

THE TRIBUNAL RESUMED ON FRIDAY, THE 24TH OF MARCH, 2006,

AT 11 A.M. AS FOLLOWS:

CHAIRMAN: Ms. O'Brien.

MS. O'BRIEN: Mr. Brian McCabe, please.

BRIAN McCABE, PREVIOUSLY SWORN, WAS EXAMINED BY MS. O'BRIEN

AS FOLLOWS:

CHAIRMAN: Good morning, Mr. McCabe. Thank you for coming

back. You are, of course, already sworn from quite some

time back.

Q. MS. O'BRIEN: Good morning, Mr. McCabe.

A. Good morning.

Q. Thank you very much. As indicated by the Chairman, you

have given evidence, certainly I think on two previous

occasions before the Tribunal, so I think you are probably

reasonably familiar with the approach that we adopt in the

taking of evidence?

A. Yes.

Q. So do you have with you the Statement of Evidence which you

provided to the Tribunal?

A. I do, yes.

Q. Well, what I am going to do, if it's agreeable to you, is I

am going to take you through that. As we go through it,

there may be one or two matters that I will ask you to

clarify, and obviously anything that you wish to add to,

other than what is in your statement, you can, of course,

do so, and then we will go back and discuss some matters in

a little more detail and we will look at some of the

documents that have been provided to the Tribunal.

A. That is fine.

Q. So you state in your statement that you are a Principal in the Direct Taxes Policy and Legislation Division of the Revenue Commissioners. Prior to this, you were a Principal in the Capital Taxes Division. During that time you were involved with your Assistant Secretary, Mr. Norman Gillanders, and other Revenue officials in the discussions and negotiations with Mr. Charles Haughey's tax agents that eventually led to the agreement with Mr. Haughey on the 18th of March, 2003; I think that's correct?

A. That's correct, yes.

Q. You state that at the request of the Tribunal you are making this statement in relation to your involvement in that process, and in particular in relation to the preparations for and the discussions that took place at the meeting with the Taxpayer's agents on the 8th of October, 2002, a detailed minute of which has already been provided to the Tribunal.

A. That's correct.

Q. Now, you state in connection with the lead-up to the meeting of the 8th of October, 2002 that Mr. Gillanders' statement outlines the analysis, research, requests for legal advices and discussions that took place in relation to this case from mid-2001 and which led, by early 2002, to the view within the Revenue that the best prospects for closing the case on a satisfactory basis lay in an agreed

settlement with the Taxpayer. Against that background a preliminary meeting was held with the Taxpayer's agents on the 29th of April, 2002. I think we opened the minute of that meeting in some detail in the course of yesterday's Opening Statement?

A. That's right.

Q. You state that during that meeting Revenue impressed on the agents the need for their client to resolve his outstanding tax issues with Revenue in light of the information arising at the Moriarty Tribunal to the effect that he had received substantial sums of money in addition to those revealed at the earlier McCracken Tribunal. At that meeting the agents indicated an acceptance on the part of their client that there were major tax issues outstanding and that there was a willingness on his part to address these. The agents also indicated that they were willing to work towards a mutual understanding of a baseline figure in relation to taxable receipts received by their client. They agreed to a further meeting on the 6th of June to show progress.

A. That's correct, yes.

Q. You state that as it transpired the agents showed little in the way of progress at the June meeting, or indeed at a subsequent meeting on 4th of July, 2002. You state that in an effort to progress matters, Revenue was - handed a draft Expenditure Schedule to the tax agents at the conclusion of the July meeting. The heading on this schedule read "Issues to be addressed in order to bring the Taxpayer's

case up-to-date." It was designed to be an indicator to the tax agents of Revenue's view of the order of magnitude of the tax issues that faced their client and to help speed up their deliberations. The schedule also included a series of questions on which Revenue was seeking information, and a copy of this schedule has been provided to the Tribunal.

A. That's correct.

Q. Now, I think this was, in fact, a draft of the final Expenditure Schedule that was served on the 4th of October of 2002, is that right?

A. That's correct, yes.

Q. And I think, in fairness to you, that was fairly worked up, the draft schedule, that was furnished on the 4th of July?

A. Yes.

Q. So as and from really the 4th of July Mr. Haughey's agents, Mr. Peelo, Mr. Moore and Mr. Cooney, would have had a reasonably clear impression of where the Revenue were coming from?

A. Absolutely, yes.

Q. And I think also again in that draft schedule, we will refer to it when we are looking at the documents in the final form, you also raised a number of issues on which you were seeking information from Mr. Haughey's agents?

A. Yes, yes.

Q. Now, you say that following this, a possible settlement scenario was put to your Assistant Secretary

Mr. Gillanders, by Mr. Des Peelo at a meeting on the 6th of September, 2002, which involved a settlement offer of $\text{€}1\frac{1}{2}$ million. While this offer was rejected, it represented the first real engagement by the Taxpayer to move towards settlement of his tax affairs. And of course, at that stage, on the 6th of September, 2002 when this initial offer of $\text{€}1\frac{1}{2}$ million was made, which was rejected, Mr. Peelo would have had sight of the draft schedule that you had furnished to him at the meeting of the 4th of July?

A. Yes, he would, yes.

Q. So if you like, that was his response to what was in the draft schedule?

A. Yes, you could interpret it like that, yes.

Q. And you state that these contacts lead directly to the meeting of the 8th of October which was designed to produce an agreed expenditure base on which appropriate tax, interest and penalties could be calculated. In advance of the meeting, a refined version of the Expenditure Schedule, previously given to the tax agents, was sent to Des Peelo with a covering letter and copies of this letter and schedule have been provided to the Tribunal. The Expenditure Schedule was to form the agenda for the subsequent meeting?

A. That's correct.

Q. And that's the final Expenditure Schedule, which I think was furnished on the 4th of October, in advance of the meeting of the 8th of October?

A. That's right, yes.

Q. Now, in relation to the Expenditure Schedule, and again we will look at that in the in the course of today's evidence?

A. OK.

Q. But you have stated, in relation to the Expenditure Schedule, it represented Revenue's view of the maximum potential expenditure incurred by the Taxpayer over the 20-year period, 1977 to 1997, based on information available to Revenue at that time. This information arose from a number of sources, including information divulged during the Moriarty Tribunal hearings, internal Revenue sources, for example information on tax payments made by the Taxpayer over the years, and information gleaned from bank account details provided by bank financial institutions following the use of Revenue powers. Most of the detailed work on the schedule had been carried out by Investigation Branch over a period and it had been added to and refined over time.

A. That's correct, yes.

Q. Now, you state that the Expenditure Schedule essentially reflected a combination of known expenditure by the Taxpayer over that 20-year period, plus known receipts as divulged at the McCracken and Moriarty Tribunals, unless those known receipts could be linked directly in whole or in part to the funding of identified items of expenditure. Where receipts could not be specifically linked to

expenditure in this way it was assumed for the purposes of the schedule that they were used to fund other expenditure that Revenue simply did not know about?

A. That's correct.

Q. So that was the approach that you took to preparing the Expenditure Schedule?

A. Yes.

Q. You took expenditures from all known sources over the period 1977 to 1997 and you also took receipts during that period unless there was evidence available to you that those receipts had been applied to known expenditures?

A. That's right, yes.

Q. Now, you have given an example by way of illustration of the approach that you took and for the purposes of that example you've referred to the payment from Mr. Ben Dunne in, I think, November of 1987, in the sum of sterling £182,630, which was at equivalent of £204,000, isn't that right?

A. That's right, yes.

Q. And I think that was the first of the payments that had been identified in the course of the McCracken Tribunal hearings?

A. That's right, generally called the bank or Furse cheque, I think?

Q. Yes. And, of course, it postdated, we now know, the bearer cheques that were in January/February of 1997?

A. Yes.

Q. And also the TriplePlan payment, which was in May of 1987?

A. That's right, yes.

Q. Now, in relation to that, you've indicated from the evidence that was available from, of course, the McCracken Report, i.e. \$105,000 had been used to clear an ACC overdraft, isn't that right?

A. That's right.

Q. That i.e. \$50,000, the evidence showed, was used to fund the Haughey Boland bill-paying service, is that right?

A. In fact that is actually a typo, it should be 40,000.

Q. 40,000?

A. Yes, 40,000.

Q. And that i.e. \$59,000 was withdrawn in cash?

A. That's right.

Q. And you say that on that basis the payment was accounted for in the schedule as follows: Under the Deloitte and Touche Haughey Boland bill-paying service entry as part of the figure of 203,000 paid under the bill-paying service in 1987?

A. That's correct.

Q. Just to pause there for a moment so that we can understand it; the i.e. \$40,000 which as you indicated on the basis of the McCracken Tribunal report had been applied to fund the Haughey Boland bill-paying service was included within the total figure for that year for the Haughey Boland bill-paying service in your core Expenditure Schedule?

A. That's right, yes.

Q. And again we will look at this when we are looking at the Expenditure Schedule. And then, secondly, you say that under the AIB Merchant/ACC entry, it was included as clearing the ACC overdraft in 1987 and that was the $\text{€}105,000$ portion of the total payment, is that right?

A. That's correct, yes.

Q. And then the final tranche of that total, $\text{€}204,000$ payment, was $\text{€}59,000$ and the evidence and the findings of the McCracken Tribunal were that that was withdrawn in cash, isn't that right?

A. That's right, yes.

Q. And in your schedule, you inserted that under the heading "Ben Dunne, receipts"?

A. Yes.

Q. And that, I think, illustrates how you applied receipts where there were known applications in terms of expenditure for those receipts?

A. Absolutely. It demonstrates the risks, I suppose, of double counting as well that, had you included both, clearly you would have been overstating the position.

Q. Yes, yes. Because in this instance, there was a known application

A. Absolutely.

Q. for the receipts?

A. Yes.

Q. And you state that, in the absence of actual knowledge of all of the payments that may have been made to Mr. Haughey

over the years, the aggregate expenditure of $\$10$ million set out in the schedule was taken to represent a proxy for receipts?

A. Yes.

Q. So, of course, that $\$10$ million would be the equivalent of, I suppose, something in excess of $\$12$ million, would it?

A. Yes.

Q. You state that that this was on the basis that the expenditure had to be funded in some way, and on the assumption that this was funded by way of taxable gifts, it essentially reflected the Taxpayer's maximum potential exposure to Gift Tax and interest, is that right?

A. That's right, yes.

Q. There is only one small thing that I'd raise with you there, and I know it was built into the final settlement, but when you arrived at the figure of $\$10$ million, you hadn't actually provided for any expenditures prior to 1985, isn't that right?

A. Prior to 1985?

Q. Yes.

A. That's right, for the period 1980 to 1984

Q. Yes.

A. there were no actual figures available

Q. Yes.

A. from various sources in relation to what the bill-paying service might have been in those years.

Q. Yes, yes.

A. So they were actually added in in the final

Q. In the final reckoning?

A. That's correct.

Q. But, in fact, if they had been added in at the beginning the $\text{€}10$ million, of course, would have been higher?

A. Slightly higher, yes.

Q. You state that the maximum Expenditure Schedule represented Revenue's opening negotiating position for the meeting on the 8th of October, 2002. You state that a more conservative view of the Taxpayer's expenditure over the 20-year period, based on the assumption that all of the receipts and payments identified as having been received by him or on his behalf were, in fact, used to fund his known expenditure, suggested a lower or minimum expenditure figure for some $\text{€}6$ million over the period. In Revenue's view, the truer expenditure position most likely lay somewhere between these two extremes when account was taken, for example, of possible double counting and the fact that in relation to certain of the receipts payments, the link to the Taxpayer was tenuous, based on the available evidence.

A. That's correct, yes.

Q. And of course, you were considering that from the point of view of ultimately seeking to negotiate a compromise settlement with Mr. Haughey's agents?

A. Yes, yes.

Q. Now, in relation to the core expenditure that was arrived

at in the course of the negotiations on the 8th of October, you state that Mr. Gillanders in his statement has referred to the negotiating document discussed at a case meeting with the Board on the 23rd of September 2003, a copy of which has been provided to the Tribunal. You state that paragraph 3 of that document refers to a review of the items making up the gap between the potential maximum and minimum expenditure figures which was underway at that time. You state that the purpose of the exercise was to take a view as to whether, on the balance of probabilities, these items should be included or excluded in arriving at a core expenditure base which would represent a Revenue bottom line in the context of negotiations with the Taxpayer's agents?

A. That's right.

Q. You state that the outcome of that exercise is set out in a document entitled "Expenditure Base re CJH Discussions," a copy of which has been provided to the Tribunal. You state that the first date of the document summarised the outcome of the exercise, while the schedule, on the following pages, identified each item and the amount involved in respect of which a decision needed to be taken or whether on whether it should be included in a core baseline expenditure figure, summarised the available evidence in relation to each item and made a probability call to include or exclude particular items based on the available evidence, isn't that right?

A. That's right, yes.

Q. And you've then given three examples to, I suppose, illustrate the analysis that was undertaken in relation to these items of expenditure and receipts by by you and by other Revenue officials in advance of meeting with Mr. Haughey's representatives?

A. That's right, yes.

Q. And the first example that you refer to is the Gallagher payment of $\text{€}2300,000$?

A. Yes.

Q. And I think you will recall, of course, that the Tribunal heard evidence in relation to the provision of $\text{€}2300,000$ by Mr. Patrick Gallagher to Mr. Haughey in early January of 1980, isn't that right?

A. That's right, yes, yes.

Q. And there was also reference, I think, to an agreement between Mr. Gallagher and Mr. Haughey regarding an option to acquire certain lands comprised in Abbeville?

A. That is my recollection, yes.

Q. And I think evidence was also heard that it appeared that some of these funds, probably all of these funds, had been credited to a special account that had been opened by Mr. Traynor on, I think, the day that Mr. Haughey had been elected Taoiseach in December 1979, isn't that right?

A. That's correct, yes.

Q. And I think the bulk of the funds that were lodged to that account, it was ultimately shown in evidence, were applied

in the discharge of Mr. Haughey's liabilities to Allied

Irish Banks?

A. That's right.

Q. Now, you state, in relation to the Gallagher payment of
i;½300,000 made to the Taxpayer in 1980, was included in the
maximum Expenditure Schedule as a separate line item on the
basis that it had not been proven that it was used in part
satisfaction of the AIB overdraft?

A. That's right.

Q. You say, however, while not proven, all of the available
evidence pointed to the i;½300,000 having been received by
Mr. Des Traynor and used to part-fund the AIB settlement
which was itself reflected in the Expenditure Schedule,
isn't that right?

A. That's correct, yes.

Q. You state that on that basis, therefore, it was excluded
from the core expenditure figure to avoid double counting?

A. Yes.

Q. And that's perfectly understandable, why you would have
excluded it?

A. Yes.

Q. You say that, in addition, because the i;½300,000 Gallagher
payment had itself been subject to Capital Gains Tax in
1980, it needed to be excluded from the core expenditure
figure that was going to be used for a proxy for receipts
on which Gift Tax would be calculated, as otherwise it
would have been subjected to tax twice, isn't that right?

A. Yes.

Q. And that is also perfectly understandable. And just again on a point of detail, I think there where you said that it had been subject to Capital Gains Tax in 1980, I think, in fact, the evidence heard by the Tribunal was that the tax was paid many years after 1980?

A. Of course, yes, you are absolutely right.

Q. And I think that was as a result of Mr. Laurence Crowley, who had been the receiver of the Gallagher group, bringing that matter to the attention of the then-Chairman of the Revenue Commissioners, Mr. Pairceir?

A. That's right, that's right.

Q. Now, the second payment that you used to illustrate the analysis that you undertook in advance of the meeting of the 8th of October, were the payments of $\text{€}1/250,000$ from Skelligs, $\text{€}1/2260,000$ from Princes Investments, and $\text{€}1/243,000$ from Central Tourist Holdings and two lodgements totalling $\text{€}1/2245,000$ to an Amiens account from Bank of Ireland which were excluded from the core expenditure figure due to lack of evidence linking their use specifically for the benefit of the Taxpayer?

A. That's right.

Q. And just again there to recap: They were funds of which the Tribunal heard evidence in respect of lodgements to the account of Amiens Securities, isn't that correct?

A. That's correct, yes.

Q. And I think those lodgements were in or about times when

there had been hefty drawings from that account in favour of the bill-paying service, isn't that right?

A. Yes, yes.

Q. And then the final example that you've used to illustrate the analysis that you undertook in advance of the meeting was certain tax payments made by the Taxpayer over the years which were excluded from the core expenditure figure because an examination of the Deloitte & Touche client cheque payment schedule showed the specific amounts of the tax payments involved being made from the Deloitte & Touche bill-paying service, which was itself included in the core figure?

A. Yes, we received the schedules and can actually trace specific amounts

Q. Yes.

A. on the schedule for different years.

Q. And that was things like payments of residential property tax?

A. Absolutely, yes.

Q. Now, you state that the exercise produced what you considered to be a more realistic core expenditure figure of some $\text{€}7$ million. In addition, given that the Taxpayer's agents were unlikely to be in a position to dispute the actual expenditure information included in the maximum Expenditure Schedule, the exercise highlighted the areas that the agents were likely to target in terms of negotiating down from the maximum figure of $\text{€}10$ million?

A. Yes.

Q. You state that there would also be the areas these would also be the areas that the Revenue would be prepared to be flexible on at the negotiations, subject to securing a core expenditure figure of around $\text{€}1\frac{1}{2}$ million?

A. That's correct, yes.

Q. So that was really the objective of Revenue officials going into that meeting of the 8th of October, is that right?

A. It represented effectively what we saw as a bottom line figure.

Q. Yes. Now, you state that Mr. Gillanders' statement refers to the meeting of the 8th of October and to the preliminary discussions he had with the tax agents in advance of the main meeting, during which he set out your intended approach, that is the Revenue's intended approach, to the negotiations, and indicated that the Revenue would take a fair and rational approach to issues such as double counting. The substantive meeting lasted most of the day. At the outset, Revenue indicated that the aim was to try and arrive at a core expenditure figure for the Taxpayer, and that, once that was accomplished, the core expenditure figure would be taken as a proxy for receipts and form the basis upon which tax, and so forth, would be calculated. Some time was given over to clarifying for the agents how the schedule was compiled, and it was indicated that, in essence, it represented a worst case scenario for the Taxpayer. Some initial discussion took place on the issue

of possible double counting in the schedule and the fact that it included items that appeared to the agents to have tenuous links to the Taxpayer?

A. That's correct, yes.

Q. You state that from about 10:30 a.m. to 11:30 a.m., the discussion largely focused on the list of questions set out at the end of the Expenditure Schedule, which, as mentioned earlier, had been sent to Mr. Des Peelo on the 4th of October, in advance of the meeting?

A. That's correct.

Q. And I think, in fact, those selfsame questions had pretty much appeared on the draft schedule that you had provided to Mr. Peelo on the 4th of July?

A. That's correct.

Q. So indeed Mr. Peelo and Mr. Moore and Mr. Cooney had about two months or three months' advance notice that those issues would be raised by the Revenue?

A. Yes.

Q. They were matters on which the Revenue were seeking information?

A. That's correct.

Q. You state that, in this regard, Revenue were attempting to throw further light on these issues and to establish if additional expenditure items needed to be added to the Expenditure Schedule on the basis of any new information the agents might provide. The outcome of the discussions on those issues is reflected in the minutes of the meeting.

For example, in relation to the question about the application of the Taxpayer's Dail income of some $\frac{1}{2}$ €600,000 over the period, the agents indicated that their understanding was that the Taxpayer cashed his salary cheques from the late '70s on and did not lodge them to any accounts. This accorded with evidence given to the Tribunal, and, from Revenue's perspective, it allowed you to conclude that the Taxpayer's salary did not fund any of the items included in the Expenditure Schedule. You state that in relation to the IIB Bank balances, the agents indicated that the accounts were not in the client's name, that he had no control over them, and that, as far as they were aware, the balances were still there.

A. That's correct.

Q. And there I think what they are referring to were the balances in Irish Intercontinental Bank in the name of Ansbacher Cayman?

A. That's right.

Q. And which would have included funds referable to what have been described as the S8 and S9 accounts?

A. That's right, yes.

Q. You state that as regards the funding of the Taxpayer's expenditure since 1997 the agents indicated that he was continuing to survive on borrowings and on his pensions. The initial borrowings had been repaid out of the proceeds of the first land sale involving the interim settlement with the Revenue and the loan had then been renewed, is

that right?

A. That's correct.

Q. You state that following a break for coffee, a more detailed discussion then took place on the Expenditure Schedule itself. Following some debate about possible alternative approaches to arriving at a taxable figure and a suggestion by agents that the negotiations should be adjourned to allow for further reflection, Revenue proposed that the better approach would be to go through the Expenditure Schedule line by line with a view to confirming the figures which were not in dispute, excluding those figures that reflected double counting, etc., and adding back sums to cover gaps in the expenditure history from 1980 to 1984. You state that this exercise resulted in an agreed core expenditure figure of $\pounds 6.9$ million and that this figure was very close to the figure of $\pounds 7.1$ million pounds that Revenue had targeted prior to the meeting?

A. That's correct.

Q. You state that all of the items excluded from the Expenditure Schedule had been considered by Revenue as being likely candidates for exclusion based on the pre-meeting analysis, as documented in the 'Expenditure base re CJH' discussions paper referred to in paragraph 11 of this statement. You state that those considerations and the negotiating mandate to be fair and rational in your approach, as indicated the Taxpayer's agents at the commencement of the meeting by Mr. Gillanders, guided your

approach on the day?

A. That's right, yes.

Q. You state that following agreement on the core expenditure figure the discussions then turned to the amount of Gift Tax interest that would arise if this expenditure was to be treated as a proxy for taxable gifts. Revenue indicated that even if the interest element was capped at 100 percent of the tax the liability would be some $\frac{1}{2}$ 5.5 million, but accepted that because of the lack of information as to the source of payments the tax position could not be fully demonstrated. Following a break for lunch the agents pressed to know what Revenue's bottom line figure would be for tax and interest with a view to settling the case. At this stage you arranged for Mr. Gillanders to join the discussion and his statement covers the events that ensued subsequently.

A. That's correct, yes.

Q. And you conclude your statement by saying that you continue to be involved on the ongoing negotiations, which concluded with the signing of an agreement between Revenue and Mr. Haughey on the 18th of March 2003?

A. That's correct.

Q. Now, Mr. McCabe, before proceeding to discuss the matters that led up to the settlement and the settlement itself in 2002, I just want to recap very briefly on some of the evidence that you already gave back in early 2001 regarding the general efforts that you were making to inquire into

Mr. Haughey's tax affairs, both during and after the

McCracken Tribunal?

A. That's fine, yes.

Q. Now, I think we know from your previous evidence that being

within the Capital Taxes Division, your primary focus at

that time was in the raising of assessment to Capital

Acquisitions Tax in respect of the Dunnes Payments

identified by the McCracken Tribunal report, and that those

assessments were raised, I think, on the 12th of December

or the 10th of December of 1997, isn't that right?

A. That's correct.

Q. Now, I think you also referred in your previous evidence,

as well to what you described as "other contacts" that you

had with Mr. Haughey. And in that context you referred to

a notice which you also issued on the same date as

Mr. Haughey's assessments to Capital Acquisitions Tax, that

is on the 12th of December, 1997 and I think that was a

notice pursuant to Section 36(4) of the Capital

Acquisitions Tax Act of 1976, isn't that right?

A. That's correct, yes.

Q. And I think we can put a copy of that document on the

screen and we can, I think, hand one up to you, as well.

(Document handed to witness.)

A. Thank you.

Q. You see it's addressed to Mr. Charles Haughey, Abbeville,

Kinsealy, County Dublin, from Mr. Brian McCabe, Principal

Officer, Capital Taxes Division, Office of the Revenue

Commissioners. And it's,

"Notice pursuant to Section 36(4)(d) of the Capital Acquisitions Tax Act, 1976, as substituted by Section 74 of the Finance Act, 1989."

And it states, "You are hereby required to deliver within the prescribed period (i.e. within 4 months of the date hereof) self-assessed returns in respect of -

"(a) All taxable gifts which, up to and including the date of this notice, were taken by you (from any disponer) on or after the 28th of February, 1974, and

"(b) All taxable inheritances which, up to and including the date of this notice, were taken by you (from any disponer) on or after 1 April, 1975."

And it's signed by you. It's dated the 10th of December, 1997, and it's stamped "Capital Taxes Division".

A. That's right.

Q. And that is a statutory notice whereby the Revenue Commissioners require a Taxpayer to make a return in relation to all gifts and inheritances, isn't that right?

A. Yes, all taxable gifts and inheritances.

Q. All taxable gifts and inheritances. And I think it's clear from the contents of the notice that the return was required within four months of the date of the notice?

A. That's correct.

Q. So that would have been sometime around April of 1998?

A. Yes.

Q. And am I correct this thinking that, in fact, no return was

received in April of 1998 and indeed no formal return was ever received by Mr. Haughey in response to that notice?

A. That's correct. I mean, there were promises made that they were working on them, but, in effect, we never got returns in respect of these gifts and inheritances.

Q. Now, I am not going to go into details of the correspondence that passed between you and Mr. Haughey's tax agent and representatives over that period, '97/'98/'99, because it was already referred to, and we know, I think, that on the 29th of June you did receive a memorandum

A. That's right.

Q. that had been prepared by Mr. Peelo?

A. That's correct.

Q. In which he referred, I think, to an additional payment from Mr. Dunne in the sum of $\text{£}80,000$?

A. That's right.

Q. And I think also a sum of money from Mr. Dermot Desmond that was described as a loan

A. That's right.

Q. of, I think, $\text{£}125,000$?

A. That's correct.

Q. sterling. And I think arising out of that memorandum, that you raised further queries of Mr. Moore and Mr. Peelo, isn't that right?

A. That's correct, yes.

Q. And you may have had meetings with them, and so forth?

A. Yes, I think there were two subsequent meetings with them.

Q. And I think you may have received some information but that you appear to have taken the view that there was nothing new in the information you received and that it was largely information that was already in the public domain as a result of evidence that had been led at this Tribunal?

A. That's right.

Q. And I think that that was in or about the middle of 1999, would that be right?

A. That's correct, yes.

Q. There or thereabouts?

A. '98, I think it was.

Q. '98?

A. Yes.

Q. And then I think you were really taken up with the appeal to the Appeal Commissioners

A. Yes.

Q. and the further appeal to the Circuit Court, and what has been described as the 'Interim settlement' that I think was concluded in May of 2000, isn't that right?

A. April 2000, I think, yes.

Q. April 2000?

A. Yes.

Q. Now, we heard yesterday from Mr. Gillanders that immediately after the interim settlement, which would have been around 2000, the strategy of the Revenue Commissioners at that stage as regards Mr. Haughey's wider tax

liabilities was to continue to monitor the evidence which was emerging at this Tribunal and ultimately to seek to recover whatever tax was due by Mr. Haughey after the work of the Tribunal had completed, isn't that right?

A. Yes, which would have been what we did in relation to McCracken; awaited the outcome, the findings of fact, and then move.

Q. Yes, yes. And I think Mr. Gillanders also explained yesterday in his evidence that, in about the middle of 2001, there was an alteration in that approach by the Revenue Commissioners, isn't that right?

A. That's right.

Q. And I think that was largely because it was clear that, if you like, the money trail evidence that had been led in this Tribunal had largely come to a conclusion?

A. That's correct, yes.

Q. And it was, I think, clear to the Revenue Commissioners that Mr. Haughey was going to have a sizable exposure to additional tax?

A. Yes.

Q. And I think Mr. Gillanders also referred to, and what clearly was, a very extensive analysis that was undertaken both by Revenue officials and indeed also by solicitors and counsel who were advising the Revenue Commissioners, isn't that right?

A. That's correct.

Q. And he also referred to the fact that probably the

principal issue that was facing Revenue officials and the Revenue Commissioners at that stage was the best approach to seeking to collect this tax from Mr. Haughey?

A. Yes, well I suppose what the appropriate approach was, based on the facts and evidence we had.

Q. Yes, yes. And I suppose the most immediate dilemma that was facing the Revenue Commissioners was whether to approach this from the point of view of Income Tax or from the point of view of Capital Acquisitions Tax, isn't that correct?

A. That's correct, yes.

Q. And I think Mr. Gillanders in his evidence yesterday, and I don't know if you can assist the Tribunal further, he explained the difficulties that the Revenue Commissioners would have faced had they sought to assess these receipts to Income Tax, isn't that right?

A. Yes.

Q. And I think he explained that the principal difficulty that the Revenue Commissioners faced was that in order to assess receipts to Income Tax, according to the statute and on the basis of the case law, that what you have to have is a source of income?

A. Yes, yes, you need a source.

Q. And you have to have an identifiable source of income, isn't that right?

A. Well you need to know that there is a source, you know. You don't necessarily have to identify the source but there

has to be a source.

Q. Right. So in other words, there have to be earnings, isn't that right?

A. Well it could be earnings for, it could be a trade/profession, it could be for the provision of services or whatever, but there has to be a source.

Q. Yes. And just so that the public will understand the distinction, is it correct that the 'Source' in that context means a profession or a job or a trade or some activity from which there is a periodic return?

A. Generally speaking, yes.

Q. Yes.

A. Yes.

Q. Now, I think Mr. Gillanders also explained that in those circumstances, it would have been difficult for the Revenue Commissioners to raise what he would describe, I think, as a 'Credible assessment to Income Tax'?

A. Yes.

Q. Is that right?

A. Yes, yes, and our legal advice was to that effect.

Q. Yes. And I think following all of that analysis and following the taking of legal advice on it it was decided that the only approach available to the Revenue Commissioners, if they were to recover any tax in relation to these sums, was to seek to tax the sums under the Capital Acquisitions Tax code?

A. Absolutely, yes.

Q. And I think that even having reached that determination that there were also problems associated with taxing these amounts under the Capital Acquisitions Tax code, am I correct in that?

A. Yes, indeed, yes.

Q. And I suppose you, as a Principal within the Capital Taxes Division, would have been acutely aware of those, would you?

A. Yes, indeed, and having been involved in the initial appeal case.

Q. Yes.

A. And having been at the receiving end of the nil assessments

Q. Yes.

A. Imported for by the Appeal Commissioners, we were very acutely aware of the difficulties.

Q. And could you just explain again, from the point of view of a member of the public?

A. Yes. Well, basically, I mean, we have to bring the individual within the charge to tax.

Q. Yes.

A. I mean he has to be absolutely within the provisions of the legislation. So essentially for a gift to be a taxable gift, the donor, at that stage, had to be domiciled here, or the property comprised in the gift had to be located here.

Q. Right?

A. And, as we know, in many of the payments the property or the payments came from abroad.

Q. Yes.

A. From foreign trusts.

Q. Yes.

A. From companies, so there was difficulties in establishing a clear evidence trail and money trail to be able to say that the disponent was definitively Irish-domiciled.

Q. Yes.

A. That was a major difficulty.

Q. Yes. Can I also just ask you to comment on this: Would I be correct in thinking that the decision to proceed by way of Capital Acquisitions Tax rather than Income Tax, while, in fairness, it wasn't really a decision that was open to the Revenue, it was forced on the Revenue because of the provisions of the Acts, but that, I take it, had, I suppose, significant beneficial consequences for the Taxpayer, isn't that right, in terms of the rate of tax that was applicable?

A. Well, had the payments been clearly income

Q. Yes.

A. then a different set of scenarios and rules and procedures would have applied.

Q. It is the case, though, Mr. Treacy [sic], isn't it, that the rate of Income Tax - Mr. McCabe, I do apologise; it is the case, though, Mr. McCabe, that the rate of Income Tax would have been much higher than 40 percent during

those years?

A. Yes, in the early years of the '80s, for example, the rate of Gift Tax would have been very as high as 65 percent,

so...

Q. 65 percent?

A. 65, yes, in the early days.

Q. And when did it in the early '80s?

A. It then dropped, gradually, to 40, and it's now down to 20 percent.

Q. And when did it drop to 40 percent?

A. I would think probably sometime in the maybe mid-'80s.

Q. In the mid-'80s

A. I can check that for you.

Q. But from the mid-'80s

A. But your premise is correct, yes, in general.

Q. Yes. I mean, from the mid-'80s to 1997 the higher rate of Income Tax would have been much, much higher than 40 percent?

A. Probably, yes, indeed, yes.

Q. And of course the rate of CAT that was applied across the Board to these payments was 40 percent, isn't that right?

A. Yes. Just to be clear on that 40 percent, that is the effective rate, in other words when we did all of the calculations and applied all of the appropriate rates of tax for the particular years, applied all of the aggregation rules applied in the particular years, the effective rate of tax ended up at 40 percent.

Q. And had you undertaken that calculation in advance of the meeting of the 8th

A. Oh absolutely, we had carried out very detailed calculations, yes.

Q. So when the minute of the 8th of October refers to you indicating that on the basis of a rule of thumb it would be 40 percent, you had done your calculations in advance?

A. Absolutely, absolutely.

Q. OK. Now, I think Mr. Treacy will explain about the raising or request for a Statement of Affairs from Mr. Haughey on the 21st of August, but I suppose that was the way in which the Revenue reengaged with Mr. Haughey and his representatives after the conclusion of the interim settlement, isn't that right?

A. Yes, yes.

Q. That was the request for a Statement of Affairs which I think was hand-delivered on the 21st of August

A. That's correct.

Q. of 2001. And I think it was

CHAIRMAN: Ms. O'Brien, just one matter whilst it is in my mind. Mr. McCabe, on Ms. O'Brien's last question, you referred to the 40 percent not being an automatic appraisal of gross value of a gift. There to had to be indexation, and so on.

A. Absolutely, yes.

CHAIRMAN: The fact that there hadn't been disclosure and some years had gone by, that didn't affect the Taxpayer's

entitlement to have it indexed on the appropriate

A. Oh, absolutely, yes. We had to apply the law in the correct and proper manner.

CHAIRMAN: I see.

Q. MS. O'BRIEN: And I think it was arising out of difficulties which were encountered in preparing a Statement of Affairs. And indeed furnishing it, that the initial opening meeting of the 29th of April arose?

A. Yes.

Q. And I think I referred to the minute of that meeting in some detail in the Opening Statement. I don't propose opening it at this juncture?

A. That is fine.

Q. But you were in attendance?

A. I was, yes.

Q. At that meeting, and Mr. Gillanders was in attendance at the meeting, and there were quite lengthy discussions between you and Mr. Moore, Mr. Peelo and Mr. Cooney, isn't that right?

A. That's correct, yes.

Q. And there was an indication that there was a recognition on the part of Mr. Haughey that he owed further tax arising out of the evidence that had been heard by this Tribunal, and that there was a willingness on his part to pay that?

A. Yes.

Q. And I think the next meeting you then had was on the 6th of June, 2003, isn't that right?

A. 2002, I think.

Q. Sorry, 2002, pardon me.

A. Yes.

Q. And I think you will find a copy of the minute of that meeting at Divider 2 in the Book of Documents. I don't know if you have a book with you in the witness box, but I can arrange to have one handed up to you.

(Book of documents handed to the witness.)

A. Thank you.

Q. That is "Minutes of meeting with agents for CJH, 11:30 a.m., Thursday 6 June, 2002, in Stamping Building, Dublin Castle."

"In attendance were: Mr. Paul Moore, Mr. Terry Cooney, tax agents. Mr. Norman Gillanders, Mr. Brian McCabe, Capital Taxes Division. And Mr. Robert Harrington and Mr. Stephen Treacy, Chief Inspector's Office."

It states,

"The meeting was a follow-on to the meeting of 29 April."

"At the outset the agents indicated that they had consulted

with their client following the initial meeting at

end-April to clarify their terms of reference and to

establish the client's position in relation to addressing

and progressing tax liabilities arising from the Moriarty

Tribunal revelations. They indicated that the client's

preferred course of action is to proceed along a settlement

route rather than the confrontational assessments route.

The agents again confirmed to Revenue that their role was

that of 'tax agents' with a remit to put tax order on the client's affairs. They stressed that they were not forensic accountants and did not see that as coming within their specific remit or area of expertise.

"They indicated that, to date, Des Peelo has performed the forensic accountant role. However, since the last meeting with the Revenue during which the agents had undertaken, inter alia, to refine their view of the client's position, Peelo had had some reservations on how best to proceed in the absence of the Moriarty Tribunal report. As far as the agents were aware, this matter was not as yet resolved.

The upshot was that no progress had been made at their end as regards the undertakings given at the last meeting.

"Revenue expressed surprise and disappointment at this turn of events. It was made clear that Revenue were not looking for perfection as regards the agents' view of the client's affairs at this stage. For the most part, Revenue had no information that was not equally available to the agents from the various Tribunal revelations. However, there were known expenditure and income figures in relation to the client and the gap between them had to be explained.

Revenue's position in this regard has already been made quite clear - the client's tax liabilities had to be brought to a conclusion.

Then over the page: "Revenue's preferred course was that of negotiation having regard, for example, to the client's health. There was an expectation on the part of Revenue

that the agents would make a material submission on the matter so that detailed discussions and negotiations could commence. In the absence of progress, Revenue would have to start taking a view on the matter and try and advance things along the alternative assessment route. Revenue accepted that not all issues were 'black or white' but the important thing was to commence an engagement on the figures and at least identify those issues. At the end of the day, any agreement or settlement would have to be conditional on the ultimate findings of the Moriarty Tribunal in relation to the client and it is certainly not evident at this stage what such findings might be, other than the fact that there appears to be a huge gap between the client's declared income and his level of expenditure over many years.

"The agents indicated that they appreciated that Revenue were attempting to deal with the case in a positive way. They wanted to make it clear that they were not in the business of hindering that progress but the question was how matters could be moved on. Unlike in the previous settlement, the Moriarty Tribunal had not reported as yet, which made it difficult for them to pin down figures.

"It was agreed that a further meeting would take place towards the end of June - tentatively scheduled for 11 a.m. on Thursday 27th. It was made clear by Revenue that progress would be expected at that time in terms of a submission. The agents accepted this and indicated that

they would be in a position to show progress at that stage.

"During the meeting, the question of how any ultimate settlement might be funded was briefly raised with the agents. They indicated that they had broached the matter with the client but did not elaborate.

"Also the matter of whether the forms 62.BD had been circulated was raised by Revenue. Agents indicate that they had been given to the client's secretary for circulation, but could not confirm if it had actually been carried out as yet."

And that is signed by you and dated the 4th of June - sorry, the 7th of June?

A. Yes.

Q. So, in fact, no submission was received from the Taxpayer's agents at that meeting?

A. No.

Q. And there had been little progress, really, I suppose between the 29th of April and the 6th of June?

A. No progress was certainly reported to us.

Q. You then had another meeting on the 4th of July, 2002 and I think that meeting really had been arranged in principle at the earlier meeting on the 6th of June, isn't that right?

A. Yes.

Q. And it was a month, roughly a month later?

A. Yes.

Q. And this time it was Mr. Moore, Mr. Haughey's tax agent, Mr. Gillanders and yourself?

A. That's correct.

Q. And the meeting was a follow-on to the meeting of the 2nd of June which, I think probably - the 4th of June. And it records, "Mr. Moore indicated that he had met the client recently on his return from holidays and had discussed developments with him arising from the Revenue contacts. As a result of that discussion he could report that the client genuinely wanted to settle his tax affairs with Revenue once and for all and in that regard was anxious to bring the matter to finality.

"Mr. Moore indicated that he advised the client that the important thing was to get discussions with Revenue back on track. The issue of funding would have to be addressed and sorted in due course.

"As regards how best to move the discussions forward, Mr. Moore referred to the fact that unlike the McCracken Payments, there was no final Moriarty Report available which could form a common basis for discussion. As had been indicated at the previous meeting, the forensic accountant, Mr. Peelo, had some reservations on how best to proceed in the absence of the Moriarty Tribunal report. In that regard, however, he indicated that the client planned to meet with Mr. Peelo shortly.

"Revenue emphasised the importance of injecting momentum into the discussions and to get down to detailed negotiations with a view to reaching a settlement if possible. For that to happen, the agents needed to take a

view of their client's tax affairs having regard to all of the Moriarty revelations, etc.

"It was agreed that a further meeting should take place in late July, early August at which the agents would demonstrate progress in relation to a negotiation position.

Mr. Moore is to contact Revenue to determine a suitable date.

"During the meeting it was mentioned that there were outstanding matters arising from the gifting of land to the client by his children - Mr. Moore agreed to follow these up with the client's tax compliance agent."

And again that is signed by you and dated 4 July, 2002?

A. That's correct

Q. So really there hadn't been any further progress again from the previous meeting in early June, isn't that right?

A. No.

Q. And really, I suppose, you seem to have covered much the same kind of ground at both of those meetings.

A. Yes, yes, indeed.

Q. You were being told that Mr. Haughey generally wanted to settle the case, but there wasn't very much in the way of firm proposals or movement towards a position where you could negotiate?

A. That's correct.

Q. And I think it was either at or immediately following that meeting that you furnished, Mr. Moore presumably, with a copy of the draft Expenditure Schedule?

A. Yes, I think immediately after the meeting

Q. Yes.

A. Following the meeting, it became clear that no progress had been made.

Q. Yes.

A. So this was an effort to sort of move things along.

Q. Right. And, in fact, as I had indicated during your statement, that draft schedule - I am not going to open the draft because I will open the actual Expenditure Schedule itself - it was fairly well worked up?

A. Yes, at that stage.

Q. There was very little in the final schedule that wasn't in that draft schedule that you furnished to Mr. Moore on the 4th of July

A. That's correct.

Q. in the hope of speeding things up?

A. Yes.

Q. Now, we know that in early September Mr. Gillanders - now, you were giving them that schedule on the 4th of July with the intention that it might move on negotiations but just for a moment, Mr. McCabe, I want you to bear in mind that you had raised the notice back on the 10th of December

A. That's correct.

Q. of 1997. And you had received no return from Mr. Haughey, isn't that right?

A. That's right, yes.

Q. You had received some information but as far as you were

concerned that was not information over and above the evidence that had been led at the Tribunal, isn't that right?

A. Yes, yes.

Q. And what I want to ask you is this: Why is it that on the 4th of July, instead of asking Mr. Haughey's agents where the money came from, did you decide, or did the Revenue decide, instead, to furnish the draft Expenditure Schedule?

A. Well I think the purpose, as I say, was to try and move the discussions forward. Over the course of two or three meetings the line coming from the agents was that they needed to await the outcome of this Tribunal's findings and then perhaps engage in negotiation on facts, whereas we were aware, based on the Tribunal's findings and our own investigations, that there seemed to be tax issues for the man to answer to.

Q. But am I not right in thinking that under self-assessment there is an obligation on the Taxpayer to account for monies in his hands?

A. Yes, if he has received a taxable gift, which of course was the core of the issue; were these payments taxable gifts or not?

Q. But no information was actually furnished by Mr. Haughey or his tax agents, isn't that the position?

A. By way of returns?

Q. By way of returns or by way of information over and above what was led in evidence

A. I think that's correct, yes.

Q. at the Tribunal. He was asked, isn't that right?

A. Oh he was indeed, yes. Yes.

Q. Was there anything further that the Revenue might have done to insist on that information being furnished?

A. Again, is this in terms of seeking returns?

Q. Seeking returns or seeking information, both?

A. Well, I mean, we could, I suppose, have sued to compel the making of a return.

Q. Yes.

A. But to do that we would have had to demonstrate, in court, that, in fact, we have an obligation based on the payments; in other words that they came within the charge to tax, which would have led us into producing evidence in court that the man was taxable on the basis of Gift Tax.

Q. Yes.

A. Now, that you can see the dangers from Revenue's perspective, in going down that road, had an adverse decision been taken in the context where we were trying to negotiate a settlement.

Q. I suppose what I am really trying to get at in this, and I am not faulting you or criticising you in any way for furnishing the Expenditure Schedule or the draft schedules, but really Revenue had shown their hand to Mr. Haughey by furnishing that schedule, hadn't they?

A. Yes, but that schedule, remember, from our perspective, showed a maximum, you know, it was the worst case scenario.

So we were that was an opening negotiating position.

Q. Well I know you say it was a worst case scenario but there again, as I pointed out to you, it didn't include the provision of any expenditure prior to 1985, isn't that right?

A. That's right.

Q. Now, we know, in any event, that on the 2nd or 3rd of September, I think it was the 6th of September, that Mr. Gillanders met with Mr. Peelo, and Mr. Peelo having had the benefit of the Revenue draft Expenditure Schedule, offered $\frac{1}{2}$ million?

A. That's correct.

Q. So that was, if you like, was his choreographing of the settlement in the same way as Mr. Gillanders indicated that the Expenditure Schedule was the Revenue's choreography of the settlement, isn't that right?

A. Yes, yes, yes.

Q. That was his opener?

A. Yes.

Q. Now, on the 4th of October, prior to - four days prior to the scheduled meeting - Mr. Gillanders sent to Mr. Peelo the revised Core Expenditure Schedule, isn't that right?

A. That's correct.

Q. Now, we are going to look at this in some detail but I think - I think it might be difficult to see the entire document as a whole on the screen but we are going to see what we can do. Now, it's headed there "Expenditure

Schedule for discussion at meeting with CJH agents 8th

October, 2002." Isn't that right?

A. That's right.

Q. Now, if we just maybe move it over to the left of the document, on the left-hand side, and we will go through these one by one, but on the left-hand side you have the list of items, isn't that right?

A. Yes.

Q. And then if we just go across the page again you have the - each of the years from 1977 to 1997?

A. Yes.

Q. Isn't that right? And where there has been a receipt or expenditure referable to one of the items on the left in a given year you have an entry for that year, isn't that right?

A. That's correct.

Q. And then over on the right of the document in bold, sorry the right of the document, in bold, you have a total for each of the separate items?

A. That's right.

Q. And then if we just go over to the second page of the document for a moment you will see there on the left "total" and you have a total for shown for each year, isn't that correct?

A. That's right.

Q. And if we go over to the right-hand far corner of the document, you then have a total for all years?

A. Yes.

Q. Now, if we go back over to the first page again and we will just look at each of the items. And as you said earlier and explained in your Opening Statement, these items included both expenditures and receipts, isn't that right?

A. Yes, yes.

Q. And the only receipts excluded were those where there was a known application for the receipts to the expenditures?

A. Yes, for the purpose of the table, that is how we did it, yes.

Q. So the first entry was expenditure 1977 - 1984, and there was no entry at all for that item, isn't that right?

A. That's correct, we were asking the agents that question, basically.

Q. Yes. And I think we can recall that, in fact, there were no records available for the Haughey Boland bill-paying service prior to 1985?

A. That's correct.

Q. And that is why you put in the question mark?

A. Yes.

Q. There were, of course, statements for the Guinness & Mahon accounts so that could be some guidance as to what the figure would be?

A. Yes, indeed.

Q. But for the moment you had left the figures for those years out?

A. Yes.

Q. Now, the second entry then is Deloitte & Touche/Haughey Boland bill-paying, and you have an entry there for each of the years 1985 to 1991, and that I think accords with the evidence which the Tribunal heard as to the amounts that went through the bill-paying service in each of those years?

A. That's correct, yes.

Q. And I think just to recap: The reason for the small figure in 1991 of $\text{€}16,000$ is because the very early part of 1991 the bill-paying service passed from Haughey Boland, which by then had become a very large accountancy firm, to Mr. Jack Stakelum?

A. That's correct.

Q. Now, the third entry then if we go back over to the left-hand side of the page, is Stakelum bill-paying and that is the bill-paying service conducted and operated by Mr. Jack Stakelum and you have figures there for the years 1991 to 1997, isn't that right?

A. That's right, yes.

Q. And again, those figures roughly accord with evidence that the Tribunal heard as to the sums passing through the bill-paying service for those years, isn't that right?

A. That's correct, that's correct.

Q. Now, the fourth entry there, which is, I think, also an expenditure entry, is Irish Helicopters and the whole item for that entry relates to the year 1982 in the sum of $\text{€}11,000$, isn't that right?

A. That's correct, yes.

Q. And I think that relates to evidence heard by the Tribunal of a debit to a Guinness & Mahon account in favour of Irish Helicopters?

A. That's correct.

Q. Now, I think the next three entries are again expenditure entries and I can probably deal with them together because all three relate to 1992; and they are expenditures and payments to Mr. Sean Haughey, Mr. Conor Haughey, and to Dr. John O'Connell, isn't that right?

A. Yes.

Q. And if we go over then, to the year 1992 we see the item there for that entry to Mr. Sean Haughey, i.e. 1/25,000; Mr. Conor Haughey, i.e. 1/25,000; and Dr. John O'Connell, i.e. 1/15,000, isn't that right?

A. Yes.

Q. And again, I think that relates to evidence heard by the Tribunal of debits to Ansbacher accounts in Irish Intercontinental Bank and equivalent debits, I think, into the S8 account?

A. That's correct.

Q. Then if we look at the next entry, which I think is also an expenditure entry; it's Galtee Deer Care Limited. And if we go over - across - the page to 1993 we see an entry there, an item of i.e. 1/71,000, is that right?

A. That's right, yes.

Q. And I think, again, that relates to a debit to an Ansbacher

account in Irish Intercontinental Bank, is that right?

A. That's correct.

Q. And I think the Tribunal heard evidence that a corresponding debit was made to the S9 Deutschmark memorandum?

A. I think that's correct, yes.

Q. Now, the next entry on the left-hand side of the page, which is again an expenditure item, is Frank Glennon Limited, isn't that right?

A. That's right.

Q. And there were two separate items under that entry, two separate expenditures, one in 1985 - maybe if we use a pointer to show that on the overhead projector - of $\text{£}10,000$; and then across the page, one in 1993 of $\text{£}25,000$?

A. That's correct.

Q. And again, I think that relates to evidence heard at sittings of the Tribunal, isn't that right?

A. Yes, yes.

Q. I think just to recap in relation to the $\text{£}10,000$, I think that related to a payment which was - ultimately appeared to have its source, a loan to Mr. P.V. Doyle, isn't that right?

A. That's correct, I think, yes.

Q. And the monies from that loan, I think, passed to the Amiens account and $\text{£}10,000$ of that was made to Mr. Frank Glennon?

A. That's correct.

Q. If we look just across to 1993, to the £25,000, I think that, again, related to evidence heard of a payment out of an Ansbacher account in Irish Intercontinental Bank, and a corresponding debit to the S9 Deutschmark account?

A. Yes.

Q. Now the next entry - next two entries - are Guinness & Mahon interest on two separate numbered accounts, isn't that right?

A. That's correct.

Q. And that would have been apparent, there are entries there or items of interest running from 1980 up to 1987, when the debit balance on the accounts was finally cleared out of a TriplePlan Cheque, isn't that right?

A. That's right.

Q. And again, you would have classed those as expenditure items, isn't that right?

A. Yes.

Q. Because Mr. Haughey would have had a liability to pay the interest on the overdrawn accounts?

A. He had to fund the interest, yes.

Q. The next item was a similar item, it's Northern Bank Finance Corporation interest: 1981, 21,000; 1982, 31,000; and 1983, 4,000?

A. That's correct.

Q. And again, I think that is apparent from evidence which the Tribunal heard regarding documents in respect of that loan, which showed that interest in that amount had been paid,

isn't that right?

A. That's right.

Q. Now, the next entry on the left-hand side of the page is "P.V. Doyle 'Loan 1' interest," and there are entries then for interest paid in 1983 of 15,000; 1984, 25,000; 1985, 30,000; 1986, 21,000; and 1987, 26,000; and then, finally, I think the loans were paid from the estate of Mr. Doyle in 1988. There was an interest amount of $\dot{i}_{\dot{c}}^{1/2}$ 2,000, isn't that right?

A. That's correct, yes.

Q. And similarly in relation to loan number 2, there are also two interest payments, one in 1986 and one in 1987, each of them for $\dot{i}_{\dot{c}}^{1/2}$ 6,000?

A. Yes.

Q. And again, I think they also relate to evidence which the Tribunal heard regarding lodgements of cheques drawn on accounts that appear to have been in the name of Mr. Doyle

A. That's right.

Q. to meet those interest liabilities on loans in his name?

A. That's right.

Q. So they were also considered to be expenditures by Mr. Haughey?

A. Which needed to be funded, yes.

Q. Yes. Now, the next item I suppose is a similar item, it's Guinness & Mahon Cayman Trust interest, and there are two entries there for 1985 and 1986, one for $\dot{i}_{\dot{c}}^{1/2}$ 68,000 and one

for $\text{€}96,000$?

A. That's right.

Q. And I think, again, that arises from evidence heard by the Tribunal in relation to applications for exchange control approval made by Mr. Traynor on behalf of Mr. Haughey, isn't that right?

A. That's right.

Q. And I think those applications recorded that interest had to be paid on those loans in those amounts?

A. Yes.

Q. Now, the next entry is the next entry is AIB/Merchant/ACC. And I think that relates to loans that were made available to Mr. Haughey, isn't that right?

A. That's correct.

Q. And, in fact, the repayment of the loans?

A. Yes.

Q. And the first item listed there is $\text{€}750,000$, in 1980?

A. That's right.

Q. And that is in respect, presumably, of the repayment of Mr. Haughey's liabilities to Allied Irish Banks on foot of a settlement that had been concluded with

A. That's correct, that's correct.

Q. The second item, we can see there under that entry, is in 1982, and that is $\text{€}23,000$, and again, I think the Tribunal heard evidence of the repayment of two loans to Merchant Banking Limited, isn't that right?

A. Yes.

Q. And I think, in fact, that was after Merchant Banking was in it was in liquidation, I think, isn't that right?

A. Yes, I think so.

Q. The repayments were to the liquidator, Mr. Shortall?

A. Yes.

Q. And then the third item under that entry is in 1987, $\text{£}105,000$, and that is the repayment to ACC bank, is that correct?

A. That's right.

Q. And, in fact, that is part of the illustration that you referred to in your statement, isn't that right?

A. Yes, indeed.

Q. You could trace that $\text{£}105,000$ back to the Bangor Ben Dunne payment of $\text{£}204,000$, and $105,000$ was accounted for in this schedule by that entry of $105,000$ in the repayment of the ACC loan?

A. That's right.

Q. Then you have another separate entry, "ACC interest, '85/'86". For 1985 you have $12,000$ and for 1986 you have $16,000$?

A. Yes.

Q. And again, they are separate expenditures by Mr. Haughey and evidence of them was heard by the Tribunal

A. Yes.

Q. is that right? And then you have an entry "Sundry Payments", and there is items in 1983 and 1984, and they are $\text{£}6,000$ each?

A. Yes, these are very minor items that appeared on the bank statements.

Q. Yes. And I think they were on the Guinness & Mahon Bank statements, isn't that right?

A. That's correct, that's correct, yes.

Q. Now, then you have an entry "Leaders Allowance Account."

And there is a single item in respect of that entry in

1991, and that is $\text{€}1/238,000$

A. Yes.

Q. is that right? And I think that that relates to evidence which the Tribunal heard in relation to drawings from that account in that year 1991, isn't that correct?

A. That's correct, yes.

Q. And I think there the drawings such as the French franc amounts and payments to Le Coq Hardi restaurant, and so forth?

A. That's right.

Q. And again, that is an expenditure item on the schedule?

A. Yes.

Q. Now, the next entry is "Traynor cheque, 1977, $\text{€}1/210,000$ ", isn't that right?

A. That's right.

Q. And I think that, in fact, is a receipt item?

A. Yes.

Q. I think it relates to evidence which the Tribunal heard of a cheque

A. Indeed, was made out to Mr. Haughey.

Q. was made out to Mr. Haughey by Mr. Traynor?

A. Yes, yes.

Q. You then you have figures "Ben Dunne Receipts" and you have entries for 1987, 1988, 1989, 1990 and 1991, and then below that you also have "TriplePlan Cash" at 1/226,000, isn't that right?

A. That's correct, yes.

Q. And sorry, I seem to have left out one entry before the Ben Dunne one, but I think I will go back to that if that is all right with you?

A. OK.

Q. And the total you have then on the right is 1,431,000?

A. That's right, yes.

Q. And I think, in fact, you have prepared a separate schedule for the Tribunal showing precisely how you arrived at that figure

A. Yes.

Q. isn't that right? Because I think you accept that - I think it's accepted - I think it's accepted by the Revenue - there is no dispute about this - that the total figure in respect of which evidence has been heard of payments from Mr. Dunne to Mr. Haughey, is 2,119,000?

A. Yes, indeed, yes, yes.

Q. In fact, we may as well have a look at that schedule now, if that is all right with you?

A. That is fine, yes.

Q. And it's headed "Reconciliation of Ben Dunne payments with

Expenditure Schedule," and this is to show how you arrived at the figure for each year and how you arrived at the total figure of $\text{€}1,431,000$ in the schedule, notwithstanding that the actual amount received was $\text{€}2,119,000$, isn't that right.

A. Yes.

Q. If we just go to the first one, the Bangor Cheque, line item 59,000; bill-paying, 40,000; other, 105,000; overall total, 204,000, and I think that was the illustration in your statement, isn't that right?

A. Yes, yes.

Q. The 105,000 went to ACC, the 40,000 went to bill-paying, and 59,000, the evidence was, or in fact the findings were, that that was in cash to Mr. Dunne, so it was the 59,000 that went into the core Expenditure Schedule because the other items were represented by other entries on the Expenditure Schedule?

A. Yes, yes, absolutely.

Q. The next one is TriplePlan, and I think there might be a mistake there because I don't think 285,000 went to bill-paying; I think that went to clearing the Guinness & Mahon account, isn't that right?

A. Yes, I think what I am saying there is that it cleared the overdraft and the overdraft arose essentially from the bill-paying, so the 285 is reflected in the bill-paying over a period of time.

Q. Yes, that is for the purposes of your computation of

Expenditure Schedule, but it is an assumption, isn't it, that the Guinness & Mahon overdraft is accounted for by the bill-paying?

A. Well, certainly there were drawings from the account

Q. Yes.

A. that went to the bill-paying. That were drawings from the account, for example, to pay back the Northern Bank Finance Corporation loan.

Q. Yes, of course.

A. Yes, so maybe it's a loose use of the term 'bill-paying'.

Q. Yes. There could well be another use or another inference that could be drawn from it?

A. Possibly, yes.

Q. And then $\frac{1}{2}$ 26,000, I think, was the balance that was left after the 285,000 was applied in the payment to Guinness & Mahon, and I think, in fact, that was included as a separate entry in the schedule, isn't that right?

A. Yes, just for clarity, it was included.

Q. So then you had a subtotal for 1987 of $\frac{1}{2}$ 59,000, isn't that right?

A. That's right.

Q. And then you show the First Equifex payment in 1988 at 561,000, and the total for that year is 561,000, isn't that right?

A. Yes.

Q. And then the second Equifex in 1989 at 173,000, isn't that right?

A. That's right.

Q. Then the first Tutbury at 206,000, isn't that right?

A. That's right.

Q. And the Wytrex payment, of which this Tribunal heard evidence, at 207,000?

A. That's correct, yes.

Q. And, of course, these were sterling amounts, but you converted them, presumably, as of the date of receipt, is that right, the rates you would have used?

A. Yes, I would think so, yes.

Q. So your subtotal for 1990 was $\text{£}413,000$. Then in '91 you have the second Tutbury payment at 225,000?

A. That's correct.

Q. So you have the total there in '91 of 225,000. Then you have included the bearer cheques in this schedule at $\text{£}32,000$?

A. Yes.

Q. And you have indicated as regards the bearer cheques, as these were lodged to the Amiens account in Guinness & Mahon and as there were drawings from this account in favour of Haughey Boland, you have made an assumption that it was used for the bill-paying service?

A. Yes.

Q. Now, that is nothing more than a working assumption, isn't that right?

A. Yes.

Q. For the purposes of the exercise that you were undertaking,

which was to arrive at a core expenditure figure in order to negotiate a tax settlement with Mr. Haughey's agents?

A. Exactly, yes.

Q. And then in relation to the Carlisle payments, the Dunnes Carlisle payments of $\text{€}180,000$ of which this Tribunal heard evidence, which I think were in November of 1991, November of 1991?

A. I think so, yes.

Q. You have those listed there, $\text{€}180,000$ and I think they - assumption there was that as they were lodged to the Ansbacher accounts in Irish Intercontinental Bank and as they were credited to the S8 and S9 accounts, they were also used to fund the bill-paying service?

A. Yes.

Q. Is that right?

A. Yes.

Q. And again, that is an assumption?

A. Yes.

Q. And then the personal cheque of $\text{€}20,000$ which we know went into National Irish Bank?

A. That's correct.

Q. And that just shows how you dealt with these receipts for the purposes of preparing the entry in your Expenditure Schedule?

A. That's correct.

Q. But there is no question that the actual receipts received or the evidence which suggests that the actual receipts by

Mr. Haughey from Mr. Dunne were 2,119,000?

A. And there is no doubt about that, yes.

Q. Now, if I can just go back to the Expenditure Schedule itself, and maybe I should deal with the entry that I overlooked, which is the Gallagher payment at i;½300,000 in 1980?

A. Yes.

Q. Now, below the "TriplePlan Cash", there is "Traynor special account cash, i;½36,000" and the entry there is 1980?

A. That's correct.

Q. And I think am I correct in thinking that that is in respect of evidence that the Tribunal heard about the application of the final balance left on the Des Traynor special account after the money to discharge Mr. Haughey's liabilities to AIB on foot of his settlement had been sent to AIB?

A. That is absolutely right, yes.

Q. Now the next entry that you have is CGT payments and you have an amount for 1986 of i;½50,000; 1987, i;½25,000; and 1988, i;½27,000.

A. Yes.

Q. They were expenditures by Mr. Haughey, isn't that right?

A. Yes.

Q. Now the Tribunal heard evidence of those expenditures, and indeed evidence of the circumstances in which they came to the attention of the Revenue Commissioners, but of course, I take it you would agree with me that the Revenue

Commissioners would have at all times been aware of those expenditures going right back to 1986, 1987 and 1988?

A. Yes indeed, yes.

Q. Now, the next item is, entry in your expenditure list, is "Loans to Larchfield." And you have an entry in 1986 of £60,000; 1988 of £167,000 pounds; 1989 of £23,000 and 1990 of £13,000, isn't that right?

A. That's correct, yes.

Q. And am I correct in thinking that those entries relate to the acquisition costs of the yacht, Celtic Mist, and to Mr. Haughey's island, Inishvickillane, and to his holiday home?

A. I think they certainly apply to the yacht and I think they apply to some small land acquisitions in Wexford, which I think were included within Larchfield, and also I think to maybe shareholdings in Celtic Helicopters as well.

Q. I see.

A. As far as I can recall.

Q. And that arises out of, I think, the balance sheets for Larchfield Securities?

A. Yes.

Q. Does it?

A. Yes.

Q. Also the evidence, I think, of Mr. Kieran Ryan who gave evidence to this Tribunal?

A. Yes, yes, indeed.

Q. Now, the - the next entry is NBC drafts and for 1990 you

have 207,000; and for 1991 you have $\frac{1}{2}$ 95,000?

A. Yes.

Q. And they are, in fact, receipts by Mr. Haughey, isn't that right?

A. Well, in fact, I think what they represent are - you may recall that in this investment account, there were two bank drafts drawn in the account during the course of its existence, so that is what they represent, in effect.

Q. I see.

A. Sort of expenditure.

Q. Yes.

A. And then the balance of the investment account, as you know, was transferred to I think the S8, S9 accounts, so together, all of that is reflected in the Expenditure

Q. I see.

A. Schedule.

Q. These were the investment accounts operated in NCB Stockbrokers?

A. Yes.

Q. Now the next entry is "National Irish Bank account lodgements", and you have entries there for lodgements for 1993, 1994, 1995 and 1996?

A. Mm-hmm.

Q. And interestingly enough, there are even amounts for each of the first three years, $\frac{1}{2}$ 145,000 for each year, and just $\frac{1}{2}$ 1,000 extra for 1996, $\frac{1}{2}$ 146,000?

A. Yes, I think those those simply represent dividing the

total by four.

Q. I see.

A. We didn't have specific information. It was simply spreading it over the course of a number of years.

Q. And again they are lodgements of which, and bank accounts, of which the Tribunal had heard evidence?

A. Yes, indeed.

Q. Would they have included the $\text{i}\frac{1}{2}$ 20,000 cheque

A. Yes.

Q. from Mr. Ben Dunne?

A. Yes, yes.

Q. Then the next entry is another entry for interest on Guinness & Mahon loan account, isn't that right?

A. No it's not interest; it's these are sort of drawings on the account which couldn't be traced to

Q. I see.

A. specific or to specific uses.

Q. I see. I see.

A. Yes.

Q. So these are drawings on the account?

A. Yes.

Q. Which couldn't be accounted for by bill-paying, or anything like that?

A. Yes, were not identified.

Q. You have another entry for leader's allowance account, and you have amounts in 1986 of $\text{i}\frac{1}{2}$ 75,000, and an amount in 1989 of $\text{i}\frac{1}{2}$ 25,000?

A. Yes.

Q. Again, I take it that relates to evidence heard by the Tribunal of drawings from those that account in those years that were lodged to I think Amiens accounts in Guinness & Mahon, is that right?

A. Yes, indeed.

Q. Now, the next entry is the entry in respect of Fustock cheque in the amount of $\text{€}1/250,000$, for 1985, isn't that right?

A. That's correct.

Q. And again, the evidence being that it was lodged to an Amiens account?

A. Yes.

Q. Could you just tell me where you got the spelling for Fustock as F-U-S-T-O-C-K? Just it appeared in

A. I am not sure.

Q. It appeared in a Department of Justice document, that the Tribunal had reason to look at last week, in the same way. It's a document that was produced to the Tribunal by the Department of Justice; we are not sure it was a Department of Justice document?

A. I am not sure.

Q. Now, if we just go over the page. The next item I think relates to money received by Mr. Haughey, apparently from Mr. Michael Smurfit, is that right?

A. That's correct.

Q. And the entry there is 1989, $\text{€}1/260,000$?

A. Yes.

Q. I think the Tribunal heard evidence of that money being lodged to an account in London, isn't that right?

A. That's right, yes.

Q. You then have an entry for "Kavanagh" which I take relates to Mr. Mark Kavanagh of Hardwick, is that right?

A. That's right, yes.

Q. And the entry is $\text{€}25,000$ for 1989?

A. That's correct, yes.

Q. And again, I take it that relates to the evidence that the Tribunal heard regarding the application of $\text{€}25,000$ of the $\text{€}100,000$ which Mr. Kavanagh had provided to Mr. Haughey in the run-up to the 1989 election?

A. That's correct, yes.

Q. Now, there are then three entries, and I think I can probably - or four entries - which I think I can probably deal with together: There is Skelligs, $\text{€}50,000$, 1987; Princes Investments Limited, $\text{€}260,000$, also in '87; Bank of Ireland lodgements, February 1988, $\text{€}245,000$; and Central Tourist Holdings 1987, $\text{€}43,000$?

A. That's correct.

Q. And I think you did refer to these also in your statement?

A. That's correct.

Q. I think they relate to evidence which the Tribunal heard about lodgements to Amiens accounts at a time when there were heavy drawings to Mr. Haughey's bill-paying service?

A. Yes, yes.

Q. And you had included those, I take it, as being potential receipts?

A. Yes, yes.

Q. Now, the next entry is RPT, WT, CAT, Stamp Duty. I take it that relates to Residential Property Tax, Wealth Tax, Capital Acquisitions Tax and Stamp Duty?

A. Yes.

Q. And they are small amounts for each year, except, I think, 1989 is it 1/2 39,000?

A. Yes.

Q. And 1990 is it 1/2 45,000?

A. Yes.

Q. I think they may have been the years when tax was paid in relation to the transfer of lands by Mr. and Mrs. Haughey to their children, is that right?

A. That's correct, yes.

Q. And that is also treated - they are all treated as separate expenditure items?

A. Yes.

Q. And the next entry then is "Kentford debit to Haughey Boland, 1990," and that is it 1/2 50,000 in 1990, and I think that relates to evidence the Tribunal heard regarding a debit to a Kentford Securities account I think in Bank of Ireland in respect of a payment to Haughey Boland?

A. Yes.

Q. Then the next entry is "Celtic Helicopters," and for Celtic Helicopters there were two items in your Expenditure

Schedule, isn't that right?

A. That's right.

Q. There is an item in 1985 of $\text{€}150,000$, and there is an item in 1991 of $\text{€}150,000$?

A. Yes.

Q. If we just take each of those in turn; I think the 1985 one relates to the initial capitalisation of Celtic

Helicopters?

A. I think that's right.

Q. Or part of the initial capitalisation. I think there was additional funds provided, and the Tribunal heard evidence as to the likely source of those funds.

A. Yes.

Q. And then the second entry is 1991, $\text{€}150,000$, isn't that right?

A. That's correct, yes.

Q. I think that relates to evidence heard regarding the repayment of a loan to Irish Intercontinental Bank, isn't it

A. Yes.

Q. that had been advanced to Celtic Helicopters?

A. Yes.

Q. And the evidence suggested that Mr. Haughey might have been the source of those monies?

A. Yes.

Q. And I think there were two separate tranches, one of $\text{€}100,000$, which I think there was some suggestion that

might have been in respect of an assignment of a chosen action to Mr. Traynor, and then there was another $\text{£}150,000$ payment which I think the Tribunal was told in the books of Celtic Helicopters was an advance payment by Mr. Haughey but under the pseudonym 'Gary Heffernan'.

A. I think that is correct, yes.

Q. And the final entry, in that list of entry, is debits to S8 sterling account?

A. Yes.

Q. And there are amounts for 1991, 1992 and 1993 in the sums of $\text{£}20,000$, $\text{£}45,000$ and $\text{£}3,000$?

A. That's correct.

Q. And again, I think that's in respect of debits to that account for purposes other than the bill-paying purpose bill-paying service, isn't that right?

A. Yes, yes.

Q. And on the right-hand side of each of those pages you had a total figure for each of the separate items and then in the bottom right-hand corner, having totalled the amount for each of the years, you had a grand total of $\text{£}9,777,000$, isn't that right?

A. That's right.

Q. Now, below your total figure you also had included a figure of $\text{£}40,000$ in 1990 for a Smurfit painting, isn't that right?

A. Yes.

Q. That wasn't included in your actual grand total, though;

that was presumably there for inquiry purposes?

A. Well, the painting was, I suppose, an item of property, as such. It didn't represent spending or a receipt for sale, so it was sort of a below-the-line item and it was in there as a memorandum item for ourselves that would have to be taken account of.

Q. Yes. And that was based on evidence heard by the Tribunal?

A. That's correct, yes.

Q. Can you tell me can you recall how you came up with the figure of $\frac{1}{2}$ 40,000?

A. As I recall, Mr. Haughey subsequently sold the painting, and that was the value placed on it for CGT purposes, I think.

Q. I see. Now, you had some other questions that you wished to raise with Mr. Haughey's agents and those, in fact, were discussed on the 8th of October, but there were just two matters that I wanted to clarify with you with regard to that Expenditure Schedule. It's a very lengthy schedule, there can be no doubt about that?

A. Yes.

Q. But there were just two items that don't appear on it and I want to give you an opportunity to perhaps explain why they are not on it?

A. Yes.

Q. The first items are the actual P.V. Doyle loans themselves; we have amounts for interest on both loans but the loans of 120,000 in 1983 and 50,000 in 1985 don't appear as a

separate entry on the expenditure list and I just wanted

to

A. I think the proceeds of the loans, as I recall, went into a number of accounts in Mr. Haughey's name, which were then used to fund his expenditure. I mean, that is the logic of that.

Q. Right. Yes. So the assumption there was that the P.V. Doyle loans were used in generating funds to fund the bill-paying service?

A. Yes.

Q. So they were excluded from your expenditure figure?

A. Yes.

Q. Within the purposes and on the assumptions that you were working on at the time?

A. Absolutely, yes.

Q. And then, secondly, I see that the payments from Mr. Dermot Desmond of sterling $\frac{1}{2}$ 100,000 and sterling $\frac{1}{2}$ 25,000 don't appear to have been accounted for in the schedule and again, I just want to give you an opportunity to explain why they don't appear as separate items?

A. Yes, again both of those loans found their way into the S8/S9 accounts and were then used to fund the bill-paying service, the Stakelum bill-paying service.

Q. I see.

A. So again they are reflected in the expenditure figures.

Q. So the assumption is that those monies which were lodged to the Ansbacher account in IIB were used for Stakelum

bill-paying service?

A. Yes.

Q. And, in fact, in fairness to you, I think $\frac{1}{2}$ of 25,000 went directly to Mr. Stakelum, isn't that right?

A. I think that's right, yes.

Q. Can I just ask you in relation to those loans, I suppose, just a general matter that you might be able to assist the Tribunal on; earlier in your evidence you were referring to the fact that in order for a gift to constitute a taxable gift for the purposes of Capital Acquisitions Tax, that you have to have a donor who is I am not sure whether it's domiciled

A. Domiciled.

Q. Domiciled or resident within the State, and/or you have to have property which is either within the State or originated within the State?

A. Yes.

Q. Could you just assist the Tribunal then in the case of persons who are non-resident in this country for tax purposes; if they made a gift to a Taxpayer here of property that comes from outside the jurisdiction, would that gift constitute a gift for CAT purposes?

A. Yes, the issue is whether they are domiciled so it doesn't matter where you are resident, you have a domicile and if you are Irish-domiciled, which is not the same as where you are living, it's where you are domiciled, you know.

Q. I see.

A. And in Mr.

Q. I am not referring to anybody in particular, obviously; it's just a general query?

A. No, the law has changed since then. We have moved to a residency rule.

Q. I see. So if a person is now non-tax-resident in this jurisdiction

A. Well, if either the donor or the donee are resident here, it's a taxable gift here now.

Q. I see.

A. So it doesn't matter that someone is non-resident, if the donee is resident, he is taxable.

Q. I see. And when was that change brought about?

A. I think it would have been in I am not sure of the precise date, about five or six years ago.

Q. At the time that the sums were received back in 1992 or 1994, you say that a distinction is drawn between domicile and residence?

A. Absolutely. It's a domicile rule.

Q. And is that domicile rules for tax purposes or domicile rules as we, as lawyers, would understand them?

A. As you, as lawyers, would understand domicile.

Q. I see, I see.

A. People have a domicile of origin; it's very difficult to lose your domicile.

CHAIRMAN: Well, does it seem we will probably be going marginally into the afternoon, Ms. O'Brien?

MS. O'BRIEN: Yes, I think so.

CHAIRMAN: And there may be one or two matters for

Mr. Connolly to take up, so if it is not putting you out,

Mr. McCabe, we will take up what probably will not be the

very lengthy remainder of your evidence at 2 o'clock.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL CONTINUED AFTER LUNCH AS FOLLOWS:

BRIAN McCABE CONTINUED IN EXAMINATION BY MS. O'BRIEN

AS FOLLOWS:

CHAIRMAN: Thanks, Mr. McCabe.

Q. MS. O'BRIEN: Thanks, Mr. McCabe. Just before going on to

discuss the actual settlement on the 8th of October, I just

want to clarify one or two matters arising out of what we

were discussing before lunch, which is when we were

discussing a gift to a person within this jurisdiction, in

the State, from a non-tax-resident donor.

A. Yes.

Q. And the matter that I wanted really to clarify with you is

this: In circumstances such as the position of Mr. Charles

Haughey where a gift was received by a person in this

country but was applied to a foreign trust, to a Cayman

trust

A. Yes.

Q. and the source of that gift was also an offshore

account, as was the case in many of the instances of

transactions of which the Tribunal heard evidence; were

there any powers available to the - or to the Revenue

Commissioners whereby the Revenue Commissioners could access information or documents relating to either the source of the money or the ultimate application of the money?

A. This would be back at that particular time?

Q. Yes, yes.

A. No, no, at that particular time I am fairly sure we didn't have powers to access that foreign information.

Q. Yes. So that other than as a result of cooperation from either the donor or the recipient, there was actually no means of the Revenue Commissioners accessing the relevant information?

A. I think that's a reasonable statement, yes.

Q. OK. If we move on then to the meeting of the 8th of October. We have been through your Expenditure Schedule in some detail, and, as you say, that was the agenda for the meeting of the 8th of October and the objective of the Revenue officials at that time was to establish a minimum core expenditure of $\text{€}1\frac{1}{2}$ billion and for the tax, interest and penalties consequences to flow from that?

A. That's correct, yes.

Q. Now, I opened this in detail yesterday and I am not going to open it all again. What I wanted to ask you to look at in the minute is on the second page where you deal with discussion of specific agenda items?

A. Yes.

Q. And these are, in fact, the items that appeared as a list

at the bottom and foot of the Expenditure Schedule of the 4th of October and I think much the same in terms of items had appeared on the draft Expenditure Schedule which had been given to Mr. Peelo in early July?

A. Largely the same thing, yes.

Q. So, in fact, Mr. Peelo and Mr. Haughey's tax agents had about three months' notice that these were issues on which the Revenue will be looking for information, isn't that right?

A. Yes, that's true, yes.

Q. So if we just look at them in turn. The first one is "National Irish Bank lodgements", and am I right in thinking this was information they were giving to you?

A. Yes.

Q. Yes, "These are farm account lodgements. It was felt that it should be possible to reconcile the NIB lodgements with the farm account documentation. It was noted, however, that the Ben Dunne personal cheque given to the client was included in the lodgements."

A. Yes, yes.

Q. You would have been able to clarify that - and show

A. Excuse me?

Q. You would have been able to check the position from the returns that had been made in respect of the farm accounts?

A. Yes, and as I understand it, that was done by Mr. Treacy subsequently, yes.

Q. Yes. Then secondly, "Galtee Deer Care. The purchase of

the deer stock came from the S9 account."

And, in fact, you would have known that already

A. Yes.

Q. from your Expenditure Schedule?

A. Yes, indeed.

Q. "The deer stock appears to have been accounted for in the farm accounts by reference to capital introduced explained by commuted pension."

I am afraid I don't understand that at all, and could you explain to me what you were being told?

A. Well, very briefly in that one, what - in fact, we may have actually made that comment, that the farm accounts would suggest that the deer herd was actually purchased from severance payments that Mr. Haughey had received when he left office back in 1992 and '93.

Q. Right.

A. Whereas the S8/S9 accounts would tend to suggest that it was funded from that source.

Q. So the debit was from the S9 account would have been for something else?

A. Well, you could argue that it was indeed for the purchase of the herd but that in the accounts that were received by Revenue, the suggestion was that this had come from severance payments.

Q. I see. Then "3. TriplePlan Cash." I think you just explained the position there of how you dealt with it; I don't think I need to go through it again.

A. Yes.

Q. "4. Dail income. Agent's understanding was that the client cashed salary cheques from the late seventies and did not lodge them to any accounts. The income would have been used to fund any of the spending the income would not have been used to fund any of the spending reflected in the schedule."

A. That's correct.

Q. Of course, they were telling you nothing that you didn't know there already?

A. Absolutely.

Q. Because, in fact, that had been the evidence that was led by the Tribunal, isn't that right?

A. That is true.

Q. "5. IIB Bank balances 1997. Agents indicated that these accounts were not in the client's name, that he had no control over them, and that, as far as they were aware, the balance was still there. To all intents and purposes the accounts could be considered dormant."

A. That's what they said, yes.

Q. So let's just put that in context for a moment. The IIB Bank balances you would have been referring to, am I right in thinking that they would have been balances in the name of Ansbacher Cayman in IIB Bank?

A. Yes.

Q. But referable to the S8 and S9 accounts?

A. That's correct, yes.

Q. So although evidence had been led and indeed findings were made by the McCracken Tribunal that these memorandum accounts appear to have been for the benefit of Mr. Haughey, his tax agents were saying that he had no access to them?

A. That's right.

Q. They weren't in his name and that they should be considered as dormant, is that right?

A. Yes, effectively.

Q. Did the Revenue have any way of checking that position?

A. That they were dormant?

Q. Yes.

A. I think, perhaps, on another side of Revenue the whole - an investigation was being undertaken at Ansbacher, so I think they would have been aware that there was nothing happening on those accounts.

Q. Right.

A. But again, I am not totally au fait with that side.

Q. And maybe, I think, Mr. Treacy might be able to help the Tribunal?

A. He may be able to throw light, yes, I think he might be.

Q. Then "6. Funding of Expenditure since 1997. Agents indicated that the client continued to survive on INBS borrowings, secured by way of an equitable mortgage on Abbeville, and on his pensions. The initial $\text{€}1\frac{1}{2}\text{m}$ INBS loan had been repaid out of the proceeds of the first land sale and the loan was then renewed."

A. Yes.

Q. Then "7. Island/Holiday House & Boat. Agents indicated that as far as they were aware these assets had probably been funded out of the client's accounts with AIB."

A. That's correct, yes.

Q. Again, they weren't giving you any detailed information there, were they?

A. No, no.

Q. Then "8. Interest on IIB Bank Accounts. Agents indicated that their client's position was that as he was not the beneficial owner of the accounts, he could not be held liable for tax on interest income arising. Agents stated that as the balance on the account (\$9) exceeds the interest, an argument could be made that the client never got the interest."

A. Yes.

Q. But that's if you accept that he wasn't beneficially entitled to those balances, isn't that right?

A. Yes. Well, I think maybe they were saying, as well, just supposing he was beneficially entitled

Q. Yes.

A. the fact that the value of the interest exceeded the value of the balance at that date, you could argue that perhaps he never got the interest, but, I mean, it wasn't a particularly strong point.

Q. It wasn't a huge amount of money, anyway, was it?

A. No, no.

Q. In the scheme of the figures that you were discussing?

A. Yes.

Q. Then "The Guinness & Mahon Cayman Trust loan. Agents indicated that they could not throw any light on these issues and all the indications were that the client couldn't either."

Now, that was a sizable loan, wasn't it, of sterling $\frac{1}{2}$ 400,000?

A. 400,000, yes.

Q. Dating back to, I think, the early '80s, '83 or '84?

A. I think you are correct, yes.

Q. So it was a very substantial loan at that stage?

A. Mm-hmm.

Q. And what you were being told that was Mr. Haughey's tax agents couldn't help you on it at all, and that Mr. Haughey had no idea, either?

A. That's correct, yes.

Q. And because of what we discussed earlier, the fact that the Revenue had no powers available to go to foreign offshore financial institutions, was there any means, therefore, whereby the Revenue could have obtained information in relation to this loan in the absence of information being forthcoming from the Taxpayer?

A. At that time, no, I don't think there was.

Q. Then under the heading, "Other monies/Gifts received since 1997/funding of holidays, et cetera. Agents had no information on these issues, but undertook to raise them

with the client."

A. That's correct, yes.

Q. And this, even though they had known about these issues for three months?

A. Yes, yes.

Q. "11. Benefits received from Celtic Helicopters. Agents understood that the client ran an account with Celtic Helicopters and paid for any transport received."

A. That is what was said.

Q. And were you furnished with any account information or account documentation?

A. I don't think they were, I don't think we were. Again, this would have been something that I the Investigation Branch would have been pursuing with them, you know.

Q. I see. And then "12. Expenditure 1977 to 1984. Agents view was that up to 1979 funding came from the AIB overdraft and Guinness Mahon (Ireland) Limited accounts. Between 1980 and 1984 it appeared to agents that there was a lot of bank borrowings and 'switchings'. This they felt explained Traynor's approach to Ben Dunne at the time he was leaving G&M to effectively 'buy-off' the borrowings." I don't really quite understand what they meant there by "switchings". Do you understand that or can you assist me at all?

A. I am not 100 percent sure but I think what they were talking about was this idea that maybe money would have been moved from the account of A to B onshore, and then, at

the same time, money was moving from accounts offshore, and the individual here would be getting the benefit of those monies, even though there was no, maybe, foreign exchange requirements, or anything. I think a good example of that might be the Carlisle payments, in fact, where $\frac{1}{2}$ 100,000 of that

Q. Yes.

A. at the end of the day, found its way into the S8/S9 accounts from the Gresty cheque, a cheque from Mr. Gresty

Q. That's right.

A. So you had this offshore movement of funds and onshore movement of funds, but apparently unconnected.

Q. They weren't indicating, though, that they had any instructions from Mr. Haughey on that, were they?

A. No, I don't think so, no.

Q. They were saying that that was their view?

A. Yes, and I suspect it was based, perhaps, on what they had heard at the Tribunal about 'switchings', et cetera.

Q. Yes. But they certainly didn't have any information from you as to how that was all ultimately being funded, did they?

A. No, other than suggesting it was from AIB and Guinness & Mahon.

Q. Yes. Now, we know that, having dealt with those issues, that you then went on to deal with the Expenditure Schedule line by line, and, in fact, you have a table appended to

that minute that hasn't been opened yet, and I am just going to refer you to that table

A. Yes.

Q. which I think sets out the adjustments that were agreed to the Expenditure Schedule to bring it down to 6.9 million. And firstly, you had I think you have "Item" on the left-hand column of the table, the amount in hundreds of thousands of pounds in the middle, and then the "Comment" if you like

A. Yes, yes.

Q. which is why the Revenue were agreeing to this adjustment or what the justification for it was, bearing in mind, of course, at all times, that you were in a negotiation situation?

A. Absolutely.

Q. And there had to be give and take on both sides?

A. Yes, yes.

Q. Now, the first was the Gallagher $\frac{1}{2}$ 300,000, and I think really you have explained that already in your statement?

A. Yes.

Q. That the "Evidence points to this being part of payments used to defray the AIB overdraft. Already subjected to CGT, therefore should not be included in expenditure base on which Gift Tax to be calculated."

So, in fact, it was deducted as an independent entry of 300,000?

A. Mm-hmm.

Q. Because it was reflected in the payment to AIB?

A. Absolutely.

Q. And, for tax purposes, it was deducted from the AIB amount because it had already been liable to Capital Gains Tax?

A. Yes.

Q. Following the information brought by Mr. Crowley to Mr. Pairceir?

A. That's correct, yes.

Q. So that adjustment amounted to minus 600, for tax purposes?

A. Yes, yes.

Q. Then secondly the NIB lodgements, minus 561, and the comment is "Lodgements largely reflect the farm accounts for 1993-1996 period. Agreed that Ben Dunne lodgement (€20,000) unconnected to the farming business should remain in the schedule."

A. Yes, yes.

Q. And as you say, you believe that the matter would have been checked in the farm accounts

A. I understand so, yes.

Q. and clarified. So, in effect, apart from the €20,000, that money had already been subject to tax?

A. Well, it was explained as - in other words, that the lodgements were linked to the farming business.

Q. I see.

A. To the extent that it was tax arising on that business, then it would have been subject to tax.

Q. Then "3. Princes Investments." And you say "Link between

client's finances and this item (and items 4 to 6)", that is Skelligs, Central Tourist Holdings and Bank of Ireland lodgements, "appear tenuous. Noted that these items not included by Tribunal in their tot of payments made to Charles J. Haughey."

A. Yes.

Q. And again, I think you have already explained that. And it was in a negotiating situation?

A. Absolutely.

Q. Then "7. Fustock Payment"

A. Maybe if I can just make one comment on that?

Q. Yes.

A. The fact that we were parking them to one side, it didn't mean we couldn't come back to them, and I think as Mr. Gillanders indicated yesterday, the Schedule 2 to the agreement specifically doesn't mention those.

Q. Yes.

A. So we are free to look at those again, should additional information become available, yes.

Q. Then "Fustock Payment. Payment more than likely went to fund bill-paying service - therefore already captured in bill-paying figures."

A. Yes.

Q. And again, this was based on an assumption that was being accepted by the Revenue for the purposes of these negotiations?

A. Yes, based on the evidence that we had.

Q. And based on that assumption?

A. Absolutely. I mean to say, this is a probability call. I mean, I am not saying this is absolutely correct, but, for the purposes of this exercise

Q. Yes.

A. we gave them, if you like, the benefit of the doubt on that.

Q. Yes. Then you have "Residential property tax - minus 42 - As payments could be traced to bill-paying service - should not be added in again," and that seems fair enough?

A. Yes.

Q. "CGT - minus 27 - As 1988 CGT payment could be traced to bill-paying service - exclude to avoid double count. No evidence that '85 & '86 CGT payments made from bill-paying service, therefore leave in."

A. Yes.

Q. I think that really illustrates the approach that you were adopting, wasn't it?

A. Yes.

Q. And then "Leaders Account - minus 100 - Evidence indicates these payments went to the Deloitte and Touche Haughey Boland number 3 account - therefore probably helped fund bill-paying service."

A. Yes.

Q. Then you have "Living expenses for 1980/1984 period. Net addition of plus 425,000. No information available - 'guesstimate' of $\frac{1}{2}$ 600K decided on net of $\frac{1}{2}$ 175K of G&M

unexplained withdrawals (i.e. 220K) included in sum of i.e. 9,777K equals i.e. 600K minus 175K equals i.e. 425K."

I wonder could you just explain to me how you arrived at that figure?

A. That is a bit confusing. Basically, they had no information on the bill-paying service of what his day-to-day expenditure would have been back in those years, so, basically, we agreed on a guesstimate figure of 600,000.

Q. Right.

A. But in doing that, they sought credit for some of these unexplained G&M balances that we mentioned this morning, which totalled 220,000, and, for the relevant years, from 1980 to 1985, I think, they would have totalled 175.

Q. Right.

A. So in other words, we allowed them 175 of that 220 as, if you like, being part of this guesstimate of 600,000.

Q. And again, that was kind of horse trading, wasn't it

A. Yes, absolutely.

Q. between you and them?

A. Absolutely, yes.

Q. It may well have been a lot more than 425?

A. It could well have been.

Q. In fact, on the basis, I think, of the amount paid in '85, it could easily have been up to 180,000 a year, but, as you said, it was horse trading between you and them

A. It was, yes.

Q. in the absence of any records?

A. Yes.

Q. Because Mr. Haughey had no records, is that right?

A. That's correct, yes.

Q. And then there was a credit for the McCracken settlement minus 1.3 million, which is fair, isn't it

A. Yes.

Q. the interim settlement and the fact that tax had been paid on that?

A. Although at that stage, I mean, all we were taking off there was the value of the gifts that were made, if you like, or the payments that were made. I mean, obviously, there would have been a bottom line, as Mr. Gillanders said yesterday, that there would have been a below-the-line, then, reduction one would have expected off the tax that was paid in relation to the first settlement.

Q. Yes, yes.

A. If you follow me?

Q. I don't, actually. Could you just explain that a bit more?

A. OK. In fact, if you look at point 12, you will see credit for McCracken is in inverted commas there.

Q. Yes.

A. You know, that is just a label for this figure of 1370, and what the 1370 represents, if you like, you may recall the figure we had this morning of 1.431 million?

Q. Yes.

A. And included in that we had this 59,000 cash figure.

Q. Yes.

A. So if you take the 59 cash off the 1431, you get, in fact, 1372, but it's essentially the same figure. And the assumption we were working on in the maximum schedule was that these were spent on something that we knew nothing about, on expenditure items that we didn't know anything about.

Q. Yes, yes.

A. The agents were making the argument, which again it's possible, that, in fact, those balances - that amount was used to fund the bill-paying.

Q. Yes.

A. And I think that the point they were making was, as I recall, the S8 and S9 accounts were opened in '92 and '93.

Q. Well, the records available are from '92 and '93, but I think the evidence is that they would have been operating from a much earlier date.

A. That's right, but I think it shows an amount of 1.3 million, or something, funding those. I think they were making the argument that it's possible that this was the balance of the BD monies.

Q. I see.

A. So...

Q. Despite the fact that they had been - those monies had been available, some of them, back as early as 1987?

A. Yes, that's true.

Q. and there had been very hefty drawings on the

bill-paying service over those years?

A. Yes, yes.

Q. In any event, as you say, this was a horse trading exercise

A. Yes.

Q. between you and Mr. Haughey's agents, and it was a give-and-take situation?

A. Yes, absolutely.

Q. And that brought you to the figure of 6.9 million?

A. That's correct.

Q. And then, below that, you just have the interest calculation, and we went through that with Mr. Gillanders yesterday?

A. Yes.

Q. But you had a receipts figure of 6.9 million, you had tax at 40 percent, you'd interest capped at 100 percent, which would have given you a total tax in interest of 5 point $\frac{1}{2}$ million, and there was an increased settlement offer at the meeting of $\frac{1}{2}$ 3.85 million, and you have noted below that subsequently it was increased and the matter was settled at $\frac{1}{2}$ 3.94 million, to equal $\frac{1}{2}$ 5 million?

A. That's correct, yes.

Q. Can I just ask you there, in terms of this interest cap, and I am not going to go into it with you in any huge detail because it was discussed very fully with Mr. Gillanders yesterday; but, as we understand it, there was an invariable practice on the part of the Capital Taxes

Branch in negotiating in relation to Capital Acquisitions

Tax matters to apply this 100 percent interest cap?

A. Yes, in settlement cases, yes.

Q. Now, can I just ask you, because I don't recall from the assessments that had been raised back in 1997, but if you are raising an assessment to Capital Acquisitions Tax on a Taxpayer, I presume that assessment also includes a provision for interest, does it?

A. Absolutely, yes.

Q. And would interest be capped at 100 percent if you went down the assessment route, or would you be looking for the full interest?

A. The assessments that were raised in '97 would have included full interest.

Q. Right. And that would be the invariable practice, would it

A. That would be the normal.

Q. where assessments are raised.

A. Yes.

Q. So if you went down the assessment route and it had gone to the Appeal Commissioners and the assessments were upheld, what you would have been getting would be the tax plus all full interest?

A. Yes.

Q. So I suppose it's fair to say a settlement, I mean, will always be to everybody's advantage, but from a Taxpayer's point of view in dealing with Capital Acquisitions Tax,

there is a very considerable benefit to settlement where the interest is capped at 100 percent?

A. Yes, I would think so, yes.

Q. Now, in fact, we know that it was I think Mr. Peelo who contacted you to confirm that Mr. Haughey was agreeable to paying the higher figure of $\text{€}1\frac{1}{2}$ million, isn't that right, and I think we have a note on the file, at Divider 10, of the phone call that you received from Mr. Peelo. Do you see that there?

A. This is on the 10th of October, is it?

Q. 15th of October, I think, yes. It's headed "Note for File"?

A. Yes.

Q. There we are.

A. Yes, I have that, yes.

Q. There we are.

"Note for file.

"Des Peelo rang around 11 a.m. on Tuesday 15 October.

"He said that he had spoken to the client on Monday 14th.

The client had spoken with his children and the settlement proposal involving a payment of $\text{€}1\frac{1}{2}$ million had been accepted. Mr. Peelo was given the go ahead to proceed with the discussions with Revenue.

"He felt the next step was to consider any issues which Revenue wished to pursue in the context of any agreement and then to get the legal aspects of an agreement sorted and pinned down with the respective legal teams. He

intimated that it would be his hope to have a preliminary meeting between the solicitors on both sides next week. In that regard, he indicated that Anthony and John Grimes of Gore" - I think that should be 'Gore Grimes' - " of Gore Grimes Solicitors would be acting for the client.

"He suggested that he (Peelo) should be the initial point of contact for Revenue in the further discussions. I indicated that we would hope to be in a position to discuss an issues list with him later in the week."

A. That's correct, yes.

Q. So it was really then on the 15th of October that you had your settlement in principle?

A. In principle.

Q. You had agreement on the $\text{€}1\frac{1}{2}$ million?

A. Yes.

Q. And I think Mr. Gillanders said yesterday, and there can be no doubt that the Revenue recovered a very sizable amount of money from Mr. Haughey?

A. Yes, indeed.

Q. And I take it that you were personally pleased with the outcome of the settlement?

A. I think from a Revenue perspective, it was a satisfactory outcome.

Q. And I suppose you would agree with me that, really, the essence of a settlement, as we said earlier, is that there be something in it for both sides; there be something in it

for the Revenue and there be something in it for

Mr. Haughey?

A. Yes.

Q. And I think you'd agree with me that Mr. Haughey was represented by very experienced people in these negotiations, wasn't he?

A. He was indeed, yes.

Q. And Mr. Peelo, I think, is a forensic accountant of considerable reputation; would you agree with me?

A. Absolutely, yes.

Q. And Mr. Moore, I think, had been formerly a Revenue official himself?

A. He was, indeed.

Q. And he would have been acutely aware of all of the technical difficulties that Revenue would have encountered

A. Very much so.

Q. in seeking to assess Mr. Haughey for this tax?

A. Yes.

Q. So I suppose that it would be reasonable to suggest that they must have felt that they also did a good job for Mr. Haughey?

A. Well, you'd probably have to ask them, but I suspect they would take that view, yes.

Q. Yes. And, in fact, there were benefits for Mr. Haughey in this settlement, weren't there?

A. In the sense that?

Q. Well, we will just go through them. Well, firstly, his tax liability was fixed at $\frac{1}{2}$ 2.7 million, isn't that right?

A. That's right, yes.

Q. So he had certainty on that?

A. Yes.

Q. Subject to the Revenue's entitlement to reopen?

A. Absolutely, it was a very important point

Q. in connection with other issues, he had certainty that it was 2.7 million?

A. Yes.

Q. Now, I know we discussed this morning how difficult it would have been for the Revenue to go the Income Tax route; it might well have been insurmountable, the difficulties.

But from Mr. Haughey's point of view, there must have always been a concern that the Revenue Commissioners might seek to assess him to Income Tax, isn't that right?

A. He may have had that concern, yes.

Q. So, in effect, having reached agreement at $\frac{1}{2}$ 2.7 million, he had certainty as to what his exposure to tax was going to be?

A. Yes.

Q. And I suppose, secondly, he had secured the cap of 100 percent interest, isn't that right?

A. That's correct, yes.

Q. And that was, as we were saying earlier, that was a sizable benefit to him well over and above what would have happened if he had been assessed or if you had gone down the

assessment route?

A. If we had gone down the assessment route and, ultimately, say the courts approved the assessments, then we would have been able to collect that amount of money, but with no certainty as to timing, et cetera

Q. Of course, of course, absolutely.

A. as was mentioned yesterday.

Q. Absolutely, of course. As I said, nobody is suggesting for one moment that there weren't considerable benefits in this for the Revenue Commissioners. But just at the moment I am trying to explore with you what the benefits might have been from Mr. Haughey's point of view?

A. Yes.

Q. And then, thirdly, I suppose, we know that, in the context of this matter, there were no tax-related penalties, isn't that right?

A. No tax-geared penalties, yes.

Q. His penalties were limited to $\frac{1}{2}$ €60,000, isn't that right?

A. They were non-filing penalties.

Q. Yes, non-filing penalties, and that is all.

A. Yes.

Q. And again, had you gone down the Income Tax route, which, as you say, you could have done, you may well not have succeeded - but Mr. Haughey may have had a concern that you might have gone down that route - there would have been exposure to very, very considerable penalties, isn't that right?

A. That's correct, yes.

Q. And I suppose, also, another advantage, that occurs to me, to Mr. Haughey, is that he avoided being embroiled in lengthy litigation, isn't that right?

A. That is true, yes.

Q. And, also, I suppose, as well, really, the settlement received only a modicum of publicity, isn't that right?

A. I think it received quite a lot of publicity at the time

Q. I see.

A. you know, I think it did, on both occasions, both the interim settlement and this one.

Q. Certainly the interim settlement did.

A. Yes.

Q. But the media release by the Revenue Commissioners on this occasion was, I suppose, it was an agreed release, but I suppose, in comparative terms, it was very sparing in terms of detail, isn't that right?

A. It was indeed, yes.

Q. And also, Mr. Haughey avoided being included in the quarterly publication of tax defaulters?

A. Well, as Mr. Gillanders said yesterday, statutorily we could not publish him.

Q. Yes, yes. Am I right in thinking, from evidence that the Tribunal has previously heard, that it is part of the Revenue's charter that they do not seek to recover tax from a taxpayer that they do not believe is bona fide due and owing?

A. I just missed the last part of that question.

Q. That they do not believe is properly due and owing?

A. Absolutely. I mean, we wish the tax to take the proper amount of tax.

Q. So that there couldn't have been any question but that the Revenue believed that this $\text{€}1/25$ million was due by Mr. Haughey?

A. That's correct, yes.

Q. Now, I know that you were involved in quite a number of meetings regarding the technicalities of the agreement that was ultimately concluded, and I am not going to go through those with you because they primarily related to concerns over security?

A. That's correct.

Q. were all ironed out and the nuts and bolts of the agreement?

A. Yes.

Q. But I do just want to refer you to a file note, again of a telephone conversation that you had with Mr. Peelo on the 30th of October?

A. Yes.

Q. In fact, you "rang Mr. Peelo on the 30th of October with a preliminary list of issues arising in relation to the proposed settlement with Mr. Haughey. In his initial remarks he mentioned that the sale of the land was being pushed hard and he felt it would be sold sooner rather than later."

And then you raised a series of 10 matters, and, in fact, most of those matters you raised, Mr. Haughey's agent, Mr. Peelo, had no difficulty with. But he did have difficulty with three of them and I want just to refer you to those.

"2. Proposed interest moratorium."

At 6, "The reply to the Investigations Branch letter of the 4 May, 1999. Statement of Affairs and Forms 62.BD?"

And "7. Certificate of full disclosure and any agreement being 'subject to current state of knowledge'."

A. That's correct.

Q. And then I think you have set out below that, and over the page, details of what his concerns were. And you say in relation to item 2, that is the interest moratorium,

"While appreciating Revenue's position, he was of the view that the position had been agreed as part of the agreement in principle and that he would have difficulty going back to the client on it. That said, he was prepared to look at it again with a view to sorting something out."

A. That's correct, yes.

Q. That's just in terms of what that means, that means interest payable on the sum for which you had settled, isn't that right?

A. That's right.

Q. And I think, in the end of the day, you did agree that, if it wasn't paid within six months, interest would accrue on the tax element?

A. That's right. I mean, originally at the meeting of the 8th of October, I think they sought a two-year interest moratorium, and I think, at the end of those discussions, we agreed that we'd go back to the Board with perhaps suggesting a one-year moratorium. The Board weren't happy with that, and they insisted that, at most, it would reflect the interim agreement, which was a six-month moratorium.

Q. That is fair enough. Now, "In relation to items 6, while not familiar with the contents of the Investigations Branch letter of the 4 May, 1999, he felt that this and the requirement to provide a standard Statements of Affairs and Forms 62.BD could be problematic for the client" sorry, "Could be problematic for the client. As regards the 62.BD, he felt that the Tribunal had already trawled all of the financial institutions in the country and that there was therefore 'nothing left to ask'. He added that Revenue very probably had all of that information copied to them by the Tribunal. He appeared particularly concerned that a further Revenue-based trawl of financial institutions could give rise to 'leaks' and media inquiries as to what was afoot."

Now, I think, in the end of the day, some of these forms 62.BDs were returned, and Mr. Stephen Treacy will deal with that?

A. That's right.

Q. And also the Statement of Affairs

A. Yes, yes.

Q. was actually returned. But can you assist the Tribunal at all as to why it was that Mr. Peelo felt that it could be problematic for Mr. Haughey to answer the queries that had been raised by the Revenue and to furnish a Statement of Affairs?

A. I think perhaps it goes back to some of the early meetings that we had in April of 2002 where they said that most of his most of the contents of the house, for example, simply consisted of memorabilia, would involve a huge amount of effort to document and list. That is the only thing I can recall at this remove.

Q. I see. So it would just be inconvenient?

A. I suspect. The IB letter, I think, of May, which is the other thing; again, this was a letter that Mr. Treacy had issued

Q. Yes.

A. to Mr. Paul Moore, I think, and again, it was looking for a whole series raising a whole series of questions, seeking additional information. I think he had got a reply prior to this from Mr. Moore which sort of answered some of the questions, again, I think, mainly reflecting information that was in the public domain. So obviously there were other questions that Mr. Treacy was asking in this letter that obviously he felt might give rise to difficulty, would be problematic for the client. He had simply been saying that the client didn't know, you know

what I mean?

Q. Yes.

A. Problematic in the sense that the client couldn't offer any useful explanation.

Q. I see. So again, the difficulty was in relation to the provision of information from Mr. Haughey to the Revenue?

A. Absolutely, yes.

Q. And then just over the page, "As regards item 7, he indicated that this would certainly" item 7 was a

"Certificate of full disclosure and any agreement being 'subject to current state of knowledge'."

"As regards item 7, he indicated that this would certainly cause his client difficulties - and that he felt the client's legal advice would certainly be against signing such a declaration. Notwithstanding my indicating that it was standard practice that settlements were made subject to the 'information available at the time', he also felt uncomfortable with the proposition that the agreement might be made subject to the final outcome of the Tribunal. I indicated that I felt this would be non-negotiable from the Board's perspective."

And I think that was the position; it was non-negotiable, isn't that right?

A. Yes, yes.

Q. Then it just goes on to record, "Mr. Peelo indicated that he would be fully tied-up on other business over the next two weeks or so but suggested a meeting (possibly involving

Paul Moore) for Tuesday 12 November at 11:30 a.m. to address the various matters and to see what progress could be made.

"He also felt that the legal people on both sides should start discussing the agreement. In that regard, he suggested that our legal advisors contact Anthony Gore Grimes of Gore Grimes Solicitors. He also mentioned that they did not envisage a charge on the property but would do whatever else was necessary to secure Revenue's position - in this context he mentioned the possibility of 'depositing title deeds'. He also clarified that his understanding was that, like last time, the children would gift to their father sufficient land to enable to him to discharge the Revenue Debt from the proceeds of sale.

"We agreed to keep in touch in relation to any further issues that might emerge and in relation to the proposed 12 November meeting."

And I think you then met on a number of occasions between then and the 18th of March of 2003, both with Mr. Haughey's agents, Mr. Peelo and Mr. Moore, and also, on occasions, you were joined by the Revenue's legal advisor and Mr. Haughey's legal advisor?

A. That's correct, yes.

Q. And I think, over that period, you managed to negotiate the nuts and bolts of the formal agreement that was executed on the 18th of March, and I think there was also agreement on securities being put in place

A. Yes, indeed.

Q. to protect the position of the Revenue Commissioners?

A. Yes, yes.

Q. And that I think the Revenue Commissioners were satisfied with the securities that were executed, and I think, in fact, that matter went to the Board of the Revenue Commissioners, isn't that right?

A. It did indeed, yes.

Q. And, of course, in the event, we know that the Revenue Commissioners did not have to have resort to any of that security because the Revenue debt due on foot of the agreement was duly honoured and paid?

A. That's right.

Q. Can I just refer you to the agreement, very briefly; I am not going to ask you too much about it. There is just one or two - in fact, there is just really one matter I want to ask you about. If you just go to Clause 2, which is on the second page?

A. Yes.

Q. And that shows the breakdown of the debt that was agreed to be paid under the agreement. You have tax at 2.47 million, interest at 2.47 million and penalties at $\text{€}1/260,000$, and the total is $\text{€}1/25$ million?

A. That's correct.

Q. Now, what I haven't been able to really find in the documents is any indication of when this issue of the penalties at $\text{€}1/260,000$ arose, and I wonder could you assist?

A. It was subsequent to the meeting of the 8th of October when the issue of penalties were considered and we felt that penalties should be payable.

Q. Yes.

A. And we produced a schedule which set out these were, essentially, non-filing penalties.

Q. Yes.

A. So basically, what we did was that for each of the payments that were identified that we spoke about this morning, we took a non-filing penalty at the relevant amount for the relevant year.

Q. Yes.

A. And then in relation to each of those years, each of the 20-year period where we suspected there were other receipts being taken by Mr. Haughey but we didn't know any of the detail, we applied another non-filing penalty, so, in total, we had something like 40 non-filing penalties.

Q. But this was $\frac{1}{2}$ 60,000 which was allocated out of the money that Mr. Haughey had already agreed to pay, isn't that right?

A. Yes.

Q. So, in truth, really, these were nothing more than nominal penalties, isn't that right?

A. It's one way of looking at it, yes.

Q. It was just a way of breaking down the figure of 5 million to provide for penalties?

A. Yes, but there were penalties, I mean, we took penalties

off.

Q. But they weren't paid by Mr. Haughey over and above the tax and the interest which he agreed to pay?

A. That is true, yes; no, it's true.

Q. From the Revenue's point of view, what was the consequence to treating $\frac{1}{2}$ of that 5 million as being a penalty?

A. Well, I suppose the fact that the settlement comprised tax, interest and penalties.

Q. So it enabled the Revenue in the media release to say that there was interest and penalties paid?

A. Well, factually there was, yes, yes.

Q. But they weren't paid over and above the figure that Mr. Haughey agreed to pay for tax and interest, isn't that right?

A. That is true, that is true.

Q. Now, there is just one final matter, Mr. McCabe, I just want to ask you about. There has been reference by both yourself and Mr. Gillanders, and indeed in some of the statements, to Mr. Haughey's tax affairs, or the resolution of them, awaiting the provision and publication of a report by this Tribunal, isn't that right?

A. That's correct, yes.

Q. And I just wonder are you familiar with paragraph (j) of the Tribunal's Terms of Reference?

A. I am aware of the paragraph, yes.

Q. And I think you would agree that there could be no report of the Tribunal until the Tribunal had inquired into the

actions taken by the Revenue Commissioners to recover tax from Mr. Haughey in relation to the payments of which the Tribunal has heard evidence, isn't that right?

A. That's correct, yes.

Q. It comes within the Tribunal's Terms of Reference?

A. Yes, indeed, yes, yes.

Q. And, in fact, and I think as fairly said by Mr. Gillanders, the Tribunal appeared to hint of completed hearing evidence largely, or substantially, into money-trail matters affecting Mr. Haughey, in May of 2001, isn't that right?

A. That's correct, yes.

Q. And it was shortly thereafter that the Revenue Commissioners proceeded to develop a strategy as to how to collect tax from Mr. Haughey arising out of that evidence?

A. That's correct, yes.

MS. O'BRIEN: Thank you very much, Mr. McCabe. Thank you.

THE CHAIRMAN: Mr. Connolly?

THE WITNESS WAS EXAMINED BY MR. CONNOLLY AS FOLLOWS:

Q. Thank you, sir. Mr. McCabe, the settlement that was negotiated and obtained between the Revenue and Mr. Haughey's tax advisors, that was put in place by you and your colleagues assessing the information you had at the time, isn't that correct?

A. That's correct.

Q. And when you were assessing that information, I think it goes without saying that you were looking at this information and how you would treat certain payments to

Mr. Haughey or payments made on his behalf; you were looking at this in the context of Revenue law and Revenue powers because that was your function as a Revenue official, isn't that correct?

A. That's correct, yes.

Q. Now, it may be that other persons, perhaps the members of the public or the media or even this Tribunal, might look at particular payments, identify them or categorise them in a particular way, and if they do, they are not necessarily at odds with you, because they are looking at it through their prism of 'What does this look like?' But you were confining your exercise in assessing these payments to Mr. Haughey or payments made on his behalf, solely through, as I call it, the prism of Revenue law and Revenue powers, is that correct?

A. Absolutely right, yes.

Q. Now, Ms. O'Brien asked you to look at the settlement in terms of benefits to Mr. Haughey. Can I ask you to confirm the identifiable benefits to the Revenue of entering this settlement; first of all, just like Mr. Haughey having certainty and avoiding litigation, the Revenue had certainty in relation to this difficult tax file and they also avoided litigation, the outcome of which could be far from certain, isn't that correct?

A. Absolutely correct.

Q. And while the Revenue were completely prevented under legislation from putting Mr. Haughey into a list of

defaulters, there nevertheless was a revelation to the public by means of a statement announcing that this settlement had taken place, isn't that correct?

A. That's correct, yes.

Q. And in any event, because of paragraph (j) of the Terms of Reference that Ms. O'Brien mentioned to you at the end of her questioning, all of this must have been in the context of the Revenue contemplating what is happening here now, that there would be discussion in this Tribunal as to how this settlement was achieved and what were the nuts and bolts of it, isn't that correct?

A. Yes, indeed, yes.

Q. Now, again, looking at the benefits from the Revenue's point of view, this settlement was negotiated and finalised in the context of your current state of knowledge as it existed at the time, that is to say if extra items came to your knowledge, they could be looked at and dealt with in an appropriate way under Revenue law and Revenue powers; they weren't foreclosed, isn't that correct?

A. That's correct and that is the specific reason, I suppose, why Schedules 1 and 2 were included in the agreement, so that there was no doubt as to what had been included in the settlement and what was outside of it, what had been parked.

Q. And then, finally, and what was probably most attractive in terms of the settlement, was that it wasn't simply an IOU, so to speak; there was a means by which the payment was to

be secured if it wasn't paid by a particular date, isn't

that correct?

A. Yes, we could force the Taxpayer to sell his house - I could have actually sold his house and property after two years, based on the power of attorney that was given, you know.

Q. So those are the items that were beneficial to the Revenue which weighed heavily with you and your colleagues and the Board in finalising this particular agreement as being a provident agreement as far as the Revenue were concerned?

A. Yes, a satisfactory outcome, I think.

MR. CONNOLLY: Thank you very much, Mr. McCabe.

CHAIRMAN: Thanks very much for your assistance and preparation, Mr. McCabe. That is the conclusion of today's evidence. I think there is one more witness

MS. O'BRIEN: on Tuesday.

THE CHAIRMAN: who will be taken up on Tuesday morning at 11 o'clock. Thank you very much.

THE TRIBUNAL THEN ADJOURNED TO TUESDAY, THE 28TH OF MARCH, 2006, AT 11 A.M.