

[42.3.2] Payment by instalments where consideration due after time of disposal (S.981)

- 2.1** Where the consideration for a disposal is payable by instalments the whole of the chargeable gain is assessable in the year of assessment in which the disposal takes place. If the period of the instalments exceeds 18 months and the person making the disposal satisfies the Revenue Commissioners that he would suffer undue hardship by having to pay the tax on the chargeable gain at one time then the Commissioners may allow the tax to be paid by instalments over a period not exceeding five years and ending not later than the date upon which the last of the consideration instalments is payable.

Applications to permit tax to be paid by instalments under **Section 981** should be dealt with by the applicants Revenue Office.

Where instalment payments are agreed, the Revenue Office should forward full details of the arrangement to the Collector-General.

In considering whether undue hardship would arise, the Inspector should look primarily to the question whether the vendor or disposer would reasonably be expected to pay the tax on the full amount immediately, in the light of the resources made available by the particular transaction involved. Regard should not normally be had to the other resources of the taxpayer if it could be shown that the instalment arrangement was in the circumstances, and apart from any tax considerations, a normal commercial arrangement and reflected a genuine deferment of the enjoyment of the consideration.

- 2.2** It is not a "payment by instalments" case where, on the disposal of an asset, the vendor lends money to the purchaser whether or not the granting of the loan is a condition of the contract for sale. For example, in the case of real property, normally the vendor would acknowledge receipt of the full sale price in the conveyance whilst the mortgage deed or legal charge would recite the agreement to lend and contain an acknowledgement by the borrower of the loan. In other words there are usually two separate transactions namely a disposal for full consideration and then the grant of a loan. In such a case no part of the purchase money can be said to be "payable by instalments over a period exceeding 18 months" (**Section 981**) because receipt of the full purchase price is acknowledged by the vendor.

See the United Kingdom Case, *Coren v Keighley*, 1972, 48 T.C. 370. In cases of doubt, all relevant documents, in particular the conveyance, should be examined, to confirm that there were in fact two separate transactions.

Any subsequent default by the purchaser/mortgagor cannot affect the chargeable gain on the vendor arising from the sale of the property. As to any chargeable gain or loss which might arise in connection with the loan itself, see [Tax Instruction 19.1.13](#) **Par. 1 to 5**.