

THE TRIBUNAL RESUMED AS FOLLOWS ON MONDAY, 18TH

DECEMBER 2000 AT 11AM:

MR. HEALY: In these sittings, the Tribunal will, in the main, hear evidence connected with the Revenue Commissioners. This evidence will be given by a number of current and former officials of the Revenue. The Revenue Commissioners are mentioned in the Terms of Reference at Term of Reference (j) which provides as follows. The Tribunal is required to inquire: "Whether the Revenue Commissioners availed fully, properly and in a timely manner in exercising the powers available to them in collecting or seeking to collect the taxation due by Mr. Michael Lowry and Mr. Charles Haughey of the funds paid to Michael Lowry and/or Garuda Limited trading as Streamline Enterprises identified in Chapter 5 of the Dunnes Payments Tribunal Report and any other relevant payments or gifts identified at paragraph (e) [of this Tribunal's Terms of Reference] and the gifts received by Mr. Charles Haughey identified in Chapter 7 of the Dunnes Payments Tribunal Report and any other relevant payments or gifts identified at paragraph (a) [of this Tribunal's Terms of Reference]."

Now, these sittings will deal with the Revenue Commissioners primarily in the context of those provisions of the Terms of Reference which I have just

mentioned. However, the evidence from the Revenue officials which the Tribunal expects to hear will also throw some light on other aspects of the Terms of Reference and in particular, Term of Reference (a) which deals with payments in the case of Mr. Charles Haughey, and in the case of Mr. Michael Lowry, the corresponding Term of Reference at Term of Reference (e). For reasons which have become all too clear in recent times, the Tribunal will be concentrating, in the case of Mr. Haughey, on the evidence relating to his affairs with a view to disposing of as much as possible of the evidence of Revenue officials relating to Mr. Haughey's dealings with the Commissioners. The twin dimensional features of this evidence will become obvious when it is borne in mind that the manner in which a taxpayer treats his assets or his resources in the context of his obligations to the Revenue Commissioners may provide some useful evidence upon which to base the characterisation of the circumstances in which those resources were accumulated. And under Term of Reference (a), in the case of Mr. Haughey, what the Tribunal is required to scrutinize is not merely the fact of payments, but all of the circumstances in which any payments actually identified were in fact made.

Term of Reference (j), the term dealing specifically

with the Revenue Commissioners, involves an examination of the conduct both of the taxpayer and of the Revenue Commissioners themselves. In Mr. Haughey's case, the Tribunal will be focusing on a number of different tax headings. These, more or less, correspond with the points of contact between Mr. Haughey or his agents, and the Revenue Commissioners over the 1970s, the 1980s and the 1990s. Much of the documentary material in relation to these tax headings or points of contact between the Revenue Commissioners and Mr. Haughey overlaps. Therefore, the Tribunal anticipates that it may take sometime before a coherent picture of the dealings between the Revenue and Mr. Haughey emerges and indeed, as the evidence proceeds, it may be necessary to introduce further portions of it by way of additional opening statements. It may also be necessary, in the light of information which becomes clear or in the light of the picture which emerges from the initial evidence, to recall a number of the witnesses to address matters which could not be addressed in the context of evidence given under one heading and which may require a witness to respond to queries which take into account information relating to a number of different headings.

Under Term of Reference (j), the Tribunal is required to examine the Revenue treatment of payments identified by the McCracken Tribunal. That's putting, in fairly

simple terms, that part of Term of Reference (j) which I have already read out means. In addition, the Tribunal is also required to examine the Revenue treatment of payments found by this Tribunal that come within Term of Reference (a) or (e). The question which is posed by the Terms of Reference is whether or why the Revenue Commissioners did not collect tax from Mr. Haughey or Mr. Lowry in connection with any of these payments? The Revenue Commissioners have informed the Tribunal that until the McCracken Tribunal and the evidence and the report of that Tribunal, the Revenue Commissioners were not aware of any of these payments. Assuming that to be the case, the question for the Tribunal is whether, in all the circumstances, the Revenue Commissioners ought to have been aware of the existence of these payments; whether the Revenue Commissioners had powers which, if they were used properly, in relation to Mr. Haughey's overall taxation affairs, they, the Revenue Commissioners, would have become aware of or been alerted to the existence of these payments; or putting it more broadly, whether the Revenue Commissioners would have become aware of or been alerted to the existence of facts which would have pointed in the direction of or which would have warranted further inquiry resulting in information leading to those payments.

To this end, the Tribunal has determined that it should examine the overall relationship between Mr. Haughey and the Revenue Commissioners. And it is for this reason that it has been decided to approach the matter on the basis of the tax headings or points of contact I have already mentioned. The main headings under which the Tribunal intends to approach this are as follows: Firstly, personal income tax, secondly, farm tax or if you like, personal income tax arising out of farming operations; thirdly, capital gains tax; fourthly capital acquisitions tax, and lastly, residential property tax.

In this opening statement, I am going to confine my remarks, Sir, as much as possible, to the relationship between Mr. Haughey and the Revenue Commissioners in the context of capital gains tax.

Mr. Haughey had dealings with the Revenue Commissioners in the context of Capital Gains Tax in respect of two matters. They are, firstly, the disposal by him of a farm at Ashbourne, County Meath, known as Rath Stud. Secondly, a gain of some $\text{€}300,000$ arising out of a contract with the Gallagher Group in connection with the sale or purported sale of part of Abbeville. As the contract was not completed by the Gallagher Group, the $\text{€}300,000$ deposit was forfeited. It was a non-refundable deposit. As a result of the forfeiture

or non-refunding of the deposit, effectively the entire value of the payment of $\text{€}300,000$ constituted a gain to Mr. Haughey and to his wife, Mrs. Maureen Haughey.

The gain on Rath Stud arose from a sale in January of 1977. I think that gain was in the order of some $\text{€}50,000$. Where Rath Stud was concerned, the Capital Gains Tax was not in fact paid until in or around 1986.

It would appear that no interest was charged and no penalties were levied in respect of this late payment.

In the calculation of the tax due, Mr. Haughey was afforded the benefit of a discretion exercisable by the Revenue Commissioners so as to enable a taxpayer making a late return to avail of a more favourable method of calculation normally available only to a taxpayer paying his tax on time.

The questions which arise in relation to this treatment of the gain on Rath Stud appear to be as follows:

Firstly, was there anything unusual by comparison with other taxpayers in the fact that the tax on this gain was not collected until some nine years after the gain accrued, in particular in circumstances where no interest was charged and no penalties levied? When I say was there anything unusual, what I mean to say is whether the treatment of Mr. Haughey's case was by comparison with the general run of such cases in the Revenue Commissioners in any way more favourable or

more indulgent?

Next, was there anything unusual in the exercise of the discretion in favour of Mr. Haughey in respect of the making of a late return? In a submission from the Revenue Commissioners, the Tribunal has been informed that late filing was the norm for the vast majority of cases prior to 1988 and that penalty proceedings for non-submission of returns were taken only in a very small number of cases in each year. Although the Tribunal does not yet have available to it all of the information in relation to this aspect of the collection of tax on Rath Stud, it may be necessary to ascertain what sort of delay prompted the issue of proceedings in the cases that were mentioned in that submission.

Mr. Haughey also incurred, according to the Revenue Commissioners, a liability to Capital Gains Tax in relation to the forfeited deposit in respect of the purported sale of 35 acres of Abbeville to the Gallagher Group under a contract of January of 1980.

It will be recalled that it appears that these monies were used to fund the settlement of Mr. Haughey's liabilities to Allied Irish Banks. It will also be recalled that evidence was given that the Receiver of the Gallagher Group took the view that the contract document under which this money appears to have been

paid over was in a highly questionable form; that in view of the form of the contract, he considered that it was his duty as Receiver or that it might have been his duty as Receiver to seek to recover the sum of $i\frac{1}{2}$ 300,000 purportedly paid under the contract on the basis that, in effect, the contract appeared to be a sham; and that, in addition, he canvassed this view with the Revenue Commissioners, bringing to the attention of Mr. Pairceir of the Revenue Commissioners, his own impressions, if you like, his unfavourable impressions of the contract document.

The Revenue Commissioners determined to pursue the matter under the Capital Gains Tax heading only and were not prepared to appoint a liquidator to the Gallagher Group for what would effectively have been the purpose of challenging the bona fides of the contract.

It would appear that no return of any capital gain was made in relation to this contract and it also appears that the matter may not have come to the attention of the Revenue Commissioners but for the fact that the Gallagher Group went into receivership and that the Receiver, for his own reasons, brought it to the attention of Mr. Pairceir, then Chairman of the Revenue Commissioners.

The determination of the Revenue Commissioners to treat

this under the heading of Capital Gains Tax resulted eventually in the making of an assessment in 1986. The tax due was assessed at £89,700. The assessment to Capital Gains Tax in respect of Abbeville and in respect of Rath Stud came in the aggregate to the total sum of £102,330. Of this, some £50,000 was paid in or about the 15th July 1986. It would appear that this payment was routed through Haughey Boland, Mr. Haughey's then tax agents. It further appears that the payment was funded, as other evidence later on in these sittings will show, by a debit of £50,000 to the Haughey Boland No. 3 Account which was the same account used for Mr. Haughey's bill-paying service, an account, the funds for which, were sourced through accounts under the control of the late Mr. Desmond Traynor.

A second payment was made on the 27th July 1987 and this was in the amount of £25,000, again routed through Messrs. Haughey Boland and once again funded by a debit from the Haughey Boland No. 3 Account.

The balancing payment was not made until January of 1988, which I think was in the region of eleven years after the liability arose. This payment does not appear to have been funded by a debit to the Haughey Boland No. 3 Account.

Now, while these matters will have to be viewed or at least examined under a number of different headings as a result of other information which has come to the notice of the Tribunal and which will have to be ventilated in due course, one aspect of this payment that I should mention as an aside is that there does not appear to have been any scrutiny by the Revenue Commissioners of the source of the $\text{€}102,330$ required to discharge these tax liabilities, bearing in mind that in the years during which that payment was made, Mr. Haughey does not appear to have had any other source of income other than his payments from the Exchequer as a member of the Dail or as a minister or as a person in receipt of a pension, as far as the Revenue were aware.

More generally, the questions which arise in relation to this Capital Gains Tax issue are as follows:

Were the Revenue Commissioners under any obligation to consider the unusual circumstances in which they became aware of the transaction whereby this gain was realised?

Notwithstanding their decision to treat this gain as giving rise to a potential capital gains liability, were the Revenue Commissioners under an obligation to consider the unusual nature of the agreement whereby Mr. and Mrs. Haughey purported to sell part of the lands of Abbeville?

We now know that had the Revenue Commissioners examined the circumstances of this agreement and, for instance, the fact that there appears to have been no attempts to enforce it on either side, either by the purchaser or the vendor, the question which arises is would the Revenue Commissioners have been prompted to scrutinize the payment and if so, would this have warranted further scrutiny by the Revenue Commissioners of Mr. Haughey's affairs?

One of the stated purposes for the payment of $\text{£}300,000$ was to assist Mr. Haughey in disposing of his Allied Irish Bank debts and, in circumstances in which it would appear that the agreement was a highly unusual one, the question which arises is whether this would not have prompted further scrutiny by the Revenue Commissioners of Mr. Haughey's overall finances which, as we know, according to the Revenue Commissioners, consisted of nothing more than his State emoluments.

Although the Revenue determined to treat this agreement as giving rise to a capital gain in the ordinary way and while it appears that there may have been very good reasons why this should have been done as a means of collecting some tax, a question which also arises is whether this decision to proceed in this way have precluded the Revenue Commissioners from forming a view

as to the somewhat unusual circumstances in which the gain arose? In other words, even though the Revenue Commissioners decided that they would treat this as a capital gain and seek to collect taxation on it, was there any reason why the Revenue Commissioners should not have looked behind the gain and examined the circumstances in which it arose in order to form a picture of the activities of the taxpayer?

Once again, having determined that the transaction should be approached as giving rise to a capital gain, a further question which arises is as to whether the Revenue Commissioners ought to have charged interest or levied penalties and whether, by not charging interest, and by not levying penalties, Mr. Haughey was being treated in any way differently from other taxpayers?

Lastly, the Tribunal will wish to know why it was that an assessment of a taxpayer to tax and the collection of that tax was a matter with which the Chairman of the Revenue Commissioners appears to have been intimately involved? In particular, the Tribunal will wish to know why it was that the Chairman should interest himself in the affairs of an ordinary taxpayer, in particular, when it is assumed that the Revenue Commissioners did not see that taxpayer's conduct as warranting any special inquiry, as warranting the charging of interest or as warranting the levying of

penalties?

I don't propose to make any opening remarks at this stage, Sir, in relation to the other tax headings, though it may be necessary in due course to make a further opening statement at a later point in the course of these sittings either this week or at some other time.

CHAIRMAN: Very good Mr. Healy, we will proceed to evidence, thank you.

MR. COUGHLAN: Mr. O'Donghaile please.

PADRAIG O'DONGHAILE, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. O'Donghaile, are you also called Donnely? It's just that

A. I am, yes.

Q. Now, I think, I wanted to ask you, Mr. O'Donghaile, and you furnished a statement, particularly relating to the disposal of Rath Stud and the capital gain which arose thereon and the liability for tax, isn't that correct?

A. That's correct.

Q. I think you were the first person in the Revenue to have dealings in relation to that, isn't that correct?

A. Correct, yes, yeah.

Q. Now, I think the Tribunal, in a long letter dealing with many issues, asked you to address your dealings

with this particular aspect of the Mr. Haughey's taxes, isn't that correct?

A. Yes, correct.

Q. And I think the Tribunal pointed out that it appears that this matter was dealt with initially by you, then by a Mr. Christopher Clayton and subsequently by Mr. David Fitzpatrick, would that seem to be correct?

A. That's correct.

Q. And I think the Tribunal also pointed out that it appears from the Tribunal's analysis of the documents at that stage, that the following appeared to be the position in relation to it. Firstly, that there was no return for Capital Gains Tax on the disposal of Rath Stud in the returns for the year 1978/1979 and/or for subsequent years until the matter came to your attention in 1981, is that correct?

A. Correct, yes.

Q. When the Tribunal

A. Sorry, could I just clarify that? As the returns didn't actually, in other words, are you suggesting that there were returns that didn't include the ?

Q. No, no, I think the first time as far as the Tribunal can ascertain and can you confirm this, there appeared to have been no returns until the matter was brought to your attention in relation to communications between Mr. Haughey's tax agents and your office in 1981, is that correct?

A. Correct, correct.

Q. So that and just so that the public can follow this because it will get complicated, when we talk about returns, first of all, Mr. Haughey was a PAYE worker in terms of his public duties, isn't that correct?

A. Correct, yes.

Q. Now, I think whilst there is an obligation on all taxpayers to make returns and there was always such an obligation in real terms in respect of most PAYE workers if that is their only source of income, the Revenue doesn't concern itself greatly because of the danger of being bogged down administratively in seeking returns from every single PAYE taxpayer?

A. Correct. There would be a selective approach.

Q. And I think that's understandable, because otherwise one would be caught up in a blizzard of paper and it would or distract the Revenue from dealing with what it should be dealing with?

A. We are into a huge number of staff.

Q. But if a taxpayer has an income or a gain from some other source other than PAYE, a return should be made, isn't that correct?

A. Yes, of course, yes.

Q. And it is that return which would include the PAYE aspects would also have a facility to enable returns in respect of, for example, dividends or the disposal of assets, there'd be provision for that on the return and

that should be made?

A. Yes, correct, yeah.

Q. And again just to clarify matters, the period we are talking about here in the late seventies, the mid to late seventies and up to the early to mid-1980s, predated self-assessment?

A. Of course it did, yeah, yeah.

Q. Now, I think the first intimation of there being a Capital Gains Tax liability appears to have been on the provision in April of 1981 of financial statements for Mr. Haughey's farm income for the years from April '75 to the 14th December 1979, is that correct?

A. Correct.

Q. And I think you have informed the Tribunal that the first indication you had that there was a profit on the disposal of Rath Stud which might result in Capital Gains Tax liability was in 1981, that is when the accounts covering the period the 6th April 1975 to the 4th December 1979 were submitted by Messrs. Haughey Boland & Company with a covering letter of the 16th April 1981, is that correct?

A. That's correct.

Q. Now, I think perhaps we'll just put this up. This is what came into you in the office, isn't that correct?

Now, I think the letter, and I am only showing a portion of the letter at the moment dealing with this particular issue, I think it's the second page of it

A. Could I stop you, there just very briefly just to clarify, there were two letters of the 16th April, right. One letter sent in the farming accounts, right? The second letter included on page 2 this Capital Gains Tax calculation, yeah.

Q. And this was the letter in this letter, it dealt with the capital gains on the disposal of the stud at Ashbourne and the potential for a liability of a tax in relation to it.

A. Correct.

Q. And it indicated that the gain was just short of $\frac{1}{2}$ 50,000 and that there was the potential for a Capital Gains Tax of around $\frac{1}{2}$ 12,500 or thereabouts.

A. Yes, that's correct.

Q. Now, I think the notes to the accounts which were submitted included a reference to a profit on disposal of Rath Stud of $\frac{1}{2}$ 50,000 but did not specify the date of the disposal.

A. That's correct, yeah.

Q. And then another letter of the 16th April 1981 to which you have just referred, was sent to the Inspector in Public Departments enclosing returns of income for 1977/'78 to 1980/'81, isn't that right?

A. That's correct.

Q. And the disposal is referred to also in that letter and in the return of income for 1977/'78 which accompanied it, isn't that correct?

A. Yes, correct.

Q. And the letter, that is the letter, the second letter we are now talking about, refers to the gain as having arisen in the year 1976/1977.

A. Yes, correct.

Q. Now, I think you have informed the Tribunal that in the letter to the Inspector Public Departments, the agents, that's Haughey Boland, suggested that the farming losses would exceed other income, that is Dail salary, I suppose, expenses, and matters of that nature, which had been taxed under PAYE, so that the tax paid on it would be refundable and could be set-off inter alia, against chargeable Capital Gains Tax on the disposal of Rath Stud which they calculated at around $\frac{1}{2}$ 12,500?

A. Correct.

Q. I think the level of farming losses was such that this was a possibility but could only be actually done if and when the allowability of the losses were confirmed and the Capital Gains Tax position resolved.

A. Correct, there were two aspects to that, in other words, we would have to determine the amount of the farm loss and establish whether it was allowable and if it was so allowable, set it against the PAYE income and then establish the amount of the PAYE over-payment and then in due course set that against the Capital Gains Tax, that was to be the process which was going to take place.

Q. When you say and we don't need to go into this in huge detail, but in relation to determining the farm losses, I take it that was just to be assured that they were genuine losses, the calculation of those losses, ascertaining whether they were in fact farm losses?

A. Yes, without getting bogged down in the technicalities, there is a technical issue in relation to farm losses, as to whether or not farm losses are an allowable well certain losses in general, whether they are allowable, are they do they arise in circumstances where the activity isn't a commercial activity? But in the farming instance, there were particular rules laid down in 1974 when the legislation was passed to bring farmers into the tax net and that caused us to look closely at farm loss situations so Mr. Haughey's case was no different to many others in that regard. So I had to be concerned as to whether or not the losses would be allowable in the heel of the hunt.

Q. Now, can I ask you this: Do you know, maybe you don't, whether the Revenue ever established whether these were genuine farm losses from farming carried out on a genuine commercial basis?

A. Well, in the heel of the hunt we didn't allow the losses against the PAYE income. So the correspondence which you have before you will see that I was heading in the direction of seeking to disallow the losses.

Q. Very good. You go on to inform the Tribunal that the potential over-payment totalled this is arising out of the PAYE tax liability of £12,200 odd or thereabouts?

A. To correct that, that was in the original statement, I have corrected that and in other words, an oversight unfortunately. It's £13,868 was the

Q. Yes, £13,800 odd. I think the accounts submitted to the Revenue purported to show losses, that was farming losses, of about £370,000-odd?

A. Correct. Based on the accounts, but there would have been adjustment to that if it was a case of allowing them which would have reduced the loss I think to about £311,000.

Q. Now, I think there was a subsequent discussion with the tax agents, between yourself and Mr. Kenny I think from Haughey Boland?

A. No

Q. A Mr. McMahon, Mr. McMahon at that stage?

A. Yes.

Q. The late Mr. McMahon?

A. Yes, correct.

Q. And in any event, the farming losses were not allowed against other income, so they didn't give rise to an over-payment and the Capital Gains Tax issue was taken over by your colleague Mr. Clayton in June or July of 1984, is that correct?

A. Correct, yeah.

Q. Now, I think you made a note of the meeting, isn't that correct?

A. Yes, I think I had two meetings with Mr. McMahon, if certainly I made notes of them anyway, yeah.

Q. Well, I think the Revenue have furnished to the Tribunal a handwritten note dated 15th November 1982, would that sound correct?

A. Yes, yes.

Q. And the meeting covered a wide variety of matters?

A. Yes, yeah. We trawled through the farm accounts, and it was essentially based on the issues arising out of the farm accounts submitted that was

Q. Yes. Now, I think the issue of the capital gains or the profit on the sale of Rath Stud is on the second page of the handwritten note and it's item number 6, isn't that correct?

A. I think I have it in front of me. Yeah, that's correct, yeah.

Q. Do you have a hard copy there?

A. I have it, yeah.

Q. You can refer to it. Now perhaps I'll read it if I can, and then you can correct me and I think it reads:

"Profit on sale of Rath:

I pointed out that there was a question mark about the use of the 6/4/74 valuation method as the time limit had expired. He was aware that the Revenue had

discretion in regard to the extension of the limit. I advised him that this was a discretionary power that the Revenue Commissioners had. He will examine the matter. I told him that I would also require a rate demand note and a copy of the contract for sale in addition to the valuation at the 6/4/74 if the time limit had extended."

Is that a correct

A. That's correct, yes.

Q. reading of the note? Now, I think the particular lands in question, the stud, had been purchased in '68 or '69?

A. From recollection, yeah, '68 I think, around that time anyway.

Q. And a discussion took place between yourself and Mr. McMahon about a valuation date for the property as of the 6th April 1974?

A. Correct.

Q. Isn't that correct? Now this involves a technical matter, doesn't it?

A. Yeah, that's correct.

Q. Could you just explain it so that the public can understand what was involved in this particular discussion?

A. Well, the calculation that Mr. McMahon's people had sent, well Haughey Boland & Company which I presume

Mr. McMahon had a hand in, had sent in was a calculation based on a valuation date of the 6th April 1974 using it as the base cost, if you like, and calculating the gain by reference to that valuation between April '74 and the date of the disposal which was January '77. Now, there was a time limit within which such, to elect to use that particular method and in circumstances where that time limit, sorry, otherwise we used what we call a time apportionment method, in other words, we were talking about calculating a gain by reference to the cost and so on rather than a valuation.

Q. So in other words, if I could just take that slowly, there was obviously a statutory provision which allowed for a valuation as of April 1974 in the calculation of Capital Gains Tax, is that correct?

A. You can't be precise

Q. I am not asking for that, but it allowed between that time after the introduction perhaps of, in the previous year's Finance Act and the date of the disposal of the asset, you could take that date for the calculation, otherwise one had to go back to the time of the actual purchase of the asset and base the gain on the whole period, is that correct?

A. Yes, correct, yeah.

Q. Now, obviously, or sorry, I shouldn't was the purpose of that to act in ease of the taxpayer?

A. Which now?

Q. To allow a calculation to be based on a valuation as of the 6th April 1974.

A. I suppose if it suited the taxpayer, yes, yes, yeah.

Q. I suppose in real terms, it provided the taxpayer with an option almost, isn't it, to go the route which was most favourable to the taxpayer?

A. Take the best route, exactly.

Q. Now, at the time you had this discussion with Mr. McMahon in 1982, the time period had elapsed for this particular taxpayer to take advantage as of right, to that date for the calculation of capital gains?

A. Correct, yeah.

Q. And am I correct in thinking that that particular option as of right had passed for Mr. Haughey five years previously, as of right?

A. No. The time limit I haven't got that in my head, I think it's a two-year time limit or something after the date of disposal

Q. It was about three years?

A. Maybe two years.

Q. So notwithstanding that the taxpayer didn't have this option as of right, the Revenue Commissioners nonetheless, had a discretion, is that correct?

A. Yes.

Q. In allowing it?

A. Certainly, yeah. There were many situations where

this issue cropped up, for other reasons,
people perhaps they weren't aware of the time limits
first of all, or secondly, the circumstances were such
that they forgot about it or whatever or the accountant
forgot about it and so they would make a case, yeah.

Q. Now, if I could ask you was there any criteria set down
in the Revenue Commissioners other than those you have
just given whereby the discretion would be exercised in
favour of the taxpayer?

A. I can't tell you that offhand. My colleague perhaps
will be able to fill you in on that. I simply don't
have it at the tip of my tongue, yeah.

Q. Well, you didn't make the decision in relation to this,
did you?

A. No, ultimately, no, no.

Q. Now, I think you requested a rate demand that would
have been for 1974, is that correct?

A. For the '74, correct, yeah.

Q. April '74, the

A. Well, it would be the '74 rate demand note, covering
the rates for the year.

Q. And you also sought sight of a copy of the contract for
sale, isn't that correct?

A. Yeah.

Q. And a valuation as April 1974?

A. Correct, yeah because I mean, I would have anticipated
that the discretionary power that was there was

something that would have to be considered so and these were the preconditions, so to speak, that I had to establish.

Q. And what you were trying to do was to establish the base facts, isn't that correct?

A. Yes.

Q. You want a rateable valuation, a copy of the contract, and a valuation to enable you to say, well that was the value in 1974, now somebody is going to have to exercise a discretion.

A. Quite.

Q. And did you ever receive what you sought, or do you know if the Revenue?

A. Certainly personally no, I didn't get the rate demand note.

Q. Or a copy of the contract for sale?

A. Or a copy of the contract for sale, no.

Q. Or a valuation?

A. Or an auctioneer's valuation, no.

Q. And you were dealing you were dealing with this particular aspect of it?

A. Yes, at that time, yeah.

Q. From 1981 up till 1984, isn't that right?

A. Yeah.

Q. Now, in relation to the exercise of a discretion, was any case ever made to you by Haughey Boland on behalf of Mr. Haughey that the Revenue should exercise its

discretion to allow Mr. Haughey have the option of which date the valuation should be from?

A. Well, apart from the fact that Mr. McMahon raised it obviously in the context of our discussion, and was aware in fact that there was a discretion, that was the only circumstances. I didn't get a written case put to me, yeah.

Q. You didn't get a submission Haughey Boland never made a formal submission to you?

A. No, no. Well I mean, we wouldn't always necessarily get that, you know?

Q. I understand that and I was going to come back and ask you leave aside the fact that you wouldn't have a formal written submission in relation to the matter, did Mr. McMahon or anyone else from Haughey Boland ever make any type of case to you, now, to you which dealt with issues like that the taxpayer had forgotten about it, that the taxpayer didn't know about it, that his agents had forgotten about it or put it on the long finger or didn't know about it or anything like that?

A. No, no.

Q. Did you yourself ever know what the land sold for?

A. Yes, indeed, because it's in the accounts.

Q. Yes, I know the accounts were submitted, but did you ever have sight of the contract?

A. No, no.

Q. And you never received a valuation?

A. No, never received a valuation.

Q. So apart from it appearing in in fairness and I just want to say, you did not make any decision in relation to this?

A. No.

Q. But apart from it appearing in the accounts as submitted by Messrs. Haughey Boland, you had no independent confirmation of what the lands sold for and you had no valuation as of 1974, isn't that correct?

A. No, correct well no, again when you get a set of accounts from a reputable firm of accountants, you feel that you are getting something you can rely on, so I feel I wouldn't have thought the figure wouldn't have been any different than the figure that was shown in the accounts, but

Q. I understand that and of course in the conduct of ordinary business, the Revenue have to deal with firms of accountants on the basis of them behaving reputably and

A. Quite.

Q. take the accounts as they come. Otherwise nobody would get any work done.

A. Yeah.

Q. But this was a particular case I think where something over and above was taking place, the Revenue were going to be asked to exercise a discretion in favour of the taxpayer, and you asked for what, on the face of it,

doesn't appear like an awful lot, like sight of the contract for sale to be readily available, you would agree?

A. Yes.

Q. If you yourself were going to make the decision and exercise the discretion

A. Well, you see, I wouldn't have what I would have done is referred it up to the section in our Head Office that dealt with these issues and had them look at it. So, at that particular point in time anyway...

Q. Well, can I take it that in the exercise of your functions, you, because you asked for them, obviously considered them necessary?

A. Yes, well let's put it this way, I hadn't I mean, I wasn't making a decision as to whether we would use the time apportionment basis or whether we would use the valuation basis, but I was anticipating that if the valuation basis was to be used, that, you know, these were items which would be considered in the context of it

CHAIRMAN: Accepting that you don't have understandably at the tip of your tongue the criteria for exercising this discretion and of course you did not in fact deal with the decision, what's your recollection of practice in the Revenue Commissioners at the time generally as to how hard or how onerous it generally was to get this discretion exercised in

favour of the taxpayer?

A. Well, you see, I think we were in a changing era at that point in time, again I am speaking from recollection, because the law on this had changed in '78 and giving a much freer situation as regards using the valuation at '74. So I suspect that that would have been certainly a consideration. Now, as regards late application, certainly I'd have had a recollection of seeing this would have been the only time I saw a case where there were eight applications and as regards the question of the discretion, I can't recall overall because I have no indication of what the overall figures were, but certainly I would from recollection, think that I saw cases where we did exercise this discretion and but I can't bring to mind precise circumstances in which that would have been done.

MR. COUGHLAN: And you can't be precise, I suppose, about the type of case that was made in those circumstances.

A. No.

Q. Each case would, I suppose

A. It's on their own merits as to what the case was. I gave you some instances of the kind of things

Q. You think that there may be other criteria?

A. Oh I am sure there are, yeah, because there is no law

on what number of situations can occur that can give rise to something some difficulty for a taxpayer .

Q. Now, between it first came to your attention in 1981 and then that subsequently gave rise to a meeting with Mr. McMahon in 1982. Did any contact take place between you and Mr. McMahon in relation to this matter between 1982 and 1984 when it was taken over by your colleague, Mr. Clayton?

A. I want to refresh I know

Q. Yes indeed?

A. I had two meetings with Mr. McMahon, I think at both meetings I brought this issue up, but subsequent in '82, I don't think it no, because Mr. McMahon fell ill in, sometime in the middle of '83 and my attempts to make contact with him to advance the matter and so on, didn't succeed because of that and subsequently Mr. McMahon died. So the answer to your question is no, there was no further discussion on this particular topic, yeah.

Q. May I ask you this, how did your colleague Mr. Clayton come to take over this particular matter?

A. Well, sometime towards the end of May or June of '84 I had a phone call from the then superintending inspector who asked me to send the file over to him.

Q. Who was that?

A. That was Mr. Connolly.

Q. Mr.?

A. Connolly.

Q. Do you know his first name?

A. Fintan.

Q. Mr. Fintan Connolly. He was your supervising

A. No, Superintending Inspector. He was the Chief Inspector, I suppose, is what you would term him today.

Q. What grade would that be in the Civil Service?

A. That would be a Deputy Secretary grade.

Q. Yes.

A. Who sought the file and indicated to me that there was something that was being looked at and so I sent the file over anyway and then had a meeting with him subsequently and in the course of that meeting indicated that Mr. Clayton would be looking after the Capital Gains Tax which seemed straightforward because that's where Mr. Clayton worked in the Capital Gains Tax area, so...

Q. As well?

A. Sorry, what do you mean as well? Oh no, no, I was in the farming area. My main task at that stage was, I was the District Inspector in charge of what was the then Dublin Farming Number 2 District. So...

Q. In the case of the sale of farm lands, would they normally have been included in returns which would have come to your section?

A. Oh yes, yeah, because the agents and taxpayers and so on would send in their returns to me and that would

include the details of disposals and what have you.

Q. Claims in respects of losses, for example?

A. Yeah, absolutely.

Q. And then any tax liability in respect of disposals or making a case that they may not be liable?

A. Yeah. Although in this instance, there were two districts for Haughey's tax affairs; there was the Public Departments area and there was my area. I was looking after the farming end and another district looked after the PAYE end of things. There was a twofold.

Q. I am just interested in the demarcation or differentiation, if I may. There was an inspector in the Public Departments whose responsibility Mr. Haughey's PAYE returns or income, I won't say go so far as to say return, income made, isn't that correct?

A. Correct.

Q. In respect of the farming aspects of Mr. Haughey's life, you were the official who had responsibility in that area?

A. Yes.

Q. The Superintendent Inspector who informed you that he wished the file to be sent over and then informed you that Mr. Clayton would be taking over the capital gains side, where did he fit into the picture or did he straddle all sections?

A. Well, he was responsible for the entire taxes

organisations within the office of the Revenue

Commissioners. So he would have been the boss

basically within our area.

Q. And what prompted him in this case to take something from your responsibility, which you had been dealing with in the normal course of your business, and I presume which you had in respect of other cases, and directed that the capital gains portion of this should be sent to Mr. Clayton?

A. Well, the probability was that it was going to be sent there anyway because I was going to be referring this issue up to the Capital Gains Tax section and so this wasn't something that was terribly unusual. My principal concerns were with the farming tax issues which were the issues that I was mostly concerned about. So what prompted him to send it sorry, to ask me to or indicate to me perhaps was an earlier discussion that he would have had with Mr. Clayton in relation to the Gallagher deposits and that perhaps is what prompted the interest.

Q. May I ask you this: You were dealing with Mr. Haughey's affairs in the normal course of your work, isn't that correct?

A. Yes.

Q. On the farming side.

A. Yeah.

Q. And in that regard, Messrs. Haughey Boland had informed

you of the potential for a capital gains liability .

There had been discussions taking place as to whether losses on farming activity could be allowed against an over-payment on PAYE and in all, there was a discussion going on about potential write-offs or reconciling a situation which would enable a tax to be paid ultimately, isn't that what was going on?

A. Yeah.

Q. Now, with reference to your own responsibility, you, as the responsible official, had a meeting with Mr. Haughey's tax agent, Mr. McMahon, two meetings I think, isn't that correct?

A. Yeah.

Q. To whom were you reporting in relation to those meetings?

A. Well, I wasn't reporting to anybody.

Q. Right.

A. I was the District Inspector as such. So I didn't make reports as to, you know, my daily activities, if you like. These were reported on a monthly basis as in various different ways as to what was going on, but they weren't individual case reports as such.

Q. You were sufficiently senior to be dealing with something yourself.

A. Yes, correct.

Q. And when you say matters were reported on, perhaps on a monthly or on an irregular basis?

A. Monthly.

Q. Monthly to whom were they reported?

A. They were reported on to the principal inspector, but what I am talking about reporting on are issues of figures, you know, and how many open appeals you had and how many assessments you had raised and all this kind of thing.

Q. To see the broad picture in relation to your area?

A. Correct.

Q. Individual cases were not necessarily reported on. You were responsible not to be dealing with those?

A. Except in a different way, there was a system whereby open appeal cases were checked out as well. And the principal inspector also was concerned to see what progress was being made in the cases so that inevitably led to some discussion about individual situations.

Q. Now, in relation to this particular item, that is the question of whether there was a capital gains liability in relation to the disposal of Rath Stud, that is not something that you had to report on monthly or any irregular basis to anybody at all?

A. No, no.

Q. And you didn't?

A. I didn't, that I can recall.

Q. You can only do the best you can. And then did you consider it unusual that you received a communication from the Superintendent?

A. Yes, slightly unusual, yeah, yeah.

Q. Did you inquire of him how he knew that you were dealing with this particular matter?

A. No. But it would have been, I suppose, easy enough for him to find out what the case was being dealt with.

Q. I understand that, but it wasn't something you brought to his attention?

A. Oh no.

Q. What I am trying to ascertain is how the matter came to the attention of somebody else who advised or instructed you that it should go to somebody else?

That's really what I am interested in.

A. Basically because he asked me to send the papers up so he looked at the papers and would have seen that this issue was ongoing.

Q. Of course. If it had reached a stage under your control where what you had sought from Mr. McMahan and I appreciate Mr. McMahan had become ill and did die subsequently, but if it had reached a stage that you had received the type of information you were seeking from Mr. McMahan, the valuation, the contract and even leave out the rates demand, but the valuation and the contract, you could have made a decision or exercised the discretion at that stage, could you?

A. I don't think I would have. I think I would have referred the matter up to the Capital Gains Tax section.

Q. Were you authorised to exercise that discretion of the Revenue Commissioners yourself at that time in relation to allowing the matter be calculated?

A. I can't recall. I don't think so. I think it was the normal practice would have been to refer the matter up for adjudication up there, because in other words, if it was to be any other way, every district in the country would be exercising their own individual discretion, so

Q. There'd be no following what was going on?

A. That's my recollection of that period, yeah.

Q. There'd be no uniformity?

A. Correct.

Q. But you would not have sent it up for a decision or you obviously didn't send it up for a decision yourself?

A. No.

Q. And you would not have sent it up for a decision until you had received the type of information broadly you were seeking?

A. In the normal course, yeah, yeah.

Q. Did it ever happen to you before this that you received a communication from somebody as senior as the Superintendent who asked you for the file and where consideration of a matter like this was taken out of your control?

A. Well

Q. Or processing?

A. Just to be clear I mean I wouldn't have probably been considering that matter anyway, you know, in terms of

Q. Processing the matter.

A. I can't recall, but certainly there are many circumstances in which files get called for by Head Office. In fact I mean, given I am working there myself at the moment in a different capacity, but I would have occasion to call for files for a variety of different reasons, so it's not unusual for files to be sought and sent up. The circumstances in relation Capital Gains Tax, again, I don't offhand recall that situation cropping up in another case, but what I would say about that is that given that the Capital Gains Tax section was an established section in the Head Office, it didn't seem to me to be that particularly unusual to have the matter referred in there.

Q. I understand. Like, it wasn't something that caused you to have alarm bells go off in your head or anything of that nature, of course. But this had not happened to you before?

A. Well, I can't recall yes or no on that, I mean

Q. Well, you can't recall yes, can you, would that be fair to say?

A. I can't recall no either. Just to be clear about it, because the, you know, I would have dealt with hundreds and hundreds of files and

Q. But you can recall this one?

A. Because it's all down here in front of us.

Q. And you had no recollection of it other than now?

A. Sorry, what do you mean?

Q. You had no recollection of this other than the documentation coming to your attention of recent times?

You do not are you suggesting that you do not remember this happening back in 1982 and '84?

A. Well, if it hadn't been put in front of me, perhaps not, but I mean, since I have been looking at this for the last several years, I mean, it's hard for me to know where the cut-off point comes, but in regard to your earlier question, I mean, if it's a prominent figure, obviously you would have more

Q. Recall

A. Exactly, it would stick out a little bit more, but as I say, there are many cases where it would have been sent up to Head Office or be called up, so it's not that I don't regard that as, you know, very it's unusual, but I mean it does happen.

Q. Thank you very much.

MR. CONNOLLY: I have no questions, Sir.

CHAIRMAN: Thank you for your assistance, Mr. O'Donoghale. I suppose we should make a start on the next witness.

MR. HEALY: I don't think there is any point, Sir,

because he is going to take sometime.

CHAIRMAN: Well then, we will forward perhaps the resumption to a quarter to two. I should have apologised to Revenue witnesses present and indeed to members of the public and media representatives for starting somewhat after our scheduled time of eleven o'clock. The position was that some matters of record reached us regard belatedly which were necessary for preparation of the opening statement and I stress this had nothing to do, there was no default on the part of anybody connected with Revenue. We will take up the afternoon hearing then at a quarter to two.

MR. KETTLE: Just a moment. I am here for Deloitte & Touche, but just to make the matter clear, there may be matters which I might need to recall Mr. Donnely in the future. There may not but there may be, I just want to make that clear.

CHAIRMAN: I should have offered you the opportunity, Mr. Kettle. Is there anything now you need to ask him?

MR. KETTLE: Nothing at the moment. I just wanted to make that clear.

CHAIRMAN: A quarter to two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 1.45PM:

MR. HEALY: Mr. Christopher Clayton, please.

CHRISTOPHER CLAYTON, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. HEALY:

Q. MR. HEALY: Mr. Clayton, you have provided the Tribunal with assistance in relation to a number of the matters I mentioned this morning, including, in particular, Rath Stud and the question of capital gains on the, what I call, the Gallagher contract.

A. That's correct.

Q. What I want to deal with, just at this moment, is the dealings you had in connection with Rath Stud. If you go to folder 7, you will find Mr. Clayton's statement in relation to Rath Stud. Do you have a copy of that statement?

A. I have indeed.

Q. You say that you are currently Chief Inspector of Taxes in the office of the Revenue Commissioners and that you have held this position since 1989. You say that prior to 1984, you had no involvement at all with any of Mr. Haughey's tax affairs. In the period from 1984 to 1987 you say that you dealt '97 sorry, from 1984 to 1997, you dealt with aspects of Mr. Haughey's tax affairs under two headings: Firstly, Capital Gains Tax in the years 1984 to '87; and secondly, returns of income and capital gains in the years 1991,

1992 and 1997. You have made, as I have already indicated, a number of separate statements, not just in relation to Rath Stud and the Gallagher contract, but also in relation to Mr. Haughey's personal income tax returns. You go on then to deal with the Rath Stud item.

Firstly, I think you make a few introductory remarks about Capital Gains Tax in general, is that right?

A. That's right. I have said that it applies to gains on disposals after 5th April, 1974, and it is chargeable on the amount of gains which accrue after April 1974; in other words, gains which accrue before 1974 are not chargeable to Capital Gains Tax.

Q. I understand. You say that the legislation has been amended in various respects since 1975. You go on to say that administrative works on Capital Gains Tax is mostly handled in tax offices in Dublin and throughout the country. The work is supported and coordinated by a small number of staff in the office of the Chief Inspector of Taxes. The work of these staff includes giving advice to tax districts, where required, as regards computation of liability, legal interpretation, and advice to the Revenue Commissioners on CGT matters generally. It also includes resolution of points of difficulty which, in the early years of CGT, included taking a pro-active role in determining some

liabilities.

You then go on to make a personal note. You say that between November of 1973 and March of 1979, you served outside the Revenue on loan to the Department of Finance. On promotion in March of 1979, you returned to Revenue and served as senior Inspector of Taxes in the Head Office of the Chief Inspector of Taxes until October of 1986. In that latter capacity, you had responsibility for overseeing the administration of CGT. In the course of your work, you arranged for assessment of two CGT liabilities of Mr. Haughey in relation to Rath Stud and the Gallagher deposit, as you have already mentioned. You say that you ceased to have direct responsibility for CGT when you were promoted in October of 1986.

A. That's correct.

Q. Then dealing particularly with Rath Stud, you say that the position is as follows: During the course of your work, in the context of the Gallagher deposit, it came to your attention that Mr. Haughey had disposed of a property known as Rath Stud in January of 1977 for $\text{€}1,300,000$, and that while the matter was being considered in the context of Mr. Haughey's farm accounts up to 1979, no CGT had been paid in respect of the disposal because the then Chairman, Mr. Seamus Pairceir, had been in contact with me about the Gallagher deposit, I advised him of the position and

cleared with him the terms of a letter to Mr. Haughey's tax agents, Haughey Boland & Company, which covered, inter alia, the Rath Stud disposal, you wrote to Haughey Boland & Company on the 9th August. 1994, and we'll come back to that letter later on.

CHAIRMAN: '84.

Q. MR. HEALY: '84. You also advised Mr. Fintan Connolly, who was then Superintending Inspector of Taxes Planning, is that some subdivision of responsibility?

A. It was a title which was brought in some years prior to that and it was changed in 1986, I think, to the less unwieldy title of Chief Inspector, in fact, it reverted to the old title, which was to become whatever it was in 1975.

Q. In any case, that's the same Mr. Fintan Connolly that was mentioned this morning?

A. That is so.

Q. Then he was known as the superintending Inspector of Taxes, subsequently a title that was changed to Chief Inspector of Taxes, the title that you now hold.

A. Correct.

Q. And you also advise your immediate superior, Mr. Sean McManus, superintending Inspector of Taxes, assistant secretary level?

A. That's correct.

Q. You then say that, despite written reminders from you to the agents, you got no substantive reply. In view of the lack of progress in the case generally, you prepared a memorandum for Mr. Pairceir in June of 1985 which summarised the overall CGT position and proposed a certain line of action in relation to the Rath Stud, including assessment of the chargeable gain as computed by the tax agents in 1981. Mr. Pairceir approved your proposal. A letter issued to the agents accordingly on the 28th June, 1985. The consequential tax, $\text{€}12,480$, was assessed in July of 1985. This assessment was appealed by the agents on the 9th July, 1985. You arranged with Mr. Fitzpatrick, an inspector in public departments district, which dealt with Mr. Haughey. Does "public departments" mean people employed in the public service or in public offices?

A. In the Civil Service generally. That was a department which existed up to about 1990 or I should say a district which existed up to about 1990 and, under the restructuring and reorganisation of the office in the early nineties, it ceased to exist and the people concerned were or the people dealt with in that district were subsequently dealt with in a number of districts.

Q. I see. You arranged for Mr. Fitzpatrick, in any case, an inspector in that department which dealt with Mr. Haughey, for the appeal to be heard by the Appeal

Commissioners on the 17th April, 1986. On the morning of that day, prior to the time for hearing, the agents submitted a letter accepting the assessment and they withdrew the appeal. Subsequently Mr. Haughey made a payment of £50,000. Of this sum, £12,000 was set against the CGT liability on Rath Stud. That payment of £50,000, of course, was in respect of an aggregate liability of in excess of £100,000, isn't that right?

A. Yes. By then

Q. I simply want I don't want to interfere with the narrative, but that's what that 50,000 was part of, isn't that right?

A. It was. There was a debt of over £100,000, yes.

Q. As regards the acceptance of the agents' computation of liability, a point arises in relation to the basis of computation. You say that between 1974 and 1978, when the law was changed, the amount of chargeable gains on the disposal of an asset held before the 6th April, 1974, was, with certain exceptions, generally computable with reference to a time apportionment basis, or, at the option of the taxpayer, within a certain extendable time limit to the actual increase in value since the 6th April, 1974. You go on to explain the time apportionment basis. You say that this was a simple basis for producing a chargeable amount; for example, an asset owned for ten years and sold in 1976 could have a chargeable gain calculated as a two-tenths

fraction of the overall gain since 1966.

A. If I could just come back on one point. I made a reference in the previous paragraph to certain exceptions, and perhaps it might not be irrelevant to indicate what the exceptions were. Development land was one of those, also quoted shares. There was another exception, I think in relation to industrial buildings, where a capital expenditure had been incurred. But there were exceptions to the possibility of time apportionment.

Q. Can I take it that those exceptions, none of those exceptions applied in this case?

A. Absolutely.

Q. In any case, as you have just mentioned in your statement, if you had held property for ten years prior to '76 you'd only be charged on the time apportionment basis for the apportioned or proportionate gain in the two years since the tax became a potential liability for a taxpayer since April '74?

A. Correct, yes.

Q. The time limit for use of the April '74 option, which is the other option, was two years from the end of the year of assessment in which the disposal was made, but this limit was capable of being extended at Revenue's discretion. It was not usual to admit I beg your pardon, it was not unusual to admit late applications and their admission did not require formal decisions by

the Revenue Commissioners themselves. The power was exercised at lower levels in certain cases; for example, cases involving evasion or attempted avoidance or delays of many years, applications would have been refused.

The agents' 1981 computation made on the alternative basis; in other words, made on the basis of the gain between 1974 and the date of the disposal was late, in the sense that it was it was late because it was outside the time for making a return and it was also outside the two-year time limit within which the taxpayer had an automatic right of exercising his option to go one way or the other, is that right?

A. I would modify one thing that you said there. It was not late because of delay in making the return, it was late simply because the application had not been made in time.

Q. I see. Can you just clarify that point for me, then?

In the case of a disposal, as in this case, in 1977, when should the return have been made?

A. The return should have been made, if the taxpayer had been obliged to make one, in April of '77. That would have been the regime at that time. The regime has changed significantly under self-assessment, but on the preceding year basis of a disposal in January '77 would have been disclosable in April '77 in an omnibus

return, including income and chargeable gains for the year ended 5 April, 1977.

Q. Is that because the ordinary return a person made in those days included, under a separate heading, a provision to make a return in respect of any capital gains during the preceding tax year? Was there a standard form that included an obligation to make that return?

A. There was a standard form and ordinarily income and capital gains would be shown on the one form.

Q. Right. Well, maybe just clarify my understanding of this, then? If there was an obligation to make a return in respect of a January '77 gain by April of '77 or in the return that went in then, perhaps you'd explain to me why I am wrong in thinking that a failure to return that gain during that period was not an omission and why a subsequent filing of a return was not late?

A. No, it certainly was an omission. But what I am saying is that, as I understand it, it was not a condition of the time apportionment option.

Q. Oh, of course, I fully understand that, because the time apportionment option period of two years clearly contemplated that a return could be made late and still the taxpayer would be entitled to avail of the option, isn't that right?

A. Correct, yes.

Q. In other words, as long as the taxpayer was not later than two years in making his return, he had an automatic right to the option?

A. That is correct, yes.

Q. So he might be late, which might warrant some action, or not, as the case may be, but he could still exercise his option up to two years. After two years he could only exercise his option at the discretion of the Revenue Commissioners?

A. At the discretion of the Revenue Commissioners and the practice at that time was to allow

Q. Well, I'll come back to the detail later Mr. Clayton.

I just simply want to understand the use of that expression, that word "late " which you put in parenthesis for what I understand are quite popular reasons. You say that you decided to proceed on the basis that the late application could be allowed. And you say the following considerations would have been relevant: The application was some two years late but the delay was not very great in comparison with other cases. Also, the delay could have been defended by the agents by reference to its association with the farm accounts which spanned the period from 1975 to 1979 and which were the subject of separate discussions up to 1984. Is that correct, I don't want to go into those details for the moment.

The second point you would make is that it did not seem

that there were any other unusual features to the disposal.

And the third point you make is that similar applications in comparable cases would have been allowed in 1981.

Then you say, while not strictly relevant, "it may be noted that the time apportionment method was abolished in 1978. The Capital Gains Tax (Amendment) Act of 1978 made mandatory in all cases the previously optional basis, i.e. computation with regard to 1974 valuation which was the basis used in the case of Rath Stud."

I just want to go over one or two aspects of your statement and I also want to look at a number of documents.

Perhaps you might look at the documents first, Mr. Clayton, so that we'll have them in the front of our minds when I go back over parts of the statement.

The first document that your attention has been drawn to is a document which was, in fact, brought to the Tribunal's notice by the Revenue Commissioners, a letter of the 16th April, 1981, from Messrs. Haughey Boland & Company, accountants to the Inspector of Taxes Public Departments. It says, "We return herewith

returns for '77/'78, '78/'79, '79/'80 and '80/'81." I

think these are returns in relation to farm tax and

income tax, would that be right?

A. Yes. Income tax, farm tax would have been covered in that, yes.

Q. It goes on to record that "Mr. Haughey states that there were probably small fees from RTE which he signed

over to charities. If, technically, he is still

taxable in respect of any such fees, they should be

included as notified. Farm accounts up to the 14th

December, 1979, have been submitted to Mr. Donnelly,

Dublin farming district, as from the 14th December,

'79. On becoming Taoiseach, he" that means

Mr. Haughey "handed over the farming business to his

daughter Eimear." It goes on to say "The farms losses

to the 14/12/'79 exceed the income for the tax years

'74/'75 to '79/'80 so that the tax suffered is

refundable and may set-off to cover the following."

Now, Mr. Donnelly has dealt with that scenario this

morning, or at least he has stated in evidence that he

was the person dealing with this scenario in that he

was dealing with farm tax accounts and it was a

question as to whether there were losses which were

allowable and, if so, they could in addition be set-off

against other tax liabilities.

And then these tax liabilities are mentioned.

Firstly, a resource tax, which is, I think,

specifically applicable to farmers, is that right?

A. Yes, at that time, yes, it's a tax and then repealed.

Q. Wealth tax

A. And then repealed.

Q. And then chargeable gains, meaning Capital Gains Tax in

this case and the item mentioned was the sale of a farm

described as Rath Stud for $\text{£}300,000$ less costs, giving

a total gross gain of $\text{£}298,500$. A value for wealth tax

at the 6th April, '74, is inserted at $\text{£}250,000$ and then

the net or the gain is put in at $\text{£}48,500$. There is an

exemption for the first $\text{£}250$, leaving a taxable gain of

$\text{£}48,250$, is that right?

A. According to the agents' letter, yes. I think the figure for the exemption is wrong.

Q. In any case, the tax, according to the agents, the tax computation was $\text{£}12,545$.

A. Yes.

Q. Now, somebody, presumably in the Revenue Commissioners,

has made a number of notes, one of those seems to be

"time limit"; the next is "? Time apportionment".

Obviously that is a reference to the alternative basis

of valuation we mentioned a moment ago. The time

limit refers to the discretionary period having come

into operation. And on the right-hand side, then, we

have what looks like a note of some kind to the effect

"get valuation", is that right?

A. It looks like that, yes.

Q. Now, that's a letter of 1981. Now, I want you to go back in your book for a moment to a section of the book which deals with the evidence given by Mr. Donnely, that's section 6, and if you go to the documents at the back of that section, have you got that?

A. I am sorry, I don't have Mr. Donnely's material with me.

Q. For a moment I am going to give you

A. Mr. Sherlock, I think, is volunteering

(Documents handed to witness.)

Q. The letter which we have just been discussing was a letter of 1981 in which this matter was mentioned for the first time, or for the first time brought to the attention of the Revenue Commissioners, isn't that right, complete with a computation of the amount actually due according to the taxpayer?

A. That was when the agents drew it to our attention, yes.

Q. Now, we know from the evidence of Mr. Donnely that there was subsequently a meeting between him and Mr. McMahon of Haughey Boland & Company, who was Mr. Haughey's tax adviser. That meeting took place on the 15th November of 1982.

A. Yes.

Q. And if you go to the handwritten note, item number 6 on the second page, deals with the, what's called the profit on the sale of Rath Stud. Now, although

Mr. Donnelly wasn't asked this question, if I am wrong in making this assumption, I am sure if he is here, he can correct me, the writing "time limit" and "time of apportionment" on page two of the letter we were discussing a moment ago seems to be his writing?

A. It does indeed.

Q. And most of the other writing seems to be his writing as well?

A. Yes.

Q. Obviously having got the letter, these things were exercising his mind. He then had a meeting with Mr. Kenny and

A. I am sorry, Mr. McMahon.

Q. Mr. McMahon, I beg your pardon. And at that meeting, as he says, he pointed out there was a question mark about the use of the 6/4/'74 valuation in view of the fact that the time limit had, on the face of it, expired. And he informed Mr. McMahon about the discretionary powers which the Revenue had and indicated he would examine the matter and he told Mr. McMahon that he would require a rate demand, a copy of the contract for sale in addition to a valuation as at the 6/4/'74 if the time limit was extended. In other words, what he was saying was that, if I am to extend the time limit and if I am to use the '74 valuation method, I will need a valuation for 1974, a rate demand and a copy of the contract. Of course

he'd have required a copy of the contract in any case, wouldn't he? He'd have had to know from the contract, or however, he'd have had to know the actual consideration on sale, wouldn't he?

A. Not necessarily, if one were depending upon the taxpayer or his or her agents. The primary purpose in seeking a rate demand note and a certified valuation, so to speak, at April 1974 would be to assist the valuation office in their consideration of the matters, if the matter were to be referred to them for examination.

Q. I understand that. By the time that you came into this matter in any case, none of those things appears to have been done, isn't that right?

A. That is right, yes.

Q. There was no valuation, there was no copy of the contract and there was no rate demand?

A. That's right.

Q. You came into the matter in 1984 and took it over took it over from Mr. Donnely on foot of certain dealings you had had in connection with the Gallagher CGT issue, is that right?

A. Yes, in effect, I decided to try and wrap up the entirety of the CGT position.

Q. Can I just ask you, how did you become aware, at the time you were dealing with the Gallagher CGT issue, that there was another CGT issue outstanding in

relation to Rath Stud?

A. Well, when the Gallagher matter was drawn to my attention, I considered it appropriate to look at any other papers that the Revenue might have had in its possession in relation to Mr. Haughey and possible Capital Gains Tax, and it was in that context that I would have sought to see the file, the farming file of Mr. Haughey, having learned there was a farming file, that is, and in that context I came across this reference to the Rath Stud.

Q. I see. So you looked at the farming file initially purely to deepen your knowledge in relation to Mr. Haughey's affairs for the purpose of assisting you in dealing with the potential liability to Capital Gains Tax on the Gallagher affair or the Gallagher contract?

A. No, I didn't associate the Rath with the Gallagher matter which you are talking about.

Q. I know that, but you sought the file?

A. I sought the file in the context of Gallagher, but on getting the file I saw there was an unassessed liability on Rath.

Q. Absolutely. You knew nothing about Rath until you got the file?

A. Correct.

Q. And so you got the file for a purpose connected with your scrutiny of or review of the Gallagher issue, if I

can put it that way

A. Yeah.

Q. And having got the file, you then discover this undischarged potential liability in respect of Rath Stud.

A. That's right.

Q. And by the time you got the file, can I take it that the file contained the handwritten memoranda that I have just alluded to and which was mentioned by Mr. Donnely this morning?

A. I couldn't swear absolutely to that but I expect it did. I am not aware there was anything missing from the file.

Q. I presume that what would have drawn your attention to the Rath Stud issue, was the letter we have just seen?

A. Yes, indeed.

Q. And it's unlikely that that document on the overhead projector, was not somewhere on the file associated with that letter?

A. I am practically a hundred percent certain it wouldn't have been on the file.

Q. Neither the valuation, the rate demand nor the contract was on the file at that point?

A. No, I don't believe it was. I don't believe I have ever seen those documents.

Q. Did you think at that point that you should seek the documents which Mr. Donnely had stipulated for in 1982?

A. I would have preferred, of course, to have seen them, and I wished to make contact with Mr. Kenny to advance the matter, but I didn't make any progress in that regard.

Q. You can now go to the correspondence. You wrote to Mr. Kenny on the 21st June, 1984, a letter in which you say "I refer to previous communications with your firm about your client's tax affairs. I wish to know if you were dealing with his Capital Gains Tax affairs for all the tax years up to and including the year ended 5th April, '84. Please inform me if you are so acting."

Now, that letter was addressed to Haughey Boland for the personal attention of Mr. P. Kenny. At that stage, how did you know that Mr. Kenny was the agent acting?

A. I had phoned, as I recall it, I had phoned the firm either in May or June to ascertain who was dealing with the tax affairs of Mr. Haughey.

Q. I see. Now, at the bottom right-hand side of that letter, there is a note, is that your handwriting?

A. It is, yes.

Q. "Copies", is that right?

A. "Copies to J.F. Connolly and F.S. McManus, the two superior officers that you referred to earlier.

Q. And on the next page on the book of documents we come to what looks like a handwritten note, if we could have it on the overhead projector. I think it says

"Chairman meaning, is that Mr. Pairceir, is that right?"

A. That is correct, right.

Q. "Copies herewith"?

A. Yes.

Q. "As averaged. Signed Christopher Clayton." Then underneath that it says "Seen and agreed, thanks, looks like S", is it?

A. The signature of Mr. Pairceir.

Q. 3/8/84. At that stage, can you recall what letter would have been seen by Mr. Pairceir?

A. I think it would have been a draft of a letter of

Q. 9th August?

A. 9th August, I think. I think that would be reasonable to assume.

Q. Which is the next letter on the book of documents.

Your letter of the 9th August refers to a letter of the 27th July from Mr. Kenny. I don't have that on the bundle of documents just in front of me, but I am told it was merely a holding letter of the 27th July and I will turn it up unless you have it in front of you?

A. I don't have it either, but you are correct, it was simply an acknowledgment.

Q. You write saying "I wish to have your client's Capital Gains Tax liabilities brought up-to-date as soon as possible, and would accordingly be glad if you would attend to all outstanding matters as soon as possible,

including the following", and the first one needn't concern us, it's not relevant. The next one is "Please forward your computation of chargeable gains arising on the disposal of Rath Stud in January of 1977." That's the first thing that you wanted sent on to you.

Now, a computation had already been sent on, isn't that right? Why were you seeking the same information again, as a matter of interest?

A. It might have been said to have been superfluous to ask for it a second time, but that's what's included in the letter.

Q. I see. The next issue you raise is "to do account, Gallagher deposit". I think it might be no harm if I read it at this stage because it would put things in context even if I don't come back to till later on:

"Your client's return which was made in April 1981 did not show any chargeable gains accruing in the year ended 5th April, 1980, and no return has been made since. Would you please review the matter and let me have information about any disposals in the period from 6 April, '79 to 5th April, '84. You are, of course, aware of the provisions of Section 47 re options and deposits of the Capital Gains Tax Act, 1975."

Now, at that time you were, in fact, aware, on foot of information that had been made available to you by the

Receiver of the Gallagher Group, that there was potential for a capital gains liability, is that right?

A. Yes, I was aware of that, yes.

Q. And you were not you were leaving it to Mr. Haughey's tax agents to volunteer that information to you?

A. I was indeed, yes, and any other disposals to which they care to refer.

Q. Precisely. Why should you mention the Gallagher Group disposal when there might have been others that hadn't been volunteered?

A. Indeed there was the possibility, yes.

Q. Although the section to which you referred, options and deposits, certainly was one which would have left anyone, any accountant in any case, with an idea as to what you might have been driving at, if I can put it that way?

A. As to the nature of the gain which might have accrued, it's not beyond the bounds of possibility there might have been more than one.

Q. Yes, of course. But as to the type of transaction which might have generated the gain, the section you were referring to was undoubtedly a section which might have given an accountant some inkling of what it is you were driving at, can I put it that way?

A. I don't think that would have required much imagination on an accountant's part to figure it out.

Q. As I said, we may have to come back to that at a later point. You wrote again on the 10th October, 1984, when you had received no response to your request for assistance in relation to Rath Stud and in relation to your other queries. You wrote again in October of 1984 when you had received no in November of 1984 when you had received no response to your October letter, isn't that right?

A. Yes, indeed. I am sure you are right. I don't have a record of it in front of me.

Q. By the 5th December 1984, you did, or you had received a response? And that letter referred to yours of the 9th August and subsequent reminders and said "We regret the delay in replying to you but shall return to you in the very near future with the submissions you have requested."

A. That's right.

Q. You wrote again on the 21st January, 1985, referring to the letter of the 5th December, having allowed a reasonable amount of time, including the Christmas break to elapse, asking once again to receive the promised reply.

A. That's right.

Q. By April of 1985, you still hadn't received the promised reply and you wrote again, this time you were getting somewhat concerned at least in that you said it was now eight months since you had written about

Capital Gains Tax liabilities and you pointed out that the delay in dealing with the matters in question is a matter of concern and you say "I must ask you to forward the required information and computations in the very near future."

Now, by that stage, by April of 1985, it was, after all, over nearly eight years since the gain had accrued, isn't that right?

A. Eight years. And it was twelve months since I had, or in fact, eleven months since I had first heard of this matter.

Q. You then the next document I want to refer to you seems to be a draft of a letter to be sent to Messrs.

Haughey Boland. It's some date in 1985. It's addressed to Haughey Boland. It's "Re Capital Gains Tax, P. Murphy". Now, when I say it's a draft, I take it that, in fact, you didn't send out a letter to

Haughey Boland addressed P. Murphy; or did you, or was that for internal purposes?

A. The origin of that draft is a memo which I wrote to the then Chairman on the 20th June which enclosed a note which summarised the Capital Gains Tax position as I saw it at that stage on the 18th June, 1985, and the final paragraph of that memo said that a draft letter to the agents had attached accordingly. Now, the papers that I have here don't, in fact, show

Q. They do have that memo. I will direct you to it in a minute, but I am just trying to give you an opportunity to put it in context. P. Murphy was a way of referring to Mr. Haughey?

A. In the interests of confidentiality.

Q. Can I ask you, why was it that this qualifications of Mr. Haughey's name was introduced at this time in 1985?

A. Well, I was somewhat concerned with lengthy documentation being prepared and passing around the office, that, in the event of some misdirection of papers, that the papers would become public and that would, apart from being totally wrong for the taxpayer in question, it would have been damaging for the Revenue itself, if we couldn't handle in a confidential way documents of such a sensitive nature and which summarised everything in a succinct three pages.

Q. What had made these documents so sensitive at this time?

A. Well, Mr. Haughey was a figure of considerable prominence in Irish life at the time, controversy even, and anything to do with him would have been of interest to certain people.

Q. But the encoding, the encoding of his name in this way doesn't seem to have taken place until in or about 1985?

A. It took place perhaps at that time because, as I said, this there was this document attempting to summarise

the Capital Gains Tax position and it included a lot of summarised information in relation to Mr. Haughey.

Q. That information was all gleaned from existing files in the Revenue Commissioners, isn't that right?

A. I would think so, practically more or less.

Q. The information on those files did not contain coded reference to Mr. Haughey?

A. That is correct, yes.

Q. Why then would it be necessary to encode the information just for the purposes of this document?

A. Because the previous information hadn't been summarised into three typed pages.

Q. Was it you determined that you'd encode the information?

A. Oh, entirely my decision, right or wrong, entirely it was my decision. The Chairman had absolutely no say in the matter at all.

Q. Were you prompted to take this step because there was a special sensitivity attaching to the purpose for which this information was being summarised?

A. Not particularly. I think a Latin phrase comes to mind which lawyers might be familiar with, it's *ex abundante cautela*. I really feel in hindsight it was excessively cautious, but there was nothing sinister to it and I did it of my own volition, nobody prompted me to do it.

Q. I am not suggesting for one moment, Mr. Clayton, there

was anything sinister about it, that's not what I am driving at. What I am wondering is did you feel at this time that you were pursuing a certain line in relation to Mr. Haughey's affairs which, if it were to get into the public domain, could give rise to speculation?

A. Not speculation, but mischief.

Q. Did you think that at this point, the sensitivity that attached to these documents stemmed from the fact that you were unhappy or that, if you read the file, one could form the impression that there was a degree of unhappiness or dissatisfaction with the manner in which Mr. Haughey's affairs were being conducted?

A. No, I wouldn't put that interpretation on that. The memo contains information about Mr. Haughey, detailed financial information; for example, his wealth tax returns, the Gallagher deposit is in there, transactions involving Abbeville. There is other material there I think which, if it fell into the wrong hands, it could have been misused.

Q. What do you mean by "the wrong hands"?

A. People might have people outside of Revenue that is, would be more than happy some people outside the Revenue would be more than happy to see this memo at that time. An ordinary taxpayer would not have been subjected to such interest at all.

Q. Of course. But this document wouldn't go outside

Revenue, would it?

A. It shouldn't.

Q. But are you suggesting that somebody in the Revenue Commissioners might have

A. Absolutely not, but it is not unknown for things to get lost in the post.

Q. But this was

A. It's as simple as that.

Q. I just don't understand that because this document was presumably an internal document, isn't it?

A. Indeed.

Q. What do you mean by "the post"? Maybe I am misunderstanding you?

A. The internal post.

Q. I see. It could go missing in the Revenue's internal post?

A. Possibly, yes.

Q. And it was a document which you were sending to Mr. Pairceir?

A. Yes.

Q. Did you send it to him in the post, can you recall, or would you have handed it to him?

A. I don't recall, I don't believe that I handed it to him. I just don't remember.

Q. I don't mean him, perhaps to his secretary or to his office?

A. I don't really don't recall how it was transmitted.

Q. If the document was that sensitive, wouldn't you normally imagine that somebody with the apprehension that you clearly entertained at that time would have simply handed the documents to Mr. Pairceir or would have gone to his secretary and said "please give that to Mr. Pairceir". Wouldn't that have been one sure way to avoid

A. It's possible something like that may have happened. I just can't recall how it was transmitted. The fact is they were transmitted and it could have fallen off the table or whatever.

Q. Officials of the Revenue Commissioners are bound by the Official Secrets Act, are they?

A. All civil servants are.

Q. Do you recall at any time during your service in the Revenue Commissioners, any details of Mr. Haughey's affairs ever his tax affairs ever coming into the public domain?

A. I can't recall.

Q. I certainly can't recall from my memory and from the work the Tribunal has been doing, my impression is that no details of his income tax position ever got, or any other tax position of his, ever got into the public domain?

A. Well, it may be that people weren't as careful about his tax affairs as I was. Possibly I went to extremes it may be that people were not as careful

about his tax information as I was. Maybe and I admit this, I may have gone to extremes at that time, but nobody asked me to do that.

Q. The purpose of the memo in any case was to decide or to seek Mr. Pairceir's approval as to how you would proceed in relation to the next step you intended to take, is that right?

A. I told Mr. Pairceir of my proposed course of action.

Q. At this point, can I ask you, why was it that it was necessary for somebody in a senior position, as you were, in the Revenue Commissioners to seek the imprimatur of the Chairman for an action such as this?

A. It was the fact that Mr. Pairceir had drawn the matter to my attention in the first instance and I thought it appropriate to keep him informed as to what was happening in the case.

Q. When you say he had drawn the matter to your attention, had drawn the matter of the Gallagher

A. Correct.

Q. deal to your attention?

A. Correct, yes.

Q. And at this stage, you weren't simply keeping him appraised of matters. I think as I put it a moment ago, you were seeking his imprimatur for the manner in which you proposed to deal with it, isn't that right?

A. I was telling him of my proposed course of action. It would have been free for me, I imagine, to go and write

quite independently without advising him as to what I was doing, but I thought it appropriate, in all the circumstances, to advise him what I was about to do.

Q. In any case, you did advise him before you did it and you awaited his approval before you took any action, to judge from the memoranda that we have here?

A. That would be the gist of it, I imagine, yes.

Q. Again I am going to stay with your memorandum, Mr. Clayton, and this is going to be somewhat tedious for you because we may have to come over it again in the context of the Gallagher deal, but could I just ask you to look at the part of your memorandum which deals with the Rath Stud, and, if you don't have it, it's a short section and I will read it out to you?

A. I have it here, yes.

Q. It says "Rath Stud". And this looks to me like a proposal, is that right, the proposal is to accept the agents' computation on the disposal of Rath Stud.

"The value at 5/4/75 which was accepted for wealth tax purposes can, of course, be accepted as the value at 24/3/75, the date of acquisition." I am not sure what that means. Then you went on to say "Assessment to be entered without delay as follows." Then there is a computation. Now, it doesn't part of the note seems to be missing, but in any case, it's calculated on the basis of a chargeable gain of $\frac{1}{2}$ 48,500?

A. That's right, yes.

Q. From that the rest would, in any case, follow almost automatically. What you were proposing to do was to accept the agents' computation of the difference between the ultimate disposal price in '77 and the valuation at '74?

A. That is basically, yes, the story, yes.

Q. Now, at that self same time, you were writing a letter to the taxpayer in which you were trying to encourage the taxpayer, if I can put it that way, to volunteer information about what you knew to be another potential gain, isn't that right?

A. Mm-mm.

Q. So you had certain information which had come into the Revenue's hands in '81 and you were in possession of other information which you wished the taxpayer to volunteer. In relation to the information you had in hand, you proposed to accept the taxpayer's agents' computation?

A. That's right.

Q. And at that stage, the documentation which had been sought in 1982 was still not to hand?

A. That's right, yes, I did refer to that documentation as being critical.

Q. Did it not occur to you that it might have been preferable, as you put it yourself, *ex abundante cautela*, to get a copy of the contract, to be absolutely sure of what the land was sold for?

A. Indeed, but there were it would not be the only case where we didn't actually get a copy of the contract, and I don't believe I have no reason to doubt the figures which were quoted to us by the agent. I felt it appropriate to try and advance matters as much as possible. My main focus was on the Gallagher deposit.

Q. I understand that, but your focus on the Gallagher deposit stemmed from the facts that you had, which suggested the taxpayer wasn't being forthcoming, isn't that right?

A. My information of the Gallagher deposit arose from the liquidation of the the receivership in the Gallagher Group.

Q. But that information had come to you by a roundabout route, the taxpayer himself was making no disclosure in relation to this?

A. He wasn't actually obliged to make a disclosure of it at the time that I heard of it.

Q. Why do you say that?

A. Because there was no disposal in 1979/'80 at the time that I heard of it. It's a rather complicated legal situation.

Q. I understand that, yes.

A. So he was under no obligation to have told the Revenue about it at that stage.

Q. Was he under no obligation at the time you wrote your letter?

A. Not in '84.

Q. Why did you suggest that in the letter?

A. Because I want to advance matters and not to be procrastinating in relation to the issue.

Q. That's precisely my point. You were armed with information which you knew, as anybody in Dublin knew at the time, meant that Mr. Haughey was in possession of $\frac{1}{2}$ 300,000 which he was going to be able to forfeit because you knew that the Gallagher Group were never going to complete this sale?

A. I didn't know that for a certainty.

Q. Well, let's face it, it was a moral certainty at that stage, having regard to the attitude taken by the Receiver, that they were not going to complete and that's what prompted you, as you put it quite fairly, to say to Mr. Haughey's advisers, "can you please tell me were there any other gains?" Can there be any other reason for you sending that letter?

A. I wanted to wrap up the Capital Gains Tax position, all of it.

Q. You wanted to prompt his advisers and the client himself, their client, to come forward, to be forthcoming with information which you had obtained by another route, isn't that right?

A. Something like that, yes.

Q. And you had actually suggested that there was a liability. Now, as you said yourself, there may not

have been an actual technically crystallised liability at that point, though it may be that at a later point we will debate that, but there hadn't been an actual crystallised liability, but you were nevertheless writing, suggesting to the taxpayer, that he own up to this liability?

A. Yes, I was asking for information about his, about the Capital Gains Tax possibilities.

Q. You weren't just asking for information, Mr. Clayton, you were trying to prompt him to volunteer information which you knew yourself?

A. And any other information that might have been relevant, yes.

Q. And at the same time, you were taking, at face value, a valuation of Rath Stud without having had any of the supporting documentation?

A. Well, I didn't feel that I needed the supporting documentation.

Q. I see. If I could just jump forward for one moment.

We do know that, in the heel of the hunt, when this assessment was raised, the agents actually appealed it, isn't that right?

A. They did.

Q. Even though it was based on a computation which was lower than the agents themselves had suggested in 1981, isn't that right?

A. Well, I think it might be said that was something

perhaps of a knee-jerk reaction. It was standard practice in pre self-assessment days to make estimated assessments and it was standard practice for agents to appeal those assessments as soon as they were made.

Q. Hadn't we an unusual scenario where Mr. Haughey's was concerned? His tax agents suggested he owed a certain amount of tax, the Revenue Commissioners assessed him for a smaller amount, and his accountants appealed it?

A. Of course it was a ludicrous situation.

Q. In any case, to come back to the letter of the 9th August you sent out seeking a new computation for Rath Stud or a computation for Rath Stud and inviting information about what we now know to have been the other gain, the Gallagher gain. You received no reply by the 10th October; no reply by the 14th November; no reply by the 5th December, and I am just bringing you on to where we were. You then proposed issuing a further letter or taking further action in relation to the matter, and eventually, by the 28th June, we have a letter from you to the Inspector Public Departments which seems to be in accordance with the steps you proposed to Mr. Pairceir, calling upon the Inspector Public Departments, then a Mr. D. Fitzpatrick, to arrange for an assessment in respect of 1976/'77 tax year for $\text{£}12,480$ in respect of the gain on the disposal of Rath Stud, isn't that right? It's an internal communication, Mr. Clayton?

A. Oh, yes, I have it here, yes. I have that. I

requested

Q. We will just get it on the overhead projector so that

the Sole Member can follow it as well. Yes, there we

are. This effectively put in train the raising of an

assessment, isn't that right?

A. That's right, yes.

Q. The next document I want to come to on the book of

documents, you can pass over the memoranda dealing with

the Gallagher issue, is a letter of the 28th June,

1985, from you addressed to Mr. Pat Kenny in Haughey

Boland. It says "Dear Sir, I am writing at this stage

because my attempts to contact you by phone over the

last week have not been successful. You have been

unavailable on those occasions when I phoned your

office. My suggestion that you contact me on my

direct telephone line remains open. You may wish to

note that an assessment to Capital Gains Tax is being

made on the chargeable gains accruing on the disposal

of Rath Stud farm. Other aspects of your client's

Capital Gains Tax position remain unclear. See my

letter of the 9th August, 1984, which is basically

unanswered, and I now wish to discuss them with you.

This could, I think, be best done at a meeting in my

office and I would like to hear from you accordingly,

as early as possible."

The next document is, in fact, the notice of assessment

of Capital Gains Tax in the sum of $\text{£}12,480$. It's on the overhead projector. We see that calculation, the last line in the calculation shows the amount of Capital Gains Tax at $\text{£}12,480$. There seemed to be no reliefs.

A. The reliefs are $\text{£}500$. Certainly relief is in the middle of that schedule.

Q. I see that, in the fifth line. Then underneath the "net Capital Gains Tax payable", if we could just have the document brought up, is the date by which the amount is to be payable, payable not later than the 7th September of 1985.

A. That's correct.

Q. The next document I want to refer to is the document of the 9th July, 1985. It's from Messrs. Haughey Boland, addressed to the Inspector of Taxes Public Departments, presumably Mr. Fitzpatrick?

A. I presume so.

Q. By whom the assessment was raised. It says "Dear Sir, we have received a notice of assessment for the above year and now ... prove excessive. We wish to specify a payment on account of $\text{£}12,480$. Kindly acknowledge receipt of our appeal."

The expression "We wish to specify a payment on account", does that mean that a payment on account was, in fact, intended to be made?

A. That would seem to have been the import of that letter,

that they had intended to make a payment on account.

But quite clearly, from the record, a payment on account was not made.

Q. If an accountant, as you put it a moment ago, was going to respond to an assessment by putting in a knee-jerk appeal simply as a holding operation and take his client's instructions or whatever and save the situation until he had an opportunity to consider it more fully, would he normally make a payment on account?

A. A payment on account would normally be put in to avoid interest charges.

Q. In any case, there was no payment on account in this case?

A. There was no payment on account.

Q. Now, the next document is letter of the 6th April, 1984, and before opening the letter, if we could just put it on the overhead projector. 16th April, 1984.

Can you tell me whether the lodging of an appeal had the effect of suspending the payment date on the notice of assessment?

A. It suspended collection of the tax as shown subject to payment of whatever payment on account that was specified. It didn't of itself change the due date for payment of the tax.

Q. So the due date still remained at September?

A. Correct.

Q. But by the time of this letter of the 16th April, 1986, it had passed by seven months or so?

A. That's right, yes.

Q. Haughey Boland write on the 16th April, 1984, stating "We wish to refer to a proposed appeal list hearing number 60(b) for hearing on Thursday 17th April, 1986, at 12 noon. We can only assume that the Capital Gains Tax in question relates to the sale of Rath Stud farm. In this respect, we would refer to our letter of the 16th April, 1981, to you with which we enclosed a computation of gains showing a liability of £12,545. Per our records, we do not appear to have had a response to this computation from you."

It seems a somewhat amazing statement, doesn't it?

A. It's a bit rich, shall we say.

Q. "We should be obliged, please, for your agreement to our computation and confirmation that the appeal is settled on this basis. For your information we enclose a copy of that computation. We should be obliged if you can confirm that the case has been removed from the appeal list." Then there is what looks like a telephone or a note of a telephone message saying "Agent called on the 17th April, '86, 9.45am. He verbally agreed the position and I said he was treating appeal as settled. I pointed out that I had an open CGT appeal for '79/80."

Again, that's a reference to the Gallagher issue.

Now, in order to try to put some order on this vast amount of documents or interlocking documentation, in the ordinary way, I would now like to go onto the enforcement procedure and the collection of this tax, but because it's more sensible to deal with collection in the context of the aggregate liability, I am going to leave that aside for a moment because otherwise it will only cause complete confusion going over the same documents three or four times.

Now, I want to go back to some aspects of your statement.

Now, when this matter came under your jurisdiction, as it were, in 1984, am I correctly summarising the position when I say that you had a number of things to deal with; firstly, you had an outstanding liability on Rath Stud now, from 1977. You had a tax computation based on the agents' valuation of the property in 1974 and the agents' information concerning the consideration for the sale. You had an issue arising on the question of the exercise of a discretion as to whether the taxpayer would be entitled to avail of the option to opt for the 1974 valuation method rather than the time apportionment method.

A. Mm-hmm.

Q. You have stated in your statement that you decided to

proceed firstly on the basis that a late application could be allowed. I think what you are saying there is, and correct me if I am wrong, is that you believed it was appropriate to exercise the discretion to allow the taxpayer, notwithstanding lateness, to choose the '74 valuation date.

A. That is right.

Q. You say that it was not unusual for mid-/late applications and you say that the power was indeed one which was not exercised or necessarily exercised by the Revenue Commissioners themselves but that it could be exercised at a lower level?

A. That is correct. I am not aware that the Revenue Commissioners themselves were involved in any such case. In fact, there was a delegation of the power down to district level for a certain period, for a certain extended period; that is, applications which were no more than twelve months late could be admitted locally if the local inspector felt that it was reasonable to do so. But applications which were made beyond that twelve months time limit had to be submitted to Head Office for consideration so, in effect, it was subject to the matter being reasonable.

A request for a late application could be admitted within three years of the end of the year of the disposal, in the case of the one we are talking about, four years.

Q. The last witness, Mr. Donnelly, mentioned that in the ordinary way, the exercise of this discretion, leaving aside the twelve month class of cases you mentioned a moment ago, was usually handled by Head Office for the obvious reason of or understandable reason of uniformity?

A. Consistency.

Q. Consistency and uniformity, would you agree with

A. Absolutely, yes.

Q. In this case, I am right in thinking, am I not, that there is no note on the file which would indicate in any way what prompted your decision to allow a late application or a late option to choose a '74 valuation date?

A. No, there is nothing on the file. I have absolutely no recollection of writing anything to that effect. My summary note to the then Chairman didn't spell out the reasons why, but my witness statement refers to reasons which would have been, which I would have considered in my mind, I would think, at the time.

Q. When you say it wasn't unusual at the time to admit late applications, is there any record of late applications rejected or the number of late applications rejected?

A. There would be a record of applications being rejected, but not a record of applications being admitted. I was in the Capital Gains Tax unit for about seven years

and I have no recollection of any register or file being maintained or a summary file being maintained of applications being admitted. If a case came to us from a district, we would which was outside the period, we would say yea or nay and that might be the end of it. Only in exceptional cases would a record be maintained. I have no memory of a similar case being treated differently.

Q. When you say that late applications were not unusual, do I get the impression that, in fact, an extension was almost automatic?

A. I wouldn't say that. It would depend on circumstances. We would look at the circumstances I have indicated, in fact, that might well have come into play in a decision to reject. I think there is a further thing which we have to bear in mind here, that is that the time apportionment basis was totally abolished in 1978 with effect from 6th April, 1978.

Q. Why do you say we should bear that in mind? Are you saying that the mindset of the Revenue Commissioners was to go the 1974 valuation date after 1978 anyway?

A. Not necessarily. Applications after that date would still have been rejected if the circumstances were of a certain kind. But what became an option, shall we say, in the years from '74 to '78 became mandatory thereafter.

Q. But how did that affect the mind of the Revenue

Commissioners in exercising a discretion that applied to the pre '78 period?

A. I am saying it is a background consideration that time apportionment was going, gone, shall we say, at that stage anyway.

Q. Again, I don't quite follow what impact that would have had on the decision-making process or the exercise of the discretion?

A. Well, I suppose maybe we are getting more and more used to computing gains by reference to values as at 6th April, 1974. Time apportionment was introduced more as a convenience for the taxpayer than anything else.

In other words, if a taxpayer had bought an asset in 1950 and sold it in 1976, finding a value of the asset in '74 would seem a bit onerous and also it might possibly seem, might produce possibly a harsh result, possibly.

Q. But that's why I ask you whether I am not getting the correct impression when I say that it must have been almost automatic, because what I am trying to find out is what sort of things prompted you to reject applications?

A. Well, as I say, it wasn't automatic, but I have referred in my statement there to, for example, delays of many years. For example, a taxpayer coming along in 1985 or '86 looking for the April '74 valuation would, I would think, probably have been rejected on

the grounds that we should have known about that years before that anyway. And that there would be no reason to admit the concession. In the case in question, it was two years behind the proper date, one year behind the date the district could have exercised a discretion. The fact of the matter is that the agents had effectively sought the extension in April '81. It would there were grounds for considering the possibility that no tax would have arisen on the disposal in question, or, I should say, no net liability would arise on the disposal in question anyway. These the matter had been under consideration for some time before I came to it.

Q. Are you saying by whom had it been under consideration?

A. In Dublin Farming District.

Q. I see. But nothing had happened while it was under consideration in Dublin Farming District?

A. In the general context of the losses, the farming losses running to several hundred thousand pounds.

Q. Yes. But they weren't allowed. Do you know the date? We were trying to find that out this morning, when the determination was made to that effect?

A. My recollection is that it was sometime in 1984, but I could be wrong in that.

Q. Which would be when you took over the file?

A. Around the same time. I didn't take over I mean, I

dealt with Capital Gains Tax as a separate issue. I

consulted the file. I didn't take it over as such.

Q. Can you understand the issue that I am seeking to address? What I am trying to find out is whether the Revenue were extremely indulgent or excessively indulgent towards Mr. Haughey or whether the treatment he received was treatment that most taxpayers would have received. Do you understand the issue I am seeking to address?

A. I understand, and I was in charge of that area for a number of years and I am in no doubt whatsoever.

Mr. Haughey was not treated more leniently than other taxpayers in this regard.

Q. Would I be right in thinking, then, that most taxpayers got extensions, since one assumes most taxpayers were not guilty of evasion, attempted avoidance, or unnecessary delays?

A. Indeed. Up to a certain period, there were no black and white rules, there was criteria criteria were not set down. No doubt, if time apportionment basis continued, he would, I think, have got round to formulating a criteria, but when I took over in '79 and time apportionment had been abolished in '78, the previous year, I don't think that we would have considered it appropriate to draft criteria.

Q. When you ultimately came to compute the tax and raise the assessment, was there any question of interest

being charged at that point or any penalties for non-filing of a return?

A. The question of interest would not have arisen until the tax was paid and the charging of interest would not have been a function of mine at all. My function was to complete to the Chairman the amount of tax.

Q. You do know that interest was not charged?

A. I am aware of that, yes.

Q. From your experience of dealing with Capital Gains Tax during the time when you were in control of that department, can you recall would it have been usual not to charge interest where a liability was outstanding for, in this case, the bones of seven or eight years, nine years maybe?

A. I was conscious of the time that interest had not been charged on a number of Capital Gains Tax assessments.

Mr. Haughey was not unique in that regard. I think a reference has already been made today to a situation which evolved in the seventies and eighties and which led to the introduction of the self-assessment system with effect from April 1988.

Q. I understand all of that, but you say you are aware of other cases. What I am trying to get at is, can you say that delays, firstly, can you tell me whether delays of this length of time between '77 and '86, not to mention a further delay in actual payment, were they common, and I mean common, and can you give me a

percentage, a rough percentage?

A. I wouldn't be able to attempt a percentage. Cases did occur, but the number of them, I really don't know.

They would have occurred, but as to what the relative percentages would be, I really don't know at this stage.

Q. Were there any criteria by which the Revenue Commissioners decided to charge interest or not to charge interest?

A. I don't know, it's not my area of responsibility.

Q. From your knowledge of the Revenue Commissioners as a whole, do you know, even anecdotally, were there any criteria which determined whether or not interest would be charged?

A. I really can't say. My responsibility was determination of the liability.

Q. Who decides the interest then?

A. That would be a matter for the Collector-General and the Revenue Commissioners. It would not be a matter for the Inspectors of Taxes. Not at that time.

Q. Does the same apply to penalties?

A. Penalties: A decision to proceed for penalties would not be made by the Collector-General's office now. At that time only very few cases were voted for penalties.

And I think the numbers which were prosecuted maybe in one year in the early 1980s could be as low as 100, maybe less, I am not sure of the figures. But I would

be virtually certain that case on all fours of that with Mr. Haughey would not have been proceeded with for penalties.

Q. Why do you say that, a case on all fours with Mr. Haughey's case would not have been proceeded with for a penalty?

A. The fact of the matter is a return of income and chargeable gains was made; it was made late admittedly, but it was made, and the case in comparison with other cases would not have been regarded as being very bad, as being relatively bad.

Q. So can the Sole Member of the Tribunal take it, therefore, that in 1986, '87, '88, which was the period during which this money was ultimately paid, it wouldn't have been in any way unusual for someone with a 1977 liability to Capital Gains Tax to meet that liability without being subjected to either a penalty or interest?

A. The two matters would be separate. Certainly as but I think that you would be right on both counts and, in fact, you might possibly refer to the first submission of the Revenue to the Tribunal where this matter was referred to by the then Minister for Finance in January of 1987, when I think, and I am not quoting it precisely I dare say, when he said the system of tax collection had run into great difficulty. That's, I think, putting it mildly.

Q. I am not I want to make it clear, Mr. Clayton, that I am not asking these questions for the purpose of finding fault with anyone in the Revenue for not collecting tax from Mr. Haughey over this length of time as long as tax wasn't collected from anybody else in a similar situation over the same period.

A. Quite, indeed.

Q. So you tell me that, in fact, lots of people got away with not paying Capital Gains Tax for many, many years, would that be a reasonable summary?

A. For years beyond the due date, shall we say, yes.

CHAIRMAN: Just going back, Mr. Clayton, to the discretion that you exercised. If you had held against the taxpayer and assessed a higher figure based on the alternative formula, could Messrs. Haughey Boland effectively have challenged that by putting in a more realistic appeal than the one that they actually did and arguing the lower figure based on the 1974 figure.

A. I dare say they would. I don't know what the outcome would have been. It would have had to go to the Appeal Commissioners, but that could have taken quite a number of years to resolve. There was considerable difficulties, you will see from the correspondence, in getting any information on the case. It was not the main consideration, when I exercised the discretion.

I exercised the discretion with a view to wrapping up the case. Seven years had gone by and I didn't want another seven years to elapse.

Q. MR. HEALY: Now, Mr. Clayton, I want to move onto the other Capital Gains Tax issue we are dealing with, that's the Gallagher issue. That's in folder 10, Sir. You have made a second statement in relation to this, Mr. Clayton, and I hope you have a copy of that in front of you?

A. I have indeed, yes.

Q. You say that "on the 15th May, 1984, the then Chairman of the Revenue Commissioners, Mr. Seamus Pairceir, telephoned me about this matter", meaning the Gallagher deposit. "I had not known about it previously. He told me that a contract made on the 27th January, 1980, for the disposal of land between Mr. and Mrs. Haughey, vendors, and the Gallagher Group Limited, purchaser, had been brought to his attention by the Receiver of the Gallagher Group. He said the contract had unusual features in that a deposit of $\text{€}1\frac{1}{2}$ 300,000 had been made and we discussed the matter briefly and, as I did not have the document referred to, it was agreed that he would send it to me for consideration and report to him as regards CGT. A copy of the documentation which I received is attached. After receipt of the documents, I obtained relevant papers from the districts dealing with Mr. Haughey with a view to reviewing his CGT

position overall. I recall discussing the matter with Mr. Pairceir over the telephone at sometime of the week after getting the documentation and being in agreement with him that the contract of the 27th January, 1980, should be taken at face value. I was conscious of the fact that the contract had apparently been properly signed and witnessed as shown by both Mr. and Mrs. Haughey."

You go on to say "You outline the CGT position in general terms to your superior office, Mr. Sean McManus and Mr. Fintan Connolly, assistant secretary and deputy secretary respectively. You reviewed the papers as regards possible CGT liabilities and you sought relevant information from Mr. Haughey's tax agency, Haughey Boland & Company. You did not get a substantive reply from the agents and you submitted a summary note with your observations to Mr. Pairceir on the 20th June, 1985. A copy of your note is also attached. The Chairman accepted your recommendations and a letter issued to the agents on the 28th June, 1985. The contract of the 27th January, 1980, was conditional and governed in particular by the provisions of Section 10 and section 47 of the Capital Gains Tax Act, 1975. It was appropriate to assess the relevant CGT liability, i.e. 1/289,850, in January of 1986. That is after the 31st December, 1985, when the time

for completion of the contract had expired. And assessment was made accordingly on the 25th January, 1986. It was appealed on the grounds that it was estimated and may prove excessive. I arranged for the appeal to be listed for hearing by the Appeal Commissioners on the 23rd May, 1986, but the appeal was withdrawn by the agents before hearing. The relevant tax was released for collection. I arranged with Mr. David Fitzpatrick, an inspector of the relevant district, Public Departments District, to be kept informed of developments in the case."

You then go on to mention another CGT liability, the Rath Stud liability, which amounted to $\text{€}12,480$. You go on to say that after the Rath Stud assessment was raised, a total of $\text{€}102,330$ in CGT was due by Mr. Haughey. You say a payment of 50,000 was made by him in July of 1986 leaving a balance of $\text{€}52,330$ unpaid. In accordance with normal collection routine, the tax outstanding was a subject of a referral notice from the Collector-General's office to the district which, in return, required the district to confirm, in the facts permitted, that the tax remained free for collection. Mr. Fitzpatrick brought the referral note to your attention in October of 1986. Because of Mr. Pairceir's involvement in the case, I advised him of the position and my intention to tell Mr. Fitzpatrick to certify the referral note which you

describe as a CC 73.

A. That's right.

Q. Is that a reference to a form?

A. It's a routine computer-produced form.

Q. Although Mr. Pairceir's specific authority was not required, he approved certification of the form for recovery of the tax through action, meaning legal proceedings if necessary, isn't that right

A. Correct.

Q. by the Revenue Solicitor, and you instruct Mr. Fitzpatrick accordingly on the 31st October, 1986. You go on to say as collection of tax was a matter for the Collector-General, you were not involved in other measures taken to secure payment of Mr. Haughey's tax until after the general election held on the 17th February, 1987, when you became aware that the remaining $\text{€}52,330$ tax still had not been paid. You have a recollection of being asked at that time by Mr. Hern, the Collector-General, if, because of your previous involvement in the case, you would approach Mr. Haughey's agent with a view to having the outstanding tax paid. You agreed to do so. You spoke by telephone with Mr. Pat Kenny of Haughey Boland & Company on the 20th February, 1987, and you told him that the outstanding tax should be paid without delay, that the matter should be attended to before Mr. Haughey' expected election as Taoiseach on the 10th

March, 1987, and that the Collector-General was personally aware of the outstanding liability.

You say that while your notes on the matter are not explicit, it was your clear recollection that Mr. Kenny told you in reply that he would advise Mr. Haughey in writing to pay the amount outstanding, that he was hopeful his advice would be followed. However, you say you have no recollection of Mr. Kenny reverting to you subsequently with confirmation of the position.

You say you advised Mr. Pairceir and Mr. Hern accordingly. You say that you understand that the outstanding liability was paid in two parts; i.e. 1/2 25,000 in July 1987 and i.e. 1/2 27,330 in January 1988. You say that apart from the work you have had to do in response to requests from the Tribunal, you have had no you had no subsequent dealings with Mr. Haughey's CGT liabilities.

A. That's right.

Q. Now again, if we can go through these documents. The first document is a letter of the 22nd May, 1984, from Mr. Lawrence Crowley, the Receiver of the Gallagher Group, to Mr. Pairceir. He says "Dear Mr. Pairceir, re Gallagher Group Limited in receivership.

I refer to the inquiries which you have been making concerning the amount which might be available to meet the preferential claim of the Revenue Commissioners in

this case. In this connection, it was necessary for me to discuss with you the contract entered into by the company for the purchase of certain lands at Kinsealy, County Dublin. As requested by you, I enclose a copy of the relevant contract."

Now, in order to put this letter in context, the Gallagher Group had gone on the rocks at this stage, isn't that right?

A. There was a Receiver acting in the case, yes.

Q. So the banks had moved in?

A. So I understand, yes.

Q. And part of the duties of a Receiver in dealing with the assets of a company is to meet the preferential claims of the Revenue, isn't that right?

A. Yes.

Q. In the same way as a liquidator would have to do?

A. Yes.

Q. It would appear in this case that Mr. Pairceir had been in contact with Mr. Crowley with a view to ascertaining what money there might be available in the Gallagher Group to pay what was owed to the Revenue Commissioners.

A. That's right.

Q. And it was in response to that query that Mr. Crowley said to Mr. Pairceir, "I have something I'd like to discuss with you", isn't that right?

A. I wasn't privy to that conversation.

Q. I appreciate that, but isn't that a reasonable interpretation to put on it?

A. It seems like that's what happened, yes.

Q. Again to put this type of exchange in context, it was not unusual in the 1980s and in the 1990s for the Revenue Commissioners to take a pro-active role in liquidations and receiverships with a view to recovering substantial sums of money owed to the Exchequer, isn't that right, in tax?

A. That did happen, yes.

Q. And sometimes that pro-active role even went as far as underwriting liquidations, isn't that right?

A. I understand that to have happened. In responding to you, I should say that I am not involved in collection or enforcement activities, or I should say I wasn't involved in those activities at that stage.

Q. I am simply asking to you use your general knowledge, and I don't mean your general knowledge as a layman, but your general knowledge as a tax official.

A. Mm-hmm.

Q. Mr. Crowley was intimating, as far as I can judge in this letter, and indeed subsequent correspondence and other evidence given to this Tribunal shows that he was intimating that there may be some money that the Revenue Commissioners could get its hands on to meet its claims, isn't that right?

A. I am not sure if "could" is the appropriate word.

Might, might be more.

Q. Pardon?

A. The word "might" might be more apt than "could".

Q. But it was with the view to exploring the Revenue Commissioners in the possibility of -

A. That seems to have happened.

Q. Of getting access to or getting the Revenue's hands on this money?

A. That possibility seems to have been explored.

Q. There would be no other reason for a Receiver to draw some aspect of his receivership to the attention of the Revenue Commissioners, apart from fraud, obviously, or something like that, wouldn't that be right?

A. I would guess so, yes.

Q. What was sent with that letter was the contract that has been mentioned time and again or a copy of the contract that has been mentioned time and again in the course of the proceedings in this Tribunal.

What the contract showed, we may have to go into some of the details in a moment, but at this stage, what it showed was that a deposit of $\text{€}300,000$ had been received by the vendors?

A. That's right, yes.

Q. And it was clearly in relation to that $\text{€}300,000$ that the Receiver was approaching Mr. Pairceir and the Revenue Commissioners?

A. That is clear from the correspondence.

Q. And from the evidence that we have heard in this

Tribunal, it was clearly his impression that that

£300,000 may have been available to be recouped by the

Receiver or at least by the company, isn't that right?

You can change the word "may" to "might" if you wish?

A. I respond I wasn't involved in that, I didn't look at

the correspondence in the same way you have looked at

it.

Q. I understand, but I am trying to put the evidence we

have been given about this in some context?

A. The question was arising, yes.

Q. There would be no point in a meeting between the

Receiver and a Chairman of the Revenue Commissioners

about a mere contract of a company in receivership and

an individual, that in itself is something that would

be of no consequence. What was of consequence here

was that the Receiver thought that the £300,000 deposit

paid under the contract perhaps would have been

available to be recovered, isn't that right?

A. Another interpretation of that is possibly that the

Receiver was simply advising the Revenue of the

possibility of taxation liability in relation to this.

Q. I don't think that that is, from the evidence that we

have heard, something that was in the mind of the

Receiver.

A. Well, as I say, I don't speak for him, I can't speak

for Mr. Pairceir, I wasn't privy to either of their conversations.

Q. I understand, but I don't think receivers are in the habit, are they, of notifying the Revenue Commissioners of potential Capital Gains Tax liabilities of persons with whom their companies have dealt?

A. I wouldn't say they are in the habit.

Q. Now, the form of this document is something you are familiar with, isn't that right, this contract?

A. The contract, yes, I have seen it, yes.

Q. And as somebody who had responsibility for CGT, I take it that you would have seen a lot of contracts in your time?

A. Indeed, yes.

Q. Am I right in thinking that at no time during the course of your dealing with this matter was any copy of this contract ever forthcoming from the taxpayer's side?

A. No, never forthcoming.

Q. You were operating at all times on the basis of the information made available to you by the Receiver?

A. Correct.

Q. The type of contract or the form of the contract was quite different to what you would have been used to in terms of the standard contract for the sale of land?

A. Indeed it was, yes.

Q. And in particular, I am sure in particular, where

the consideration was, in the money values of the time,
so large?

A. Mm-hmm, it was.

Q. It was, for the overall consideration, was in excess of
1 million pounds?

A. 1.2 million plus.

Q. The contract, on its face, did not appear to have come
from a firm of solicitors.

A. It certainly did not.

Q. It wasn't witnessed by a solicitor, as might normally
be the case with most contracts drawn up on standard
loan society terms?

A. No, I don't believe it was, I think the parties who
witnessed were not legal persons.

Q. It provided for a very large deposit, and uniquely, I
would have thought, in your experience, provided that
that deposit would be refundable, would be
non-refundable in somewhat unusual circumstances, isn't
that right?

A. That is right, yes.

Q. Did you inquire into the background to this document at
the time that it came to your attention?

A. I was aware of it, as a result of Mr. Pairceir phoning
me, how he had become aware of it, and I didn't need to
inquire further into the background.

Q. I just want to ask about something that's nothing to do
with anything that's on your documents.

If you were aware then that, in fact, no steps had ever been taken, as far as we can judge, certainly no steps had ever been taken in correspondence to comply with this, or to bring this contract to completion, by that I mean there had been no demands by the vendors of completion on the part of the purchaser. No demands by the purchaser for completion on the part of the vendors. The contract involved the identification of a stud farm within a certain radius of the GPO to be used or to be obtained and given to the vendors as part of the conditions of sale. No steps had ever been taken to deal with that term of the contract. In fact, the contract does not seem to have involved solicitors at any time, either in its drafting, in its execution or in the subsequent ministerial acts which you'd normally associate with a contract, in requisitions and title, examinations of title and ultimate preparation, however far down the road for completion?

A. Mm-hmm.

Q. Would those facts, if you were aware of them, cause you to form any impression as to the type of document or the type of arrangement embodied in this contract?

A. It was undoubtedly a very unusual document, but I was of the opinion, and Mr. Pairceir was also of the opinion, that it should be taken at face value. There were three parties to the document; in addition to

Mr. Gallagher, there was Mr. Charles Haughey, there was Maureen Haughey, both signed the document and their signatures were witnessed. To have attempted to reject the document, to my mind, would have been, I think I was looking at it purely from the point of view of Capital Gains Tax, but to have rejected it, I suggest this is not a Capital Gains Tax situation, and to disregard it on that account, however for the Revenue to challenge the document, I think would have been what might be called saor in aisce, we wouldn't have got anywhere with it.

Q. It may well be saor in aisce, they mightn't have succeeded but I am asking you a different question at the moment. I am asking you, with the information which I have just given you, would you have been fortified in the view that there was, that it mightn't have been a saor in aisce to challenge this document and to seek to get the for the Revenue to seek to get its hands on the whole

A. Again I am very reluctant to get into the matter of recovery of the $\frac{1}{2}$ 300,000 because I wasn't involved in any discussions relating to that. But it would seem to me that it would be an uphill task and perhaps the gain wouldn't have been worth

Q. That on the basis of the information you had at the time or on the basis of the information which I have just given you?

A. On the information we had at the time. It was a document signed by both husband and wife.

Q. That's not what I am asking you on the basis of the information we have now?

A. That's a hugely hypothetical question now. We know so much now that we didn't know in 1980 or in 1984.

Quite obviously, if we knew then what we know now we would have taken a different approach to other cases.

Q. Your focus at the time was purely on the CGT aspect of it?

A. To see if there was a Capital Gains Tax liability in relation to the document. I decided to treat the document at face value and, in so doing, it seemed to me that there was Capital Gains Tax liability to be pursued.

Q. Of course. We'll just go through the rest of the documents. The next document is a handwritten note of the 15th May, 1984, and I may want to ask you something about the date of that document in a minute. Can you tell whether it's your document to begin with?

A. It is indeed, yes.

Q. And am I right in thinking it's dated either the 15th or the 13th May of 1984?

A. 15th.

Q. The top left-hand side, it says "Seamus Pairceir, Chairman." Then what's the next item underneath that?

A. "Collected" is my interpretation of my handwriting at

this stage.

Q. What does that signify?

A. I am not sure at this stage what it means. Whether it was connected with the receivership or not, I really cannot say. It was an extempore they were extempore scribblings from a telephone conversation.

Q. This wasn't a face-to-face meeting?

A. No, it was not a face-to-face meeting, it was a telephone call.

Q. Was it Mr. Pairceir initiated that telephone conversation?

A. It was indeed. I don't know why he phoned me directly, it may be that he had inquired from Mr. Fintan Connolly, the then Chief Inspector, so to speak, as to who was the capital gains expert in Head Office, and he may have felt it more appropriate to deal directly with me. So he phoned me directly. I think it came totally out of the blue.

Q. Can you come on to the next few lines of the document.

A. "Substantial lands, sale of lands to development company, high price conditions, non-returnable deposit $\frac{1}{2}$ 300,000, other conditions not being fulfilled." On the right-hand side of that you see "50 percent and 30 percent". I am not quite sure if that was written during the telephone conversation or after it. That was a question as to what would be the appropriate rate of tax. Likewise the box on the left. That may have

been inserted after the telephone conversation.

Q. Looks like Section 47 Subsection 10.

A. "Reference to Revenue creditor, possibly return of money. These were being mentioned by Mr. Pairceir in the telephone conversation. It would have been described as a non-legal non-stamp document, 35 acres at $\frac{1}{2}$ 35,000 per acre, totalling $\frac{1}{2}$ 1,225,000, deposit $\frac{1}{2}$ 300,000." I have conferred Section 10.3, I am not sure if that was written during the conversation or afterwards, "31/12/85 would have been the closing date of the contract. Option to acquire stud farm, 65 something to be provided

Q. Stud farm

A. To be provided within so many miles of Dublin." There is a reference there to G. Mahon, I think I filled up the word "Guinness" in front of "Mahon" at that point. I think that relates to the fact that Guinness & Mahon had a lien or something on the on one or two of the Gallagher properties. That would in fact, has been referred to in a letter from the Revenue Solicitor to the Tribunal, I think sometime in 1999. I think the rest of that, in fact the next two lines, I think, are extempore, 1982 null receivership, Revenue

Q. Could you just take that more slowly, Mr. Clayton.
"Null, unavailable to fulfil it, receivership."

A. Yes.

Q. "Revenue, main preferential creditor", is that right?

A. Mm-hmm.

Q. The next line?

A. The last three lines on that were lines I would have

written in subsequent to the telephone conversation

when, without sight of the documentation, I started to

think about the various possibilities in relation to

it. Number 1 relates to conditional contract and rate

of tax which would be relevant thereto; in other words,

the date of the contract and so on would come into

that. Probably 30 percent. Arm's length sale, was

it an arm's length sale or was it did a question of

substituting market value if higher or lower arose.

Point number 3: Paragraph 11, where, in fact, money

should have been handed over without the application of

the rules of paragraph 11 schedule 4 of the Capital

Gains Tax Act, 1975.

4. PPR is a shorthand for principal private residence,

if there were the principal's private residence

included in lands, there would have been an exemption

in relation to part of it.

5. C1, that is a reference to Case 1 of Schedule D of

the Rules of Income Tax. In other words, would this

be an income tax matter rather than a Capital Gains Tax

matter?

Q. I understand. Just in relation to, I think it must be

Item 3 which is rather obscured on my copy, that's

paragraph 11, is that a reference to the obligation of

a vendor to retain money?

A. Of the purchaser yes, the vendor to the purchaser to retain 15 percent if the vendor has not produced a certificate entitling him or her to receive the proceeds in full.

Q. Correct me if I am wrong, would that obligation not usually arise until the completion of a sale?

A. That is the standard practice to, not to apply paragraph 11 until completion of the sale. Although the deposit might have a bearing on that. If a sum were paid over to X person being a deposit of 95 percent say, a person would be quite clearly tantamount to

Q. An attempt to avoid?

A. To wipe the provisions of paragraph 11.

Q. While we are on that point, the deposit in this case was very substantial, wasn't it?

A. It was it was larger than usual certainly, much larger than usual.

Q. In the ordinary way in Ireland, in ordinary contracts for the sale of land, the deposit is usually 10 percent, isn't that right?

A. I am not the expert in that area, but I think it would be of that order, yes.

Q. This document clearly contains your note of some of the salient features of the discussion that you had with Mr. Pairceir?

A. Well, discussion, yes, it was, I was being briefed generally before seeing the documents.

Q. Again if I could take you to the section under the word "Substantial lands," "Sale of land to development company, high price, conditions non-refundable "

A. "Non returnable".

Q. "Deposit. Other conditions not being fulfilled." Then the next line; "Revenue, preferential creditor, return of money query". Can I suggest to you that that tallies with my impression of what must have passed between Mr. Pairceir and Mr. Crowley or at least that this tallies with my impression of what was behind the Revenue's involvement in this matter?

A. Yeah, it would seem to be, yes.

Q. That in other words, the Revenue Commissioners, and this is clear from your discussion with Mr. Pairceir, from looking, if I can put it neutrally or as neutrally as possible, askance at this document?

A. Indeed, yes.

Q. And they were looking askance at it because one of the potential outcomes

A. Just to stop you there for a second. I said "indeed" by reference to it may be neutrally when you said "neutrally" and then "askance". We were obviously looking at it carefully, I am not quite sure what precise meaning would be attributed to the word 'askance', but certainly we were looking at it very

carefully.

Q. I want to follow this up. The Revenue were not forming a very favourable or positive impression of what was going on in relation to this transaction?

A. I don't know. I think that implies a moral comment.

Q. I am saying that the Revenue were canvassing, at least canvassing the suggestion or the notion that this was not an ordinary contract for the sale of land and if so, that the $\frac{1}{2}$ 300,000 would be recoverable?

A. Well, whatever about the recovery, it certainly was not being taken as an ordinary contract.

Q. Yes, but the only reason for the Revenue to be involved in it in the first instance, was with a view to the return of the money. In other words, getting the money back, having the document set aside, cancelled, challenged in some way, I'm saying the Revenue were considering that, whether they put it out of their minds at a subsequent date for whatever reason is beside the point, but that is clearly the subject of the exchange?

A. That had clearly been considered, yes.

Q. And the unusual features of the document were being highlighted, the fact that the high price, the non-returnable deposit, the fact that nothing was being fulfilled, the fact that it was non-legal, well non-stamped, needless to say it wouldn't be stamped as a contract, and the fact that it had some other unusual

conditions. Now you were being asked to consider this and you considered it ultimately as a document which, whatever view you might have taken of it, or whatever view Mr. Pairceir might have taken of it or whatever view Mr. Crowley might have taken of it, if it were to be, if it were to be approached at face value, it would give rise to a Capital Gains Tax liability?

A. Yes.

Q. You said a moment ago that to have pursued any other route at the time would have been a saor in aisce, a waste of time?

A. I think it would have been.

Q. So one definitive way, or definite way of getting some money out of this transaction for the Revenue was to tackle it as a face value sale of land where the deposit was forfeited resulting in a total gain?

A. That would yeah, yeah. I would have been very confident of getting the best part of $\frac{1}{2}$ 100,000 out of that on Capital Gains Tax.

Q. But that is not to say that you didn't entertain the view, or that somebody must have entertained the view that there might have been something else involved in this document?

A. Well, of course, that was the gist of the interaction between Mr. Crowley and Mr. Pairceir and perhaps other people, I am not sure.

Q. And also part of the exchange between you and

Mr. Pairceir?

A. Well, he was briefing me as to what the background was.

Q. We will just go through the rest of the documents and we can go back over everything else maybe tomorrow.

CHAIRMAN: I am reluctant to go beyond four o'clock because Mr. Clayton has had a quite a lengthy time in the witness-box. We have made quite a good progress. Clearly he is the longest witness in this segment of evidence.

A. If you wish, I can continue for longer.

CHAIRMAN: I think we have a fair amount of preparatory work for tomorrow to do afterwards, so

MR. HEALY: I think, in fact, Ms. O'Brien tells me there are some further documents I might wish to refer to and it might be no harm if I gave Mr. Clayton and his advisers an opportunity of looking at them and stopped at this point until tomorrow morning at half ten or twenty five past.

CHAIRMAN: What about commencement time tomorrow? There is a possibility of one other statement having to be finalised and served on parties. I don't want to keep people waiting.

MR. HEALY: Perhaps eleven o'clock.

CHAIRMAN: Is eleven o'clock suitable, Mr. Clayton?

All right then, eleven o'clock.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
TUESDAY, 19TH DECEMBER 2000 AT 11AM.