards".

This is an exemption given by section 323 of the Income Tax Earnings and Pensions Act 2003, for something given to mark a long period of service (more than 20 years). The Revenue official responded by quoting paragraph EIM21750 of the Employment Income Manual which says that the exemption applies to "long service awards in the form of tangible articles given to directors and employees". A party, she said, is not a "tangible article" and so the exemption was not due. Section 323, however, does not require the award to be an "article" – in fact the word does not appear anywhere in the section, which simply says the award must not be cash or a voucher that can be converted into cash, and lists a few other excluded items such as stocks and shares. The official was very sceptical about this, but for-

tunately I was able to find another paragraph in her instructions (EIM01502) which backed up what I was saying, and the party was tax-free.

This article by James Bailey first appeared in Tax Insider magazine ([www.taxinsider.co.uk](http://www.taxinsider.co.uk))