

THE TRIBUNAL RESUMED ON THE 28TH JUNE, 2005 AS FOLLOWS:

MR. COUGHLAN: Mr. Fox.

CHAIRMAN: Good morning, Mr. Fox. Thank you for coming back for this further evidence. You are of course already sworn from earlier sittings.

NOEL FOX, PREVIOUSLY SWORN, WAS EXAMINED BY MR. COUGHLAN AS FOLLOWS:

Q. MR. COUGHLAN: Mr. Fox, I think in response to queries raised with you by the Tribunal, you have furnished two narrative statements or memoranda of proposed evidence; isn't that correct?

A. That's correct.

Q. And I think you understand, I'll take you through those, and then we might ask a few questions arising from certain matters, if that's all right.

A. That's fine, Mr. Coughlan.

Q. I think the first memorandum is dated the 29th April, 2005. That's the one I'll deal with first.

And I think you were asked for your dealings and contacts with the Chairman of the Revenue Commissioners in relation to the affairs of the trust or in relation to any person or body associated with the trust for the period January 1985 to December 1998. And you have had informed the Tribunal that you have reviewed the documents provided by the Revenue Commissioners. You do not hold any documentary records of the meetings and/or attendances referred to, but you agree with the general content of the Revenue notes

insofar as they concern records of meetings or attendances with which you were involved. You also refer to the documents provided on behalf of the Trustees of the Dunnes Settlement Trust. You specifically refer to the following occasion set out in the Tribunal's letter of the 10th February, 2005.

A) The meeting of the 7th March, 1985. You say that you attended this meeting with your fellow Trustees to discuss valuations with the Revenue officials. At this meeting, the Revenue advised you of their lowest possible valuation for the trust property. There was no capacity within Dunnes Stores Group to pay the tax bill associated with this level of valuation. Arising out of this, you that is, the Trustees considered you had no alternative but to extend the trust by the relevant date on the 15th March, 1985, and this was done.

B) you refer to meetings in July 1986, early May 1987, in July 1987 with Mr. Bernard Dunne, the 10th September, 1987, and the 21st March 1988.

You say that you have no specific recollection of these meetings as you did not keep notes, but you do not disagree with the Revenue's notes insofar as they concern such meetings.

You were then asked to deal with contacts, if any, direct or indirect, with Mr. Charles Haughey during the period January 1985 to December 1998.

You have informed the Tribunal that you also had social

meetings from time to time with Mr. Charles Haughey in the relevant period. You were doing some State work at the time, and you called on Mr. Haughey by appointment. The Dunnes Trust was not discussed at these meetings.

I think you were asked for your knowledge, direct or indirect, of all dealings or contacts between Mr. Bernard Dunne and Mr. Charles Haughey in relation to any matter, and including the affairs of the potential liability of the trust or any person or body connected or associated with the trust or the Revenue Commissioners during the period January 1985 to December 1998.

And you say, "I refer to the oral evidence given by you to the Tribunal of Inquiry (Dunnes Payments) before Mr. Justice McCracken on Tuesday, 28th April, 1997", and you say "See Transcript Number 2, pages 78 to 105."

You were asked for your knowledge, direct or indirect, of all contacts between Mr. Charles Haughey and the Chairman of the Revenue Commissioners or any Commissioners or officials of the Revenue Commissioners or any person whatsoever in relation to any respect of the affairs of the potential liability of the trust to the Revenue Commissioners. And you say that you have no such knowledge.

I think you furnish a further memorandum or narrative, which was dated the 29th April, 2005, and I think the first query that was raised with you was meetings between Mr. Bernard Dunne and the Chairman of the Revenue

Commissioners at the instigation of Mr. Charles Haughey in relation to the meeting between Mr. Bernard Dunne and Mr. Seamus Pairceir on or about the 4th June, 1987.

And you say that you have reviewed the information provided by the Revenue Commissioners in relation to this matter.

You do not hold any documentary records of the meeting referred to between Mr. Bernard Dunne and Mr. Seamus Pairceir on the 4th June, 1987. You currently have no detailed recollection of that meeting and accept fully Mr. Pairceir's note of what was discussed. You do not hold any documentary records that relate to any aspect of the alleged proposed tax cost of  $\text{IR}\text{£}16$  million. The offer from the Revenue was not taken up or acted on.

I think you were then asked about interest on the Discretionary Trust Tax payment. And you have informed the Tribunal that you have reviewed the documents provided by the Revenue Commissioners. The assessment raised by the Revenue Commissioners on the Trustees in respect of Discretionary Trust Tax was settled on the basis of an agreed valuation. You do not dispute that the settlement provided that all payments due should be paid within 21 days from the 16th March 1987. You further accept that the final payment in respect of this settlement was paid on the 25th May 1987. You currently have no direct recollection of negotiations or dealings between the Trustees and the Revenue Commissioners in respect of the interest on the late payment, which amounted to  $\text{IR}\text{£}62,450$ , some 18 years

ago. You have no documentary records in relation to the agreement by Mr. Pairceir to agree not to proceed with the demand for interest on the payment of the settlement monies. However, if there were such discussions with the Revenue, you believe that it would have been you who conducted those discussions on behalf of the Trustees.

Your understanding is that such an agreement would have been entirely normal practice for the Revenue at that time in the context of any settlement of a significant payment of taxes. You had no dealings or contacts whatsoever with Mr. Haughey in relation to the subject matter of interest on the settlement monies. You would add that it is not correct to say that has been a "waiver of interest" in relation to the Discretionary Trust Tax payment. In fact, within the amount that was paid to the Revenue in settlement of the tax due in May 1987, a sum was included that represented interest on the tax.

Then, dealing with the question of a query raised in respect of income tax assessed on the Trustees, you have informed the Tribunal that you have reviewed the documents provided by the Revenue Commissioners in relation to this matter. You hold no documentary records other than a copy of the letter to Mr. Michael O'Grady, dated 22nd January, 1986, which had been provided to the Tribunal by the Revenue Commissioners sorry, 1996, I beg your pardon which has been provided to the Tribunal by the Revenue Commissioners. Your understanding in relation to the

income tax assessment raised on the Trustees from the years from 1988 is that there was an agreement on behalf of the Revenue Commissioners that there would be no liability for income tax on distributions made by the trust for the sole purpose of discharging Discretionary Trust Tax liabilities.

You currently have no recollection of any dealings that you had with the Revenue on this matter. Furthermore, you had no knowledge of any dealings or contacts either directly or indirectly between or on behalf of the Trustees and Mr. Charles Haughey in relation to this income tax matter.

Dealing then with the query raised about the engagement of Mr. Pairceir by Mr. Bernard Dunne and/or the Trustees. You have informed the Tribunal that the Trustees never engaged Mr. Pairceir in any capacity, nor did Mr. Pairceir act as an adviser to the trust. Your recollection is Mr. Pairceir acted as a tax consultant following his retirement from the Revenue Commissioners in 1987, and that you passed this information on to Mr. Bernard Dunne. You understand that Mr. Bernard Dunne engaged Mr. Pairceir personally through you from the information provided by the Revenue to the Tribunal, and Mr. Dunne discharged his invoices. You do not dispute that Mr. Pairceir what Mr. Pairceir said in relation to this matter, but you have no further recollection of the events described by him to the Tribunal. You have no knowledge in what capacity it was intended Mr. Bernard Dunne would engage Mr. Pairceir, other than he would be able to call to give him advice or a

second opinion from time to time on various tax matters further. You have no knowledge in relation to any contacts or dealings between Mr. Pairceir and any of the Trustees or with Mr. Charles Haughey in connection with the service which Mr. Pairceir was retained to provide. The only documents that you have seen in relation to the engagement of Mr. Pairceir are the invoices that were provided to you by the Tribunal as part of the information they had received from the Revenue Commissioners.

You were then asked about evidence to the McCracken Tribunal of meetings with Mr. Pairceir that had been arranged at the request of Mr. Charles Haughey. And you confirm that there was no reference in the McCracken Tribunal to meetings between Mr. Pairceir and Mr. Dunne that had been arranged at the request of Mr. Charles Haughey. You further confirm that you had no contact or dealings, either directly or indirectly, with Mr. Pairceir or any other person at the time of the McCracken Tribunal in relation to the meetings between Mr. Dunne and Mr. Pairceir in 1987.

And just before I commence, Mr. Fox, I take it that you are not disputing any of the recorded meetings that have been given to the Tribunal in Revenue documents, are you?

A. I have no problem with them whatsoever.

Q. And do I take it that you accept that there were a number of meetings which took place between Mr. Pairceir which involved Mr. Bernard Dunne and perhaps yourself?

A. Yes, indeed.

Q. And all of these, as we know, having gone through the documents, and I'll just itemise the dates in a moment, but you have no difficulty either, I think, in accepting the content of the notes of the matters which were discussed, namely various matters relating to the Dunnes Settlement Trust?

A. No, I have no difficulty with that, Mr. Coughlan.

Q. And, in fact, they seemed to indicate fairly detailed discussions around matters of valuation, the ability of the Trustees to meet those particular valuations, new proposals in relation to potential tax liabilities, and questions surrounding the trust deed of the 15th March, 1985. Would that be the broad ballpark?

A. That's a fair summary.

Q. And again, the documents seem to record Mr. Dunne being fairly up to speed in relation to the matters which were the subject matter of the discussions, don't they?

A. Yes, they do.

Q. And would you accept that that was the situation?

A. Yes, I would.

Q. And over and above the recorded meetings that we have from the documents, I think your fellow trustee, Mr. Bowen, gave evidence of an early meeting with Mr. Pairceir in 1985 which had been arranged as a result of contact being made with Mr. Hugh Coveney, who effected an introduction to the then Minister for Finance, Mr. Dukes, and a meeting ensued

with Mr. Pairceir, I think, at that time; isn't that right?

A. That is correct.

Q. And again, I think Mr. Bowen has given evidence that the Trustees and Mr. Dunne were present at that meeting also.

A. And Mr.?

Q. And Mr. Dunne. He gave that evidence on Friday.

A. I don't recollect Mr. Dunne being at that meeting.

Q. I see.

A. The first meeting with Mr. Pairceir?

Q. The meeting yes, the meeting with Mr. Pairceir which had been arranged through the introduction effected by Mr. Hugh Coveney?

A. No, no.

Q. You don't remember him being there?

A. No, no. I don't believe he was there. I think that was a meeting with the tax advisers to the trust and the Trustees with Mr. Pairceir and his officials.

Q. I am just being corrected. Okay. Very good.

Now, just bear with me for a moment, and I'm not referring you to any of these documents for the purpose of raising any controversy with you. You accept the documents, you accept the content of the documents, and you accept the dates of the documents?

A. I do indeed, yes.

Q. I just want to it's Document Number 30A, if I may, please. You can open them if you wish; we'll put them up.

I just want you to there is a record here this is

just a document "Call from John Reid. BD has arranged a meeting with the Chairman for the 27th" that's the 27th April of 1987 and "John Reid wants to know what liability will be thrown up by the 82 million value of the..."

So there is a record there of a date of a meeting being arranged with the Chairman, and the note records "Mr. Dunne is arranging the meeting." Can you remember, in relation to any of these meetings, whether you would have taken any steps to arrange the meetings, or were you informed that meetings were about to take place? Can you remember that?

A. I can't, Mr. Coughlan, no.

Q. Now, I think when you gave evidence here previously, and you gave evidence in relation to what became known as the Tripleplan payment; isn't that correct?

A. Yes.

Q. And I think you also gave evidence about what became known as the bearer cheques, the six bearer cheques?

A. I did, indeed, yes.

Q. And I think from the evidence, it was established that the six bearer cheques were paid into an account called into Guinness & Mahon and into an account called Amiens; isn't that correct? You may or may not remember the full details.

A. I don't remember.

Q. And that would have been in early February, I think, of 1987, and that the Tripleplan payment would have been

handled around March of 1987; isn't that right sorry, I

beg your pardon, May of '87; isn't that right?

A. Mm-hmm, yes.

Q. And I think there is no doubt that you accepted on that occasion that the first payment that you had a direct involvement, as you understood it, was the Tripleplan payment, certainly predated by many months the first payment which you had remembered in giving evidence to the McCracken Tribunal?

A. That is correct.

Q. Which was the John Furze, the

A. Yes.

Q. And then we know about various other payments which you had an involvement in, in that you received information from Mr. Traynor about accounts, banking routes, matters of that nature, amounts, and that you gave those to Mr. Dunne, and he took care of matters from there; isn't that right?

A. That is correct, yes.

Q. And that's all recorded, and we don't need to go into it.

A. Mm-hmm.

Q. And am I correct, or would you agree that during the period from when the Tripleplan money was being dealt with I won't ask you to go back; Mr. Dunne can deal himself with the bearer cheques but from the time of the Tripleplan payment right through, there were issues being discussed with the Revenue about the Dunnes Settlement Trust?

A. Yes.

Q. And that Mr. Dunne, as recorded, and you don't in any way dispute, was deeply involved in discussions along with you and perhaps other Trustees with the Revenue Commissioners about those?

A. Yes indeed, yes.

Q. And just to tidy up a few matters, and I don't think I'm going to be awfully long with you, Mr. Fox. There is no dispute about the documents, your accepting of them, your accepting of what transpired, the nature of the meetings and matters of that nature?

A. Yes, I accept them.

Q. And we saw I'm just looking for a moment I may not be able to turn it up. It's a letter from Mr. Montgomery, who Mr. Bowen has indicated was probably viewed amongst the Trustees as being the senior trustee, if I could put it that way. It's behind Mr. Bowen's statement. I think it's tab 12 and 13 behind Mr. Bowen's statement. I'll just read it.

It's dated the 9th July, 1987. "Dear Frank.

"Have you heard anything further regarding the listing of the Capital Gains Tax appeal? As it looks unlikely now that anything can be done before the autumn.

"I suppose you did not receive any confirmation as to what senior counsel they are employing, but it may be that they have not yet sent out any brief.

"I understand that indirect approaches have been made to Bernard to see if he would compromise the claim, which may

suggest that the Revenue are not too happy with their chance of success. Of course, if Bernard wanted to settle and had very attractive terms offered to him I would not stand in his way, although it would not alter my own position regarding the legal position.

"Yours sincerely", and it's from Mr. Montgomery.

That seems to be an indication of Trustees keeping each other informed of information they were receiving or information that they had; isn't that right?

A. That is correct.

Q. And would that be your understanding of what was happening during this period, which was a serious time for the trust, wasn't it?

A. We were having exploratory talks, and that's what was happening.

Q. Were you aware of any indirect approaches to Mr. Dunne, to Mr. Dunne?

A. Indirect approaches from who?

Q. Mr. Montgomery is here recording that he understood there was indirect approaches.

A. Mr. Dunne was present with me with Mr. Pairceir during these meetings. I think the first meeting that we had was probably in general terms about where we were going with this. I think the second meeting, Mr. Pairceir came back with a figure of 16 million to settle Capital Gains Tax assessment. And obviously the Revenue had done a lot of work on this, and out of courtesy to them, I would think

that we would have said, "Look, we'll take it away and discuss it with our co-Trustees and tax advisers"; but it was clear that all that was doing was raising the threshold for us going forward. But when you thought about it more deeply, we had already paid I think 3 and a half million in Discretionary Trust Tax, so that would be bringing it up to 19 million, and then add on interest, so you would probably tot it up to 25/30 million. Now, if you think back then, that 1985, on the advice of two counsel here in the Republic and three in the UK, they had advised us, and we extended the trust. And when the attempt came out in 19 I think it was late '86, we felt so strongly about our case that we returned a nil amount payable to the Revenue at that time. And we said, "Look, if we were in any doubt about our case, we would have thought pretty heavily about a payment on account". But we put in nil. Because otherwise we'd have interest running against us if we were to lose that subsequently.

Q. I understand. But of course, and I understand what you are saying, but the effect of all that was to defer; isn't that right? If the trust were to continue, what you were doing was at some stage

A. Yeah, at some stage, when the trust was to be appointed, tax was to become payable. In the meantime

Q. There was an interest, or there appears to have been an interest to from the Trustees' point of view, or perhaps more importantly from the beneficiaries' point of view, to,

if possible, bring an end to the trust in as cheap a manner as possible, I suppose, would be a fair way to put it?

A. If one could have negotiated in fact, I think we went back to Mr. Pairceir and said, "Look, we are not going to run with this 16 million business, that's going nowhere, it's nonsense. But give us a figure to break it up".

Q. Well, do you remember discussing that 16 million with your fellow Trustees?

A. I don't think it would have got great currency, Mr. Coughlan.

Q. I understand that. But

A. But

Q. The one thing we do know, or, sorry, from the evidence

A. I am sure it was discussed, yes.

Q. The one thing we know from Mr. Bowen is this and perhaps from Mr. Uniacke, who were fellow Trustees I think Mr. Bowen indicated that what the Trustees, or perhaps he, felt was that the trust could bear, say, 15 million payment or something of that nature; I think Mr. Uniacke was referring to a figure around 16 million, 15 million, whatever, but that in Mr. Bowen's mind, that would be worthwhile if you could bring the trust to an end, that type of payment?

A. That would have given certainty to the situation, yeah.

Q. And the beneficiaries would have

A. I think that's where Mr. Dunne was always coming from, as a businessman. He wanted certainty.

Q. And for the assets to be taken by the beneficiaries, isn't that correct, that they would hold them themselves?

A. Yes.

Q. Because and I understand the point that you and Mr. Bowen make about the C.G.T. and the question of the advice you had received and what happened on the 15th April of 1985, but in fact, as you say, and it seems common sense, that Mr. Dunne would always have been coming from a position of wanting certainty. And matters, in fact, even after those initial meetings, I think, and after Mr. Pairceir ceased to be Chairman of the Revenue Commissioners after his retirement, I think there was a record in the Revenue documents of further discussions; this would have been after Mr. Curran was spoken to. Do you remember the meeting with Mr. Curran?

A. Not a lot about it, Mr. Coughlan. I'm sure we went in to him to see could he have another look at it, but

Q. A look at what?

A. At whether we could break it up, I would imagine.

Q. That seems, from the point of view can I just summarise it this way: From the point of view of the Trustees, and perhaps the beneficiaries, what would have been the ideal solution would have been to bring the trust to an end at value; would that be a fair way of putting it? In other words, with the least possible amount of tax that could be paid being paid, would that be a fair way?

A. Whatever the affordable figure would be so as not to wound

an enterprise.

Q. And would I be correct in thinking that that would have been your objective and Mr. Dunne's objective in relation to all of these discussions, negotiations, or whatever was going on, that that would have been what would have been in your mind to achieve?

A. The alternative would have been that if the Discretionary Trust Tax, which was always a bone of contention with us, had, as the Commission on Taxation had said, if that had been allowed as an advance payment against Gift Tax or inheritance taxes. And subsequently the EC issued a white paper about it, that Member States should come in line with the situation in the UK, where Discretionary Trust Tax is allowed against inheritance tax. But what we had here was a levy on a trading company.

Q. So can I take it that and without getting into all

A. So either/or would have been.

Q. Without getting into the all the technicalities, that these discussions/negotiations were, as far as you were concerned, and you believe Mr. Dunne was concerned were directed towards being either to be able to bring the trust to an end in a way which gave value to the beneficiaries, and/or that the Discretionary Trust Tax, which was a bone of contention anyway, that you'd get some value or benefit in respect of that?

A. Well, it was unjust.

Q. I can't enter into an argument

A. That's the way we felt about it.

Q. I can't enter into an argument with you about that. It was the law.

A. It was the law. It was an unjust law.

Q. Well, that may be your view. I certainly can't enter into a debate with you about that. But it was the law, wasn't it?

A. Yes, indeed.

Q. And still is, as I understand it?

A. Yes, it was.

Q. At the meeting with Mr. Pairceir where the question of 16 million was discussed, can I take it that the note seems to record that there was an agreement on 16 million, but Mr. Dunne was to go away and think about it. Do you remember discussions about a valuation of 16 million?

Whatever it was for might be a different issue.

A. No, what I said was that I am looking at the Revenue notes now, and clearly they went they went to a lot of trouble to articulate 16 million.

Q. They went to a lot of trouble to meet your situation?

A. No. To meet their situation.

Q. To meet their situation, and not to meet your situation at all?

A. No, I mean, what were we getting from that? We would raise the threshold only going forward. We were paying an assessment we were totally confident we would win, and we'd made a nil payment on account against it.

Q. Well, can I ask you, then, what was the purpose, so, of these meetings with the Revenue, these discussions with the Revenue and asking Mr. Haughey to intervene to arrange meetings with the Revenue if they were, as you saw it, going nowhere as far as you were concerned, and you were confident of your position? What was

A. The first meeting, obviously, was outlined, or we talked about the whole situation. I think the second meeting is where this offer came forward. But really we went back, after thinking about it, and said, "Look, we really want a figure to break it up".

Q. And there was such an ultimate meeting, isn't that correct, where a discussion of breaking it up was discussed?

A. I think so, yes. It's hard to figure out, Mr. Coughlan, did we have two meetings or one meeting, to be honest, but...

Q. There were at least three that were recorded.

A. Okay.

Q. If not more?

A. Okay. So obviously

Q. And can you remember whether you or Mr. Dunne received any briefing as a result of Mr. Haughey's intervention of the Revenue's position? Because there is a note to that effect in the Revenue documents also.

A. That Mr. Haughey briefed us?

Q. No, that you received a briefing as a result of Mr. Haughey's intervention.

A. From whom?

Q. From the Revenue, as to their position.

A. I don't recall anything like that, Mr. Coughlan.

Q. You don't recall?

A. No. Can you explain that to me?

Q. Yes. There is a note I think it may be at Tab 51.

"Chairman, saw An Taoiseach. BD confused and under tremendous pressure. An Taoiseach will have him briefed of Revenue position and he, BD, will probably be advised to contact Revenue he may do so by contacting the Chairman." Do you see that note?

A. Yes. So I presume we went in to Mr. Curran, and he would have had outlined the Revenue's position to us and

Q. No, what this is recording is Mr. Curran's meeting with the Taoiseach.

A. Yes.

Q. And it being recounted to him that Mr. Dunne was "confused and under tremendous pressure. The Taoiseach will have him briefed of Revenue position and he, BD, will probably be advised to contact Revenue he may do this by contacting the Chairman."

That's recording what transpired or what appears to have transpired between the Chairman, Mr. Curran, and the Taoiseach.

A. Right.

Q. Do you understand?

A. Yeah.

Q. Do you have any recollection of any briefing documents or any briefing being received?

A. I have no knowledge about that whatsoever.

Q. Now, I think because you accept the notes, the contents of the notes, what's recorded in them, I think we can shorten matters significantly, Mr. Fox, and I just want to ask you this. I take it that you were always aware that you had you and your fellow Trustees and Mr. Dunne had been involved in negotiations with the Revenue about trust matters; isn't that correct?

A. Yes.

Q. And I think you were also always aware that Mr. Dunne was making payments for the benefit of Mr. Charles Haughey, isn't that correct, from the first contact Mr. Traynor had?

A. Yes.

Q. And that these payments were taking place during a time when significant matters were being discussed and negotiated with the Revenue in respect of trust matters?

A. Yes.

Q. And that Mr. Dunne was deeply involved?

A. Yes.

Q. Now, it is not your concern, Mr. Fox, about what evidence some other person gives; you are only concerned about your own evidence. But I think you were, at all times, present and aware of the evidence which was given to the McCracken Tribunal?

A. Yes.

Q. And in particular, you were aware of the evidence Mr. Dunne gave about his meeting with Mr. Curran, to the Tribunal?

A. With Mr.?

Q. Mr. Dunne gave about the meeting with Mr. Curran at that Tribunal.

A. Yes.

Q. If I could just take up two other small items with you.

One is the question of the  $\frac{1}{2}$  62,500 interest which was forgiven by the Revenue

A. That's a very nice word, Mr. Coughlan.

Q. Well, I'll put it to you this way. I suppose all of us from time to time could feel a little bit aggrieved if we were charged some interest by the Revenue, but then again, that's the way things are, and that's what ordinary taxpayers tend to have to do; isn't that right?

A. Well, I have negotiated for a lot of ordinary taxpayers, Mr. Coughlan, very good settlements with the Revenue.

Q. I have no doubt I wouldn't be denying your skill in that respect at all, Mr. Fox, not at all. But can I ask you this: This particular 62,500 interest arose not out of a time in which tax returns or matters of that nature were to be filed and delay which ensued thereafter; this 62,500 arose out of a settlement which had taken place between the Revenue and the Trustees; isn't that right?

A. That is correct.

Q. And that settlement provided and of course you quite correctly pointed out that in that settlement and the

amount of tax which was to be paid, agreed to be paid, provided for a liability for tax and interest which arose because of the time from which the tax was deemed to be due; isn't that correct?

A. Correct.

Q. And that settlement also provided for the full sum to be paid on a certain day, isn't that right, or sorry, by a certain day?

A. That is correct.

Q. And the interest arose because the tax or the money was not paid by that day but was paid sometime subsequently; isn't that right?

A. Yes.

Q. And it was interest arising out of a settlement which was agreed to be forgiven by the Revenue; isn't that right?

A. Yes.

Q. And you believe that if anyone negotiated it, you probably negotiated it, you think?

A. I must have negotiated it. The cheque, the original cheque came from Cork to me, from Mr. Bowen, so I think it's pretty clear I would have negotiated it.

Q. Do you have any recollection of negotiating it? It must have been with Mr. Pairceir because he was the man who decided the issue.

A. No, but I can see what happened here. I don't have clear recollection

Q. All right.

A. but I obviously phoned him and said "Look, I have a cheque here for you. Can we have a look at it, because there is a large sum of Discretionary Trust Tax due in July. And if I advance that and add it to Mr. Bowen's cheque and make it 3 and a half million, will you give me a concession on the interest?" The concession on the interest was 62,000. Now, if you factor in the early payment of the 800,000, the net effect of the relief, or the forgiveness, as you called it, is about 35,000, which is 1% of the cheque. Now, in the cheque, I think if you tot up the interest, there is interest in excess of 400,000 in that cheque. And this was at a time when interest was at 15% nondeductible, so it had a real effect of about 22/23%, and so I got a small discount; I got 1% of the cheque.

Q. Well, I understand the point you are making. Is this a speculation by you as to what occurred?

A. No, no.

Q. You remember the settlement?

A. No, I don't remember it happening, but if you look at the maths, that's what happened. I got 1% of the cheque. Because I paid him, in advance, another 820,000.

Q. What in fact happened, and I understand your point about it being 1% of the cheque, there was an agreement, isn't that correct, with the Trustees?

A. Mm-hmm.

Q. And that agreement was not fully complied with; isn't that

right?

A. I wouldn't agree with that, Mr. Coughlan, no, because I made a fresh agreement with him.

Q. And I understand, again, the point you make when you do your calculations and you say that perhaps, to use my term, the forgiveness was more in the region of, say, the mid-30s?

A. Yeah, about 35,000, give or take.

Q. And I think we always have to be very careful here in the Tribunal that we are not talking about  $\frac{1}{2}$ 35,000-odd in the context of tax which was due, which was, as you say, amounted to just 1% of what was being paid, but we have to look at 35,000 as being a significant sum of money, even by your own calculations and rationalisation on the matter, is a very large sum of money in respect of tax being paid by taxpayers in this country at the time; isn't that right?

A. The interest, you mean?

Q.  $\frac{1}{2}$ 35,000, even  $\frac{1}{2}$ 35,000 would have been a very significant sum of money for the average taxpayer, or the average amount of tax that was being paid in this country?

A. It would indeed, yes. But you have got to look at this in the context of what I was doing, not

Q. I know you look at it in the context of what you were doing. I understand that entirely. The Tribunal is focusing on it from the public's point of view; do you understand?

A. There was already a huge interest amount there.

Q. Yes, which was due?

A. Yes.

Q. You see, again, that was the law, wasn't it?

A. That was the law, yes, but everybody the Revenue had power to compromise interest, to deal on interest. That was part of the care and management of taxes.

Q. I understand that. I understand that. But they had already achieved their agreement with you?

A. Yes.

Q. And the interest it was the interest arising out of that agreement; that is the issue here. This isn't interest in the ordinary course of tax we are talking about.

Anyhow, I'll move on, and and I think there is little doubt that Mr. Bowen, when he gave his evidence on Friday, and in a letter which he sent to Mr. Reid on the 24th March, 1987, accepted that this interest payment was in accordance with the agreement of the 16th March. He went on to say: "I think it is perhaps a little bit unfair that the interest runs from the precise date of death, and I was wondering if consideration would be given to a reasonable time-frame within which to complete the return and make a payment in such circumstances."

So I don't think there was any doubt in anyone's mind that the interest arose out of the agreement, is that right, out of the compromise of the Discretionary Trust Tax matter?

A. Yes, but I varied it, Mr. Coughlan.

Q. Pardon?

A. I varied the agreement subsequently.

Q. Oh, yes, sorry, absolutely. That's precisely what happened. Thank you, Mr. Fox; that's precisely what happened.

Now, the one other matter I wanted to ask you about,

Mr. Fox, was this whole question of income tax arising out of the dividend given to the Trustees for the purpose of discharging Discretionary Trust Tax. And I think the Trustees, and you being one of them, were always of the view that you had an agreement with the Revenue that the Trustees would not be liable for that, once the only monies that were received were monies for the purpose and to the amount of discharging Discretionary Trust Tax; is that right?

A. Yes.

Q. Now, I have been informed that matters have been resolved, and there has been evidence in relation to that; but I take it that was always your view, and perhaps continues to be your view, no matter what happened?

A. Oh, no, no, I have to say that I have changed my view entirely. Once when I read the Revenue papers, whilst we thought we had an agreement, I think the Revenue were of the view we did not. And when we I trawled through those papers just a couple of weeks ago, and it's clear that we had a misunderstanding here. Like, we thought that we could write the cheque and there'd be no further tax on it, right. And when you read

Q. Why did you think that? Mr. Bowen has told us why he thought it, but why do you think that?

A. We thought that we had cleared that matter up after the appeal hearing. Now, unfortunately, we didn't commit it to writing anywhere. And subsequently, it was

Exchequer-neutral, in that I'm not very competent on this

Q. I understand the point.

A. but it had no effect whatsoever for a number of years.

Q. Because the rates were equal?

A. They were equal. Now, subsequently they began to depart and small differences arose, and then they accumulated into larger differences. And we went to appeal on it, and we lost the appeal.

Q. I understand that, but in the period when the differences started to emerge, the Trustees didn't make any returns in respect of income tax, isn't that right, and didn't pay any income tax, based on the belief?

A. No, we did not, that is true.

Q. And it was when matters subsequently arose, in the mid-1990s, that it became an issue; isn't that correct?

A. That is correct, yes.

Q. I'm just trying to understand, and Mr. Bowen has given his evidence, but why did you believe that there was such an agreement? What was the basis for your belief?

A. I think, and this is just in the back of my mind, Mr. Coughlan, but I think that I asked at the appeal hearing,

where would we put the cheque for this tax? Like, it was the company that were giving the Trustees had no money, so and I think, I always thought we had an agreement was that we thought that we could put it into the profit and loss appropriation account.

Q. Who do you think you asked that of, or did you ask someone in the Revenue of that?

A. From the Revenue side, but I haven't and idea who I asked it of.

Q. It's at the back of your mind?

A. It's just at the back of my mind. Now, that could be nonsense, by the way.

Q. Could it have been after the day you contacted somebody in the Revenue?

A. No, that would have been hammered out on the day, but it may have been after the agreement. Because probably if it was hammered out before the agreement, it would be in the agreement.

Q. Yes.

A. Anyway, we went on for a number of years blindly thinking we had a deal. And we didn't have a deal, because what the Revenue were saying to us was some concession under the wealth tax or whatever, or surcharge or something; I don't know. And quite frankly, you could explain them to me and five minutes later I couldn't tell you from Adam what it means. So I was thinking more in basics.

Q. Did you have to pay any tax?

A. Yes. In other words, how could you possibly tax us again?

We are paying 1%, we are getting no value for it, and now we have to gross it up again and keep grossing it up, and that surely is wrong, because we are not even getting a payment on account of debt duties; we are getting nothing. We are being levied.

Q. I suppose every taxpayer in the world probably feels a little bit aggrieved about having to pay any tax, whether they are getting value or not .

A. Amazingly, the committee on taxation raised the point, and the EC raised the point, and we subsequently raised the point with Government, but we never got anywhere. But I am quite clear we didn't have an agreement, Mr. Coughlan.

Q. You are quite clear?

A. Now, we didn't have an agreement.

Q. But you operated on the basis

A. And I am sorry for any upset that might have caused people.

CHAIRMAN: Well, I think Mr. Bowen told us on Friday, Mr. Fox, in response to Mr. Connolly, the Revenue barrister, that he was inclined to accept that there was a mistake, mutual mistake; that both sides were doing the best they could, but it was accepted they were talking about different things.

A. I would accept that, Mr. Chairman, yeah.

Q. MR. COUGHLAN: Sorry, just one final matter now, if I might turn to it, which is the question of Mr. Seamus Pairceir, the former Chairman of the Revenue Commissioners.

I think you have informed the Tribunal that you informed

Mr. Dunne that Mr. Pairceir was was what?

A. He was practicing as a tax consultant. He had retired from the Revenue, and he was now practicing as a tax consultant.

I think that's what I had heard.

Q. You had heard that?

A. Yeah.

Q. Who did you hear from that?

A. I don't remember, Mr. Coughlan, but in accounting circles, I think.

Q. I see. You heard that in accounting circles?

A. I would think so, yes.

Q. And you informed Mr. Dunne of that?

A. Yes.

Q. Can I ask you why?

A. I beg your pardon?

Q. Can I ask you why? Mr. Dunne, Dunnes Stores, and the trust were surrounded by tax consultants, weren't they?

A. They were indeed, yes.

Q. Could I ask you, what was the purpose of informing Mr. Dunne that Mr. Pairceir

A. Well, we could use him for some tax matters in the future; that's really

Q. Like what? What had you got in mind?

A. Like, it could be anything; it could be anything. In fact, at that time, we in the office were doing a due diligence before the appeal hearing with our associates in London,

and we had an I think a Mr. Oliver, senior counsel, in London, so I said, "Can we not ask Mr. Pairceir to look at our side of the issues?"

Q. That's before the appeal in respect of C.G.T. before the Appeal Commissioners?

A. Yes.

Q. And you suggested to Mr. Dunne and perhaps to other people that you might ask Mr. Pairceir to look at your side?

A. I think I might have just suggested it to Mr. Dunne.

Q. To Mr. Dunne?

A. Yes.

Q. That Mr. Pairceir might look at your side of the issues?

A. Yes, yeah.

Q. Did you suggest that to any of the other Trustees?

A. No, no.

Q. I think you would have been keenly aware that Mr. Pairceir had been Chairman of the Revenue Commissioners when the assessments were raised when the assessment was raised for C.G.T.; isn't that correct?

A. Yes.

Q. And you had you and Mr. Dunne had had discussions with Mr. Pairceir where the question of valuation and extensive discussion in relation to the issues, the legal issues which arose in respect of the C.G.T. were discussed with him; isn't that correct?

A. We would have had discussions about the valuation for the Discretionary Trust Tax, which was agreed at 82 million.

The valuation of the trust for the Capital Gains Tax assessment or the deemed gain, there was no discussions about that. We did no work on that.

Q. I know you didn't sorry, I am glad to get confirmation you did no work on it, because we know the Revenue did a lot of work in respect of that, and you have now confirmed that you did no work about that?

A. No, no.

Q. But there were discussions taking place with Mr. Pairceir, according to these documents, about that?

A. Yes.

Q. And these documents record that there were discussions taking place with Mr. Pairceir on the question of the confidence that your side had about the disposal or the question of the deemed disposal on the 15th March 1985 and the view being expressed by the Revenue; isn't that correct?

A. Yes.

Q. And you suggested to Mr. Dunne that the Chairman of the Revenue Commissioners, who had been, as far as you were concerned, deeply involved on the Revenue side in respect of raising the assessment, should now be asked to look at matters from your side, pending the appeal before the Appeal Commissioners?

A. It may have arisen in a consideration between us, Mr. Coughlan. I can't recall exactly, you know. I mean, it's so far back.

Q. Isn't what Mr. Pairceir could have brought to the matter was an insight into the Revenue's thinking on these matters, as to

A. No. Mr. Pairceir was asked to look at our side, not Revenue's side, or I am sure he would not have done that, nor would we have asked him, Mr. Coughlan.

Q. Did you report the result of any analysis he made to anybody?

A. At that time we were doing a due diligence ourselves in Freaney's, and if anything had arisen, I would have mentioned it to Mr. Montgomery. I did give him Mr. Oliver's opinion at the time; that's the Queen's Counsel. I don't believe anything new came out of Mr. Pairceir's paper.

Q. Who made the judgement call in relation to that?

A. I would have.

Q. You would have?

A. Yeah.

Q. So, in fact, you were keenly aware of the work Mr. Pairceir was doing; you received his paper?

A. I would have received his paper, yes.

Q. You didn't inform your fellow Trustees about it?

A. No, no. Because I don't believe anything new arose from it.

Q. You didn't even tell your fellow Trustees of the very fact that this work was being done around what I describe as trust matters; would that be a fair way of putting it? We

see Mr. Pairceir's paper, and we can deal with it. He goes into great detail, case law and matters of that nature?

A. Yeah, he was asked to review the case law, the statutes, the statements of practice, the commentaries, the white papers. He did that.

Q. This was all work concerning

A. He had also done it previously

Q. This was all work concerning trust matters, though, isn't that correct?

A. It was work concerning the issues here, whether there was anything new, whether there was any new law or anything.

Q. But it was to do with the whole issue of what the Revenue were maintaining was the deemed disposal on the 15th March 1985; it was all to do with that?

A. Yes.

Q. Why, then, was Mr. Pairceir not paid out of the trust, or whatever vehicle the trust would have used to pay its legal fees, and why was he paid personally by Mr. Bernard Dunne?

A. I thought Mr. Dunne had engaged him personally, but it's so long ago I'm not sure now. But the fee notes were delivered to Mr. Dunne. Who paid them, I can't recollect.

Q. Well, according to Mr. Pairceir, and we have no reason to doubt, and according to Mr. Dunne, he was paid by Mr. Dunne. Does that not look like this was to cloud the true nature of the work which was being carried out by Mr. Pairceir, which was, namely, work in respect of the trust?

A. No, I don't believe so. I think that he was originally retained to advise on tax matters generally.

Q. Thank you very much indeed, Mr. Fox.

MR. NESBITT: I have no questions.

CHAIRMAN: Sorry, since he is at present your client, I will take Mr. Connolly first.

THE WITNESS WAS EXAMINED BY MR. CONNOLLY AS FOLLOWS:

Q. MR. CONNOLLY: There is just one matter I want to deal with, Mr. Fox. Did you ask Mr. Pairceir for or did you get from him any confidential information in relation to the Revenue's case concerning the pending tax appeal when you were dealing with him?

A. Absolutely no.

Q. Or to your knowledge, did any of the Trustees seek this or get this?

A. No, absolutely not.

THE WITNESS WAS EXAMINED BY MR. O'NEILL AS FOLLOWS:

Q. MR. O'NEILL: Mr. Fox, I just want to ask you a couple of questions arising out of that issue.

Did you feel, in asking Mr. Pairceir to assist you in the legal position in relation to the tax appeal, that you were putting Mr. Pairceir in a position of conflict? In other words, conflict with his previous relationship as a Revenue Commissioner, or Chairman of the Revenue Commissioners, and now advising the other side, so to speak; did you see any conflict in that respect?

A. No, I did not, and if Mr. Pairceir had seen any conflict, I

am sure he would have said so immediately, and that would have been the end of the matter.

Q. And the issues that it would appear that he was asked to advise on, having regard to the memorandum that he prepared or the paper that he prepared, was simply legal issues; it was nothing about valuation or information, internal information that the Revenue Commissioners themselves had?

A. No.

Q. It was an exercise that anyone, obviously experienced in Revenue law, could have performed?

A. Yes.

Q. And it was asked approximately a year after Mr. Pairceir himself had retired?

A. Yes.

Q. There wasn't anything secretive about your approach or the approach made to Mr. Pairceir, was there?

A. No, no.

Q. And I think the subsequent communications that Mr. Pairceir had were communications directly with the Revenue on behalf of Dunnes interests, the Trustees interests?

A. He helped Freaneys with a general tax problem a year later, I think.

Q. In relation to a tax problem that the Trustees had?

A. Yes.

Q. And contacted the Revenue

A. No, not the Trustees. The company.

Q. Did he not we see from the papers that he subsequently

appears to have contacted the Revenue Commissioners in relation to matters on behalf of the trust or in relation to the Dunnes interests?

A. I think that had something to do with we hadn't got returns in on time, or we were dilatory about something, but that we were moving on it.

Q. Well, this is I think in 1996 or thereabouts, that there appears to have been contact, we see from the notes, and indeed contact that was welcomed by the Revenue themselves from Mr. Pairceir that one of the witnesses, the Revenue witnesses, I think, gave evidence to the effect that he welcomed the involvement of Mr. Pairceir because Mr. Pairceir would be aware of how matters operated, and maybe this would speed up the dealing with the tax affairs?

A. Yes.

Q. And there was nothing secretive about Mr. Pairceir's dealings?

A. No, nothing.

Q. Thank you, Mr. Fox.

CHAIRMAN: Thank you very much, Mr. Fox.

THE WITNESS THEN WITHDREW

CHAIRMAN: Is there any further evidence, briefly, Mr. Healy?

MR. COUGHLAN: Just a short witness sorry, there is some discussion going on. It's just a short witness. I wonder, could we adjourn for lunch until a quarter to two, and it won't take very long after that if the matter is resolved

here.

CHAIRMAN: Will that do, gentlemen?

Very good. 1.45.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

MR. HEALY: Sir, Mr. O'Neill has drawn to my attention an entry in one of the documents in respect of which Mr. Frank Bowen has already given evidence, and which he wishes to refer to again for the purpose of clarification, and so I think if we could dispose of that first, I'll call Mr. Bowen.

FRANK BOWEN, PREVIOUSLY SWORN, WAS EXAMINED BY MR. HEALY AS FOLLOWS:

Q. MR. HEALY: I think, Mr. Bowen, you want to refer the Tribunal to a document which Mr. O'Neill has identified to me as the document contained in Tab 6, Leaf 12 of Book 64, which is a document referred to in by Mr. Uniacke in his statement and in his evidence, and which I think was also mentioned to you in the course of your evidence. It's on the overhead projector; it's a memorandum or note of a meeting of yourself, Mr. Horgan, Mr. Dunne and another person, probably Mr. I don't know who it is on the 26th November 1987. Is that right?

A. That's right, yes, yeah.

It's just, Mr. Healy, that I'm sure it's maybe a function of memory, but I was obviously thinking a bit about it on Friday evening, and on Saturday I had a very

kind of a clear recollection of some discussion involving Liam Horgan, and he was going to go back to talk to Seamus Pairceir. But when Mr. Horgan rang Dublin Castle, he found that Mr. Pairceir had actually retired, and I just have that recollection, if you like, and I just mentioned it to Mr. O'Neill

Q. He told you that?

A. Pardon?

Q. That Mr. Horgan told you that?

A. I just had this recollection. I mentioned that to Mr. O'Neill this morning. I had that recollection of that kind of sequence of events, that Liam was to contact Seamus Pairceir about something, and then when he contacted the castle, that he had retired. It's just a memory, Mr. Healy, and I can't say any more than that.

Q. Maybe if I could just clarify one other aspect of the matter. Mr. Dunne I take it "BD" refers to Mr. Bernard Dunne

A. Yes, I would believe so, yes.

Q. as having been in attendance at that meeting?

A. Yes.

Q. If I could just refer you to one document in Book 65. It's Document 47, and I'll put it on the overhead projector. You may have seen it already, and if you don't have Book 65, this will be a fast way of getting it. Book 65, Tab 47.

A. That's the 10/9/87, is it?

Q. If you are finding that difficult

A. No, I can manage it.

Q. All right. It says it's a note in Mr. O'Cathain's hand:

"Call to Christopher Clayton CC from An Cathaoirleach  
the Chairman. "Bowens coming in, how much C.G.T?"

They wish to proceed on the basis of the deed of 14/3 was  
invalid and that the beneficiaries became absolutely  
entitled" etc., etc., etc.

That would seem to suggest that as of that date, the 10th  
September '87, a meeting had been arranged for Dunnes to  
come in to meet Mr. Pairceir; do you follow?

A. Yes, I see that, yes, yeah.

Q. Now, we know that Mr. Pairceir retired on the 11th  
September.

A. Yes, yeah.

Q. And therefore, it would seem to follow that if he made an  
arrangement, it must have been for that day or the  
following day.

A. Yes, yes, I see that.

Q. There would be no point otherwise. And I am just wondering  
whether, at that meeting, did Mr. Dunne say anything about  
a meeting he was likely

A. No, because the timing is completely different. That's  
September, and I think when Mr. Pairceir referred to the  
Bowens, he didn't mean me; he meant that was a shorthand  
for Mr. Dunne.

Q. Absolutely, it's a shorthand for Mr. Dunne. We can take it

up with Mr. Dunne, but it would seem to suggest that Mr. Dunne would have known that Mr. Pairceir was due to retire; do you follow? I presume somebody said, "Look, I'll meet you tomorrow, that's the last time I can meet you, I am retiring".

A. He may have, I'd have to say, I think could I just say that the meeting on the 26/11 was a meeting that took place in Cork, and it was very specifically about Item A. It was very specifically about that, which was a particular transaction we were involved in at that time. Obviously the thing about the second heading, and B and C were kind of addendums, I think, to that process.

Q. Anyway

A. I am not sure much turns on it, but I just thought I should say that the to the Tribunal, that I have that memory.

Q. Anyway, it may be something that can be taken up with Mr. Dunne himself.

CHAIRMAN: Thanks, Mr. Bowen.

MR. HEALY: Mr. O'Cathain, please.

SEAN O'CATHAIN, PREVIOUSLY SWORN, WAS EXAMINED BY MR. HEALY AS FOLLOWS:

Q. MR. HEALY: Now, Mr. O'Cathain, I have asked you to deal with one or two other matters that were drawn to the Tribunal's attention initially, I think, by Mr. O'Neill in the course of his examination of I think it was Mr. Clayton, on last Wednesday, the 22nd June. I don't know if you have a copy of the transcript for Day 294, but

in fact, to make it easier, I'll put it on the overhead

projector. 294 is the 22nd June.

And I don't know if you can see it; it's very dim on this

screen. But is it clear enough on your screen?

A. I'll be able to read it, I think. What part of it?

Q. If we just go you see Mr. O'Neill's name, and then if you go right down to the end of that page.

A. Okay.

Q. Now, Mr. O'Neill says if you look at Question 164, just to lead into it.

"Question: You had, at this stage and we're talking about the period of May of 1987 you had at that stage, of course, the settlement of Discretionary Trust Tax valuation at 82 million?

Answer: Mm-hmm.

"Question 165: You had another factor in the context of the extent of the liability was the valuation you applied in 1974. And you agreed.

And the next Mr. Clayton agreed, I beg your pardon. And the next question:

"Question 166: And it was suggested, in fact, that the first time any issue in the context of increasing that valuation from 5.5 million to 8 million arose at this stage, and I just want to ask you to look at the slim booklet of documents, I think it's the black folder, is it?

I think this is Book Number 66. And this is a note of the 4th May of 1987, I think, of Mr. O'Cathain sorry, it's

the second tab within that book. Do you have that? It's headed 'Bowen Settlement.'"

And I'm not sure, on the photocopy that you have, whether the date at the top left-hand corner is clear. From a better copy, we see that it's in fact 4th May of 1987. I just want to put the note, the context or the note in context with the date.

"If you turn to the third page of that document.

"Answer: Third page?

"Question: Third page, and under the paragraph number 5, it seems to read: "There could be made a case for increasing the MV at 6/4/74 to 8 million see note 14/11/86 on" and I can't read the rest of those next two words.

"This would reduce the tax from 23.69 to 19.55."

"Answer: Yes.

"Question: And I'm not sure that the two words, what they mean. But it would appear from that and we haven't been given a copy of the note of the 14th November, 1986 but it would appear from that that even back at that date, there were discussions in relation to the base value, 1974 value, perhaps being 8 million. We don't know exactly what it said.

"Answer: There were discussions all the time. I mean, what is the value of the this thing?

"Question: It's not something that first emerged, it would appear, at this time in May

"Answer: So it would seem from this note, yes."

Now, I just want to go to that note firstly, which is in Book 66, and I think it's Leaf 2 or 3 it's Leaf Number 2, or Tab Number 2. Now, top left-hand corner we have been over this before memorandum, I think it's dated May of '87. Unfortunately, I don't have a good copy, but we have already read into the record from a better copy the exact date of that memorandum.

"Christopher Clayton BD wants to settle C.G.T., what can be offered". We know that, again, having examined a better copy.

Then if we go to the second page of that document, I think the third page, and to Point Number 5, which is in the third paragraph on that third page, and it says: "There could be made a case for increasing the market value at 6/4/74 to 8 million see note of the 14/11/86 on main papers. This would reduce the tax from 23.69 to 19.55."

Now, as you know from communications between the Tribunal and Mr. Sherlock, the Tribunal examined the papers to try to see what other information there was available, and the Tribunal extracted from the papers the documents that were dated the 4/11/86, and these, together with other documents, were collected in Book 67. And if you go to Leaf or Tab 11 of Book 67

CHAIRMAN: Is it the 4th or the 14th November '86 that we are talking about? It seems to differ in the last two entries.

MR. HEALY: It's the 14th, 14/11.

And the document at Leaf 11 doesn't seem to me to be a document that would meet the description or would be consistent with the reference in your 1987 memorandum, sure it isn't?

A. I agree, yes.

Q. It's just Mr. Thornhill says: "Agents have agreed valuation hearing for C.A.T. for week beginning 12/1/86"?

A. That should be '87.

Q. Of course, that should be '87, yes.

Then after that, in Leaf 12, there is a memorandum of the 14/11/86, and in Leaf 13, there is also a memorandum of the same date.

A. I think perhaps 13 comes first, and the heading is "Week Ending", so it's just recording what happened there on the weekend. I think that's the beginning about the Chairman wants an assessment to issue, and then do it.

Q. "Christopher Clayton required to keep this case" "requested", maybe, "to keep this case"?

A. Yes, either, I don't know.

Then you have the 13/11, so then I think the document you referred to earlier, the 14/11, would probably come after that.

Q. So therefore the sequence is probably Document Number 13 first, is it? And Document Number

A. It may be.

Q. Document 12 second. In any case, am I right in

thinking Document Number 13, or the document in Leaf Number 13, the document headed "Week Ending 14/11/86", is probably not the one you were referring to?

A. Not the one, yes.

Q. What about the document, the other document, then, of the

A. It seems likely that's the one I am referring to.

Q. Right. And can you tell me what reference in the document?

A. There, towards the middle of the page, at the para of which begins "This leaves a figure" sorry, if you wish to begin at the "Given the loss in '72 because they were expanding and building up, it should strictly be left out of account. This leaves a figure of 800,000 as the only indicator of maintainable profit, and the multiplier for '74 was 10 as against 8 for '75 and '76." While a multiplier of 10 on 800,000 will give you 8 million.

Q. Of course, but you weren't at that stage seeking to bring the multiplier up from or the figure up from 5.5 to 8, were you?

A. I don't know.

Q. Well, if you go on to the next line.

A. "So he would be hard put to have valuation much lower than a '75 valuation." That's '75 for wealth tax, I take it.

Q. Yes, 5.8.

A. Do you want me to continue?

Q. Yes, if you go to the top of the page, we'll put that comment in context. Your first note is "Beyond Reid",

meaning that Mr. Reid was in touch with you. He was doing the figures with Mr. Thornhill on the valuation; isn't that right?

A. Yes. It appears in my other note that I contacted him on the 13th. "Rang John Reid for market value at '74 and '85. That is ordinary shares and 100 preference shares".

Q. And so on the 14th, you say: "5.8 million was the figure for wealth tax valuation at 6/4/75 agreed with agents."

Then underneath that, "Less", is it?

A. "Loss".

Q. "Loss in 1972.

"Profit of  $\frac{1}{2}$ 800,000 in '73.

"Profit of  $\frac{1}{2}$ 500,000 in '74.

Average maintainable profit  $\frac{1}{2}$ 650,000 x 8," being the multiplier. Taking the average of the profit figure for '73 and '74, giving a figure of 5.2.

A. Yes.

Q. Then underneath that

A. "Has not the '71 accounts. He may ring Bowen for these."

Over on the side is written "roughly".

Q. Then underneath that, "Given the loss in '72 because they were expanding and building up"

A. It does look like "buying up". I don't know.

Q. "It should strictly be left out of account. This leaves a figure of 800,000 as the only indicator of maintainable profit, and the multiplier for '74 was 10, as against 8 for '75 and '76.

"So he would be hard put to it to have a valuation much lower than the '75 valuation.

"He will have his mind made up by afternoon. 120 million is the figure for 1985 anyway."

So, at that stage, he had the 120 figure pinned down, and he had to come back to you on the '75 figure?

A. Yes, '74.

Q. '74 figure. And obviously, the lower the figure, the harder it was going to be on the taxpayer; and the higher the figure, the easier it was going to be on the taxpayer.

Isn't that right?

A. Yes.

Q. And he was saying he would be hard put to it to have a valuation much lower than the '75 valuation?

A. Yes.

Q. Then on the next page, I think you do a series of calculations based on a figure of roughly 5 million and applying the multiplier of 4.14.

A. There is one calculation is that on the top of the page?

Q. Yes.

A. Yes.

Q. And it gives the generates what I take you to be referring to as an approximate figure of 100 million gain and 47 million tax; isn't that right?

A. That's right.

Q. They are rough figures.

Now, just when around the same time, because initially I

didn't know what "main papers" meant, some of the Tribunal researchers examined almost every document they could find in relation to this period, and a number of other documents which seem to relate to some of the dealings you were having at that time came to light, and if I could just refer you to them in Leaf or Tab 15, to begin with.

Have you got that document?

A. I have that, a typed document.

Q. A typed document, yes. It's dated the 19th November, 1986, and it's a note by Mr. Reid. It's addressed to the Chief Inspector of Taxes, re Bowen case, and it just simply starkly says: "The valuation of the group is as follows:

"6 April 1974, 5.5 million.

"14 March, 1975, 120 million."

A. I must be looking at the wrong one. Oh, sorry, that's Tab 16, is it?

Q. It's Tab 15 in my one; perhaps there's been a mistake.

A. I have it. 19 November.

Q. If you look at the projector to make sure it's the same document.

A. I notice there is probably a mistake in that, in that second date.

Q. I see that; it should be '85, obviously. That seems to be something in the nature of almost a certificate, sort of, this is the figure?

A. It is. I'm not sure when I saw that, but looking at it in the light of your questions there last week, I notice that

it values the whole group. Not the shares held by the trust, so there doesn't appear and this was an issue you were trying to clarify with me, and I wasn't able to help you. It does look as if there is no allowance

Q. Do you think not?

A. Well, it refers to the valuation of the group.

Q. Yes, I take your point.

A. And what we had been looking for was a valuation of the holding.

Q. Do you think a mistake was made?

A. Put it this way: It's certainly it's a possibility.

Q. I suppose we can take it up with Mr. Reid. But do you know

I mean, I take your point, that if there is a valuation of the group at 120 million and no allowance is made to discount the valuation because the shares in question had limited or restricted powers, when Mr. Reid subsequently came to address that issue, do you recall him ever saying that "I have made a mistake in valuing the group"?

A. No.

Q. And it was addressed, wasn't it, on other occasions?

A. I don't think so. What happened was can I just say that, again, perhaps in fairness, to try and help the Tribunal, again we were talking about the figure of 82 million and how that became so central. I just again, I looked at the figure for the the paper thrown up by counsel which shows the agreement, and I hope this is helpful, there are three things. It says No. 1, for Ben

Dunne Senior, for his decease, there is a value, that's in 1984, agreed of 82 million. And for Norah Dunne, deceased, there is a figure agreed in '86 of 100 million. Then for the 1% discretionary tax, there is a figure of

Q. I'm not sure I can follow everything that you are saying.

Let me just get it, and it will be easier, I suppose, if we can all be looking at the same thing at the same time. It should be in Leaf 25 of Book 65. Have you got that?

A. I have, yes.

Q. Maybe you can take me through it again.

A. If I could just say this first: What I will be trying to bring out is that you had a value agreed for 1984

Q. '74 oh, '84.

A. '84. And you had a value agreed for '86. And they were for the deemed inheritance by virtue of Ben Senior's death and Norah's death.

Q. Can I just can you just take me through what you said a moment ago, because it's obviously of importance, if there was a valuation of 100 million agreed at one point and 82 million agreed on the other. If you just show me

A. I beg your pardon; perhaps I said 100. I will take you through again.

The crucial dates are '84 for the death of Ben Dunne Senior, and '86 for the death of Norah Dunne. And the figure agreed was 82 million for each of those two deaths.

And then for 1% Discretionary Trust Tax, they agreed, beginning in '86, they agreed 82 million also, and on a

point here that Mr. O'Neill was debating, and I am not an expert on it, that value, the client could opt to have that value used for a further two years, as well, for the 1 percent Discretionary Trust Tax, so that would bring it up to '87 and '88. But as I say, I am not expert on that.

But to go back again then you had 82 agreed in '84 and 82 agreed for '86. So all I'm saying then, in trying to understand how the 82 became accepted for '85, the in-between date for C.G.T., I think that makes it more understandable, I think.

Q. Why is that?

A. Well, you had a value at '84 of 82, and a value at '86 of 82.

Q. And a value at '87 of 82, and 1988 and 1989 at 82?

A. They were separate things.

Q. They were all valued at 82, right up to 1989, weren't they?

Isn't that the arrangement, it seems?

A. No, no, what I was trying to say is you have two separate things, as I understand it. You have the deemed inheritance at '84, that's Ben Dunne, and the deemed inheritance in '86, that's Norah.

Q. Yes, and you agree them both at 82?

A. Yes, both sides agreed them at 82. It just occurred to me, since there was so much back and forth about the 82 million, that perhaps that may throw some further light on it, how the '85, then, in between those two dates, became to be accepted as 82 as well for the purpose of

negotiation.

Q. I don't see that, though, because the document says at the end: "All without prejudice to any liability for Capital Gains Tax".

A. Sorry, with respect, that has been debated and explained.

It seemed to me that something hadn't been brought out.

And for what it's worth, it can be evaluated on its own. I just felt to say that.

Q. Right. Could I get back to the other point you were making, that the valuation at 120 million mightn't have included any discount for

A. Yes, again, I only just this is something, as I looked at that document, that I saw, and you had alerted me by asking about this, and so I am just bringing that to your attention.

Q. Do you remember the values that were produced for the group in the first instance of 160-odd and 140-odd? Do you remember that?

A. I do remember the document being opened here, yes. But I in no way have any great information on it.

Q. Well, do you remember them we went through them in evidence, and evidence was given about them; do you remember them? I think it's in Document Number Leaf Number 10.

A. I have 10, yes.

Q. And if you go to the second page sorry, Book 66 Book 65, sorry, Leaf Number 10.

A. I have that, yes.

Q. And that in fact is page 29 of the document?

A. Yes, I am looking at page 29.

Q. And there is a figure for Discretionary Trust Tax of between 127.5 million and 135 million, and then that was eventually reduced to a figure of 100 million; do you remember that?

A. Yes, 100 million was the figure for a settlement.

Q. If you look at the figures for Capital Gains Tax between 148.5 million and 165 million.

A. Right.

Q. And they clearly are figures for the entire group, as far as I can see, because if you go on to the next page, at para 41 and following paragraphs, there are references to what deductions ought to be made having regard to the fact that the shares, the ordinary shares, had restricted rights; do you remember that? I am not asking you to read them all, but if you see those, they seem to suggest that a deduction would have to be made

A. I beg your pardon, yes

Q. And then if you go to

A. 41 begins with "Capital Gains Tax legislation does not contain deemed control". I take it this is discussing discounting.

Q. It is discussing there and in the following pages, and we know that there is a conclusion then reached at the end of the last page of that document altogether, second-last

page, in relation to Discretionary Trust Tax small deductions are made. In relation to Capital Gains Tax, it suggests more substantial reductions, up to 18%; do you see that?

A. Yes.

Q. And it says that any discount and what it says there, it's subparagraph (c), is: "If the purchaser is unable to achieve enfranchisement or winding-up, then a substantial deduction will have to be made. Precedent cases already quoted suggest discounts of up to 18%, any discount in excess of 18%, subject to further research, appears to be bringing us into uncharted territory." Do you see that?

A. Yes.

Q. So it seems clear that they were definitely the people in, if you like, the people responsible for carrying out these inquiries were alive to the deduction issue?

A. Very much, yeah.

Q. We'll have to try and see what we can find out from Mr. Reid about his use of the expression "Valuation of the group" in 1986, but one thing is clear, that the figure of 120 is certainly a figure that he is putting in at that stage, and it's much, much lower than any of the figures that he had earlier; isn't that right?

A. Yes.

Q. If you go on to the next page of that document sorry, I beg your pardon, I am confusing you now, because we are talking about three different documents. Leaf 15 in

Book 67. If you go onto the next page, then, the document on the next page in that leaf is

A. I beg your pardon; I don't think I am with you, Mr. Healy.

Q. Sorry, apparently it's the next tab. In mine it's the next page, but if you go into Tab 16. This is a document of the 18th November, 1986.

A. Is that the typed document?

Q. Yes. It seems to have preceded the document we looked at a moment ago. If you look at the projector, you'll see the document we're talking about: "Valuation of Bowen Group as of 6 April, 1974."

A. Can I say, Mr. Healy, that I'm not sure where this comes in the paper. I am not sure insofar as I have any recollection of that I had this document.

Q. I don't think you had.

A. Okay.

Q. I don't think you had. It's just one of Mr. Reid's documents. And as far as I can see, it's related to the document of the 19th November we were looking at a moment ago, and I'm just asking you about it to see whether you'd agree with me.

It's dated the 18th November, and if you'll recall, when you were talking to Mr. Reid on the 14th November, he was still wondering what figure he'd put in for 1974; isn't that right?

A. Yes.

Q. And I then drew your attention to the document of the 19th

November, where he said "The valuation of the group is as follows:" And we know that on the 14th November, he appears to have had the 120 figure; and the one figure he hadn't settled on was the figure for the 5th April, '74.

A. Yes.

Q. And if you look at the other document, then, valuation of group as of 6th April, '74, you will see that

A. What document is that? Sorry? What document now?

Q. The document that's on the overhead projector.

A. Right, yeah, John Reid's documents. Right.

Q. You'll see that he seems to canvass how he should approach valuing the company as of the 6th April, 1974, and in paragraph 8 he has "Comparative figures from the audited accounts for the years 31 December '72 and 31 December '73, and he sets those out in a column showing the profits in '72 with 26.7 million, and 31.4 million in '73.

Then he goes on to say and some of this reflects some of the information you had in your memorandum of the 14th November, 1986, when he says: "1972 was the first year for which consolidated accounts for the group were available.

It was also an exceptionally bad year for the group, as profitability was affected by the purchase of the

Bolger/Cassidy Group". And that may be why the word

"buying" is fact, as you suggest, "buying" "Which

entailed considerable write-offs (viz: Figures for exceptional and extraordinary items totalling  $\frac{1}{2}$ 165,093.)

Taxation was also exceptionally high at 85%. Adding back

the exceptional and extraordinary items and assuming a more reasonable 50% taxation charge gives an after-tax profit figure of  $\text{€}1\frac{1}{2}285,000$  for 1972. In the years till the 31 December 1973, turnover increased by 17.6% compared with an inflation figure of 12.6%. Profit after tax increased dramatically, even compared with the adjusted figure of  $\text{€}1\frac{1}{2}285,000$ . The performance of the group in 1973 was generally in line with the exceptional revival of the economy in 1973 (e.g. Central Bank Quarterly Bulletin Winter 1973). However, by the end of 1973, the revival was already showing signs of being short lived. The full impact of the oil price increase announced towards the end of 1973 was expected to have a damaging effect on Irish price levels in 1974. The Central Bank Winter Bulletin 1973 was expecting an additional 3% to be added to the CPI during 1974. National pay agreements already settled for 1974 were expected to increase wages by 15% in 1974 and by more than 20% in 1975.

"A prudent purchaser of the group on 6 April 1974 would have good cause to expect the profit levels in 1973 would be difficult to maintain in 1974. Already by the end of the first quarter of 1974, the indications were that inflation for the year would exceed 16%, and expectations for the economy generally were poorer than in 1973. A drop in after-tax profits of, say, 15%, to  $\text{€}1\frac{1}{2}672,000$ , would be a reasonable forecast, taking into account the poor performance in 1972. The average industrial price/earnings

ratio for 6 April, 1974 was 10.3. However, as investors will seek higher yields in periods of high inflation, this ratio could also be expected to fall. By March 1974 the Irish Stock Exchange was beginning to plunge, which brought it to its lowest-ever level by December 1974. It is considered that in the circumstances, a multiple somewhere between 8 and 8.5 would not be unreasonable.

"A valuation of 5.44, (that is  $\frac{1}{2}672,000 \times 8.25$ ) would appear to be what a prudent purchaser would have been prepared to offer for the group at that time.

"A simpler valuation based on historic values would be as follows:

"Total profits for 2 years to the 21 December 1973 = 1.08913 million. Average  $\frac{1}{2}544,565$ . Average industrial P/E ratio for 6 April 1974 10.3. Value  $\frac{1}{2}544,565 \times 10.3$ , giving you 5.61 million as a value.

"In the circumstances, a value of 5.5 million is suggested for the base C.G.T. rate as of 6 April 1974."

That seems to be where the figure of 5.5 came on the document I mentioned a moment ago; isn't that right?

A. Yes.

Q. And we don't know, as yet, whether control was taken into account in relation to that figure, sure we don't?

A. Indeed.

Q. We do, do we?

A. No, I said "indeed". I don't know.

Q. Sorry, I beg your pardon. We'll try to see what more we

can find out about it.

Mr. Connolly has drawn two other documents to my attention.

We'll put them on the overhead projector. These are documents from your file. I think you'll probably have to read them for me, because there is not a lot of light on the overhead projector. So we'll just put them on the projector, and I'll try to follow your reading of them. Do you have hard copies yourself?

A. No, those are the copies

Q. I see. Is that the date sequence of the two documents?

A. Yes. Can I be heard? This is the 23rd March '88. "Rang SOS" that's Sean O'Siochain; he was the District Inspector in Dublin 1 Income Tax District dealing with the trust. "He will issue query as in earlier papers and seek accounts and returns from the trust."

Q. Right. Is that something that was, in your view, relevant in light of the document that we were discussing the other day, where I drew to your attention, I think, the fact that you had drawn would it be to Mr. O'Siochain's attention, that for the first time, as far as he was concerned, the existence of the trust and this occurred sometime after the settlement of the Discretionary Trust Tax and inheritance tax issues in March of 1987 you were in touch with him, I think, in relation maybe to one of the queries that were raised, or at least what everybody thought had been raised as a query; and in your discussions with him, you noted that he said this was the first time, a

first "intimation", I think may be the word, was that he had of the existence of the trust. And I think the note went on, if my memory serves me correctly, to say that returns would be required in due course, or something like that?

A. That's right.

Q. And I asked you why hadn't it been pursued, and obviously you were not in a position to deal with that.

A. That's true. And as I have done since you raised that with me. I just looked for, was there because that actually doesn't say, that note you are referring to, doesn't say that I said to him it could be me, myself, just saying that they would be. But I find that I did actually bring it to his attention subsequently.

Q. And he said on the 23rd March the following year, "He will issue a query"

A. No, I am saying "He will issue a query" as a result of the phone call. "As in the earlier papers". And that, I take it, referred to a note I had made out earlier about four queries, and the first one is about getting information from the trust asking them for returns.

Q. Now, at that point, I think the rates still hadn't diverged, had they oh, I think they may have been the rates may have been diverging at that point?

A. I wasn't thinking of income tax dividends. It has nothing to do with that.

Q. You were simply following up on the issue?

A. Exactly, that we needed returns and

Q. Is the other document related to that document?

A. It is. Mr. Connolly has taken it there.

Well, it just says it's April

Q. We'll go on to that document to see what it says. It's extremely difficult to see what it says on the overhead projector.

A. I can read it. It's not really very important. But the essence of it is that the man in charge is now he is leaving the district, and he is telling me that he is leaving, somebody else is coming, and that he'll bring this file to the attention of the person coming in.

Q. I see. And from that I suppose we should take it that somebody did raise a query with Dunnes as to returns for tax?

A. I'd be very surprised if it wasn't.

Q. Right. Thank you very much.

CHAIRMAN: Anything to raise Mr. O'Neill?

THE WITNESS WAS EXAMINED BY MR. O'NEILL AS FOLLOWS:

Q. MR. O'NEILL: Just very shortly, Mr. O'Cathain. I want to ask you in relation to the issue as to whether the assessment that was ultimately issued in November 1986 applied any discount because of the lack of control and indeed the absence of ownership of the preference shares. And Mr. Healy has referred you to Tab Number 10, I think, and I don't think we need to go into that in detail, but just to put it into sequence, this was the exercise

performed by the Capital Taxes Branch in which they had looked at various valuations applying various profit/earnings ratios, and then discuss the issue of discount in the context of the powers that attach to the shares.

If you then turn to Tab Number 13 of that book, that's Book Number 65, and I should put Tab Number 10 was a revision of the paper that had been prepared by Dr. Thornhill and Mr. Reid, and it's dated the 12th March 1986. We now move to June of 1986, Tab 13, which is a meeting with the Chairman, Mr. Clayton, yourself, Messrs Reid and Thornhill.

A. Right.

Q. You will see, about 8 or 9 lines down, the reference to two figures, 100 and 120, which I think we have agreed 100 million and 120 million, and presumably are the valuations for Discretionary Trust Tax purposes in 1984 and C.G.T. in 1985?

A. It certainly seems to be that.

Q. And then the question that's raised at that meeting, attended by the representatives of the Capital Taxes Branch, is: "What deduction to apply for 120 for lack of control." So can we take it from that that for reasons the Revenue or the Capital Taxes Branch thought fit at the time, it was decided not to apply a reduction for the lack of control at that stage?

A. No, no, it is I think what we can take is that it was certainly an issue.

Q. It was. Perhaps I should read on: "The opinion of [blank] awaited on this". In other words, at the moment, we are not applying any reduction, and we are waiting an opinion presumably it was Mr. Fennelly's opinion, whatever?

A. Exactly.

Q. And then if you then turn to Tab Number 49, which is your analysis of well, of a number of issues, but also an analysis of the assessment that was raised. This is a paper or a document dated 3rd March of 1988, and if you turn to the fifth page of that document. Do you have that?

A. I think I have it. Is that the second-last page?

Q. It is it's the second-last page. Capital Gains Tax assessment for 1984/85 was made, and what you have done is you have broken down the assessment, the amount at the bottom 38.8 million and the figures used for 120 million and the 5.5 million and the index multiplier?

A. Right.

Q. But no discount. And then further down in that letter, or in that note, the last paragraph, you say: "In addition there is a question of whether a discounting factor should be applied to the ordinary shares to allow for the fact that the preference shares carry the voting rights".

A. Yes.

Q. So it certainly appears to be the opinion in the Revenue at that time, and indeed consistent with the note of June of 1986, that no discount was being applied for lack of

control?

A. Certainly in that computation no discount was applied.

Q. And then if I can turn you ask you

A. And it was recognised there that it was an issue to be sorted.

Q. It was an issue, and indeed it became when one became more focused as the matter progressed, it was looked at in further detail?

A. Yes.

Q. And then, if I can just refer you to the Booklet Number 67, that's the smaller booklet. And what we have at Tab Number 12 is a discussion between presumably between this you have Number 12, do you, that's 14/11/86?

A. Yes.

Q. That's your note, I presume, is it?

A. That's right.

Q. And I assume that's a discussion between you and Mr. Reid as to what value to be applied for 1974?

A. Yes.

Q. And what is being posited by Mr. Reid there is that because, because or the profits are reduced because the business is expanding and buying up; in other words, what Mr. Reid seems to be saying is that it's certainly arguable that the only year that you can rely upon as an indicator, as a proper indicator of maintainable profits, is the year of 1973. This is what he is saying at this stage.

A. Well

Q. Am I misinterpreting that?

A. No, no, and I don't know but I would suggest what he is saying is that's an arguable point.

Q. And this is something within obviously this is a ball being bounced between the two of you, and he is to come back to you with his view of what the 1974 valuation should be?

A. Yes.

Q. But he is saying it could be 8 million in this, and in the following week, when he comes back, he says for the various reasons outlined in his note at Tab Number 15 of that book, that the valuation should be 5.5 million?

A. Yes.

Q. And in fact, even if you look at that that's the last page of the note at Tab 15 he has looked at it from two ways. He has looked at it from an analysis of the world/Irish trade, whatever, in the first instance, and secondly, he has looked it from an analysis of the profits. And indeed the manner in which this was first approached seems to have been on the basis of an analysis of the profits, the maintainable profits, and then applying the appropriate multiplier. Here, Mr. Reid seems to be performing a slightly different exercise, and perhaps a more esoteric exercise, in the context of trying to put his mind into the put himself into the shoes of a purchaser to see what a purchaser would pay for the company in 1974. If you see the first part of the exercise

A. In fairness to him, yes, I mean, it's it's a valuation where he is exploring different ways of arriving at a valuation.

Q. If you look, he comes back to the more usual, if I may put it that way, method of assessing the value by applying what he considers to be the appropriate multiplier to the maintainable profits, in the last few lines?

A. Yes.

Q. And in fact, he is talking now about a profit ratio of 10.3

A. Right.

Q. instead of 10. So in other words, if that was applied to the profits he is talking about in the earlier document of 800,000 a year, we'd have a valuation of 8.3 million. Now, I know he hasn't done that, obviously.

A. Yes.

Q. In fact what he does, he, having applied that exercise, he comes out with a value of 5.61 million, which he reduced to 5.5, and in fact the effect of that reduction, because of the index, the 4.14 index multiplier is nearly a discount in valuation of nearly half a million pounds. You see the 5.61, the difference between 5.5 and 5.61 being 110,000. Multiply that by 4.14, which was the multiplier, you have 450,000.

A. Yes.

Q. So on any analysis certainly and maybe it's not something you can comment on; maybe it's a matter of

observation rather than anything else the figure of 5.5

was open to some question?

A. Indeed, as subsequently proved to be the case.

Q. Thank you, Mr. O'Cathain.

THE WITNESS WAS EXAMINED BY MR. CONNOLLY AS FOLLOWS:

Q. MR. CONNOLLY: Just one or two matters, Mr. O'Cathain.

The two documents which Mr. Healy put on the screen, which came from your file, which are dated March of 1988 and April 1988, I think are documents which you can say reflect that there was some addressing of possible income tax liabilities for the Dunnes Trust arising from dividends being paid into them at a stage in early 1988?

A. You could take that from it. I am saying we don't know what's going on on the trust; we need returns, and he is going to follow it up.

Q. But the returns could only have been in the context of income tax that was payable the only money the trust would have had that was liable to income tax was the money they were receiving in to pay the Discretionary Trust Tax.

A. Income tax and Capital Gains Tax if it arose.

Q. And in 1988, I think as we have mentioned before, self-assessment came in to play, and from that time onwards, the onus would have been on the taxpayer to make returns in relation to possible income tax liabilities rather than for the Revenue to seek out the taxpayer and raise a possible liability with him; isn't that the position?

A. That's right.

Q. And to an extent, that then explains why there isn't any further record until the matter is addressed sometime in 1994?

A. That's a reasonable interpretation, yes.

Q. Thanks very much, Mr. O'Cathain.

THE WITNESS WAS FURTHER EXAMINED BY MR. HEALY AS FOLLOWS:

Q. MR. HEALY: Just one matter arising out of that last answer, Mr. O'Cathain.

Does that mean that you brought something to the attention of if you had brought something to the attention of Mr. O'Siochain after self-assessment came in, that he'd have said to you, "What's the point of telling me that? It's for the taxpayer to put in his returns"?

A. No.

Q. I presume, if he was aware of something and it wasn't in the returns, and it was substantial in any way, he'd check it, anyway?

A. Indeed.

Q. Obviously, if you were just talking about an ordinary taxpayer, he may be too busy; but we are talking about huge sums here, so he might well say, "I better check it out to see if it's in the returns"?

A. Yes.

Q. Thank you very much.

CHAIRMAN: Well, I think, Mr. O'Cathain, the issue of the 5.5 million, or 8 million, has become an increasingly

esoteric and indigestible topic as we have gone on, but what can be said at least is this: that the notion of 5.5 being varied, perhaps, one way or the other, was not a completely new thing from 1987; there was, at least from November of 1986, some discussion of a number of permutations, and if only perhaps as an extraction, there was talk of 5.5, there was talk of somewhere around the 8, and I think at some stage there had even been talk of actually discounting downwards in the same way as the later figure, the 5.5.

A. Yes, Your Honour.

CHAIRMAN: It will take a little bit more work on my part

A. Your Honour, may I be permitted to say something?

CHAIRMAN: Do, please.

A. I hope it's in order. Since it's my record of the events that have been featured fairly prominently in these matters, when the Tribunal first contacted me and asked me had I any recollection of thinking there was anything had I any reservations in recollecting, and I have no at that time had no reservations, had no recollection of any such. When I read the papers for the purpose of the Tribunal, I could find nothing that would give rise to any such reservations. Indeed, for my own part, can I say that in reading the papers, I was reassured that the case had been pursued diligently and impartially and that everything was documented and everything was transparent. And even

with the benefit of the questions which the Tribunal that has directed me to new ways of looking at the case, I still haven't found anything to change my feeling that everything was done properly, as far as the period I was involved with the case.

And in relation to my record of events and interventions and that, it's pretty matter of fact, the way I record them. I think my view at that time would have been that any intervention that resulted in the clients coming the other side coming to a realisation that they should negotiate, with a view to reaching a settlement, would have been beneficial.

And finally, Your Honour, may I say that and it's in the context of that as well, that from my own personal experience, I have never seen any intervention by anybody on behalf of any taxpayer that ever got them anything more than they were entitled to. So it was just to put that in my involvement in the case, to read it in that light.

CHAIRMAN: I'll have full regard to that, Mr. O'Cathain, and I am more than appreciative of the amount of work and assistance that you have given to the Tribunal over the last several weeks.

A. Thank you very much, Your Honour.

CHAIRMAN: Thank you.

So what time will we fix tomorrow for the next witness?

MR. COUGHLAN: Eleven o'clock in the morning, sir.

THE TRIBUNAL ADJOURNED UNTIL THE 29TH JUNE 2005.

