

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 20TH

DECEMBER 2000, AT 10.30AM:

CONTINUATION OF EXAMINATION OF MR. PAIRCEIR BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. Pairceir, if we might refer to the documents which were primarily Mr. Clayton's documents which existed on the Revenue file, and I think the first document which the Tribunal may have brought to your attention was a handwritten series of notes made by Mr. Clayton and the first one is dated the 15/5/84.

I wonder do you have that particular document?

A. Yes, I have.

Q. And Mr. Clayton has informed the Tribunal that you contacted him and that's why the note is then headed "Seamus Pairceir, Chairman, contacted" I think is the word.

A. Yes.

Q. And then: "Substantial lands, sale of land to development company, high price, January '80." It seems to be. "Conditions, non-returnable deposit of £300,000, other conditions not being fulfilled."

Now, in the box on the right-hand side then is a calculation which Mr. Clayton made himself, that related to possible rates of Capital Gains Tax but that was work he was carrying out himself. Also on the

left-hand in the box then, "Section 47.10" I think that was something he was considering himself also.

A. Yeah.

Q. And then it continues: "Revenue, preferential creditor, return of money query, non-legal, non-standard document, 5 acres at $\frac{1}{2}$ 35,000 per acre $\frac{1}{2}$ 1,225,00, deposit $\frac{1}{2}$ 300,000." And then again this is a reference to a section of a Finance Act which Mr. Clayton himself would have been concerned about or considering. "31/12/83 option to acquire stud farm, 65 to be provided within radius of Dublin." Then there is a reference to Guinness & Mahon. "1982, null, unable to fulfil it, receivership, Revenue main preferential creditor, 1. Conditional contract rate at" and they are considerations which Mr. Clayton himself was making on the potential tax implications

A. This is a note from Mr. Clayton to Mr. Clayton.

Q. It's in fact yes, it is. Some of it contains, I think he informed us, information which you imparted to him over the telephone and other parts of it contain notes he made to remind himself of something or to consider various options or Revenue matters. Do you agree that you were the one who contacted Mr. Clayton?

I think you did tell us that yourself yesterday, having discussed the matter first with what was then the superintending inspector now called the Chief Inspector of Taxes, isn't that correct?

A. It's not a matter of any matter, but my recollection is that Mr. Clayton came to see me. But it doesn't make any difference.

Q. Yes, but you would have informed him of the broad terms of this particular transaction as noted by him?

A. That's why I spoke to him.

Q. That would be correct? What was your understanding of either the meeting or the telephone call? It doesn't really matter how it took place.

A. I would my recollection would be that it was at this meeting that Mr. Clayton identified to me the particular form of Capital Gains Tax liability that would arise from this particular contract.

Q. You, having informed him of your understanding of the contents, you had sight of a copy of the contract yourself. Mr. Clayton, I think, hadn't when he was given this information initially?

A. That's correct, this is the day following the day which I wrote the to letter to Mr. Lawrence Crowley. As I told you yesterday, that in the ordinary course then I was passing on the information to the Inspector of Taxes of this event that had come to my knowledge and it was Mr. Clayton then who informed me of the Capital Gains Tax implications.

Q. You wouldn't have had any expertise in relation to Capital Gains. Mr. Clayton was the expert within the Revenue and he was the one who would be familiar with

the legislation, any case law that there may have been and how it was carried out in practice?

A. I was aware in general about the capital taxes which had been introduced in 1970, but not in detail.

Q. As regards the specifics, that was his area of expertise. And again, just to be clear about that, one wouldn't expect the Chairman to be an expert in each individual area. One has to have an overall view of matters, there would be areas of expertise where you had worked in different sections during your career, but you were relying on his expertise in relation to the question of Capital Gains and to advise, isn't that correct?

A. Yes.

Q. Did you expect Mr. Clayton to come back to you about this?

A. Yes, I suppose I would have, yes. At any rate, as I also said yesterday, in view of all the matter that we discussed yesterday, I was very interested to know how the Haughey family would react.

Q. I see, yes. Now, the next handwritten note is Mr. Clayton's own note and it's a note he is making to himself: "Who in HB" HB is Haughey Boland "is dealing with H" that's Mr. Haughey. Then he has a name: "Pat Kenny, I phoned P Kenny of Agents. He has taken over the case." The previous agent had become unwell and/or may have died?

A. Had died, yes, Michael McMahon. By the way, I didn't know that Michael McMahon was dealing with the case, you know, the only reason I knew Michael McMahon is that he was a former Revenue official and I knew he had died.

Q. Just to be clear about that, Mr. Pairceir as well, as a Revenue official yourself of many years standing, you would know many people who had left the Revenue and gone into private practice and also in your dealings with tax agents, you would know many tax agents. I think there is nothing unusual or capable of being criticised about that, isn't that so?

A. Oh yes. I would have attended the usual dinners and celebrations to which chairmen of the Revenue Commissioners are invited.

Q. Now, I think the next document then was Mr. Clayton writing to the agents on the 21st June 1984 and it's for the attention of Mr. Kenny, he having identified Mr. Kenny as being the agent who was now handling Mr. Haughey's affairs, and it's: "Re CJ Haughey. Dear sirs, I refer to previous communications with your firm about your client's tax affairs. I wish to know if you are dealing with his capital gain tax affairs for all tax years up to and including the year ended 5th April 1984. Please inform me if you are so acting."

And this was copied to Mr. Connolly who was the

superintending inspector I think, isn't that correct?

A. Yes.

Q. And to Mr. McManus.

A. Who was the superintending Mr. Connolly was the Chief Inspector and Mr. McManus was the superintending inspector.

Q. I see.

A. One of these is deputy secretary, the other is assistant secretary.

Q. Now, this is perhaps the first hint that Mr. Clayton is giving, isn't it? There was no the only question of capital taxes up to that arose in relation to the disclosure by the agents back in 1980/81 of a potential capital gain on the sale of Rath Stud. I think you were not aware of it at that time, but

A. No.

Q. But Mr. Clayton is now asking if they are dealing with capital matters up to 1984.

A. Yes. Yes, that's right.

Q. The initial contact has been made?

A. He definitely wants to bring the case up it's fairly standard.

Q. Then on the 26th July 1984, again it's to Messrs. Haughey Boland, the agent. "Dear sirs, I should be glad to have an early reply to my letter of 21st June 1984 about Capital Gains Taxes." It's a reminder.

And then the next document is a document made by Mr. Clayton dated 30th July 1984 where he notes that: "The Chairman phoned and I advised him re non-reply."

Do you remember you may not remember the actual specifics, but you accept that that happened?

A. Sure.

Q. Do you know why you would have phoned?

A. No.

Q. The next document then is a letter dated 27th July 1984, again, it's from the agents to Mr. Clayton at this stage and it re CJ Haughey. "Dear Sir, I wish to refer to your letter of the 2nd June and the 26th July and regret the delay in returning to you. Reconfirm that we act on all matters pertinent to Mr. Haughey's Capital Gains Tax." So the agent is now making his contact with Mr. Clayton.

The next document is a handwritten note of Mr. Clayton's dated 2nd August 1984, and it reads: "Chairman" "CC case of the possible forfeited deposit agent replied confirming 'Acting,' have draft letter, seen by Mr. Connolly," who was the chief inspector. "Proposed to send it to you for any obs you may have" and "How to address? To be seen by Chairman only."

Now, it appears to be the response to the question:

"To be seen by Chairman only."

A. I don't know where he gets that.

Q. Well, his evidence how to address, in fact, what he wanted was the draft he was sending to you, he only wanted to be seen by you and was inquiring how it should be sent to you so that it would only be seen by you or perhaps come through your private secretary?

A. He follows it on, he sends the two letters he sends the letter, yes.

Q. Do you remember any contact with Mr. Clayton about how something would be sent to you for your eyes only effectively?

A. No, I don't see why he would have to ask me that he wanted to send me a letter to be seen by the Chairman. Anyway that's nothing you know, I wouldn't be giving any directions around the office as to what correspondence was to be addressed to anybody.

Q. In the normal course there would be a mail system, I presume, and matters for the attention of the Chairman would come to the attention of the Chairman through whatever normal system would exist in your office through secretary or otherwise?

A. Yes.

Q. But now, Mr. Clayton

A. I will explain that by the way, because the correspondence addressed to the Chairman is both general correspondence for that office, the Chairman has an office, it's called the private secretary's

office. It's a function and so Chairman

correspondence would be opened and then private or

personal or to be seen by would not.

Q. Of course. There would be

A. What I am saying about that, that's a well understood

thing.

Q. In any office management system, that would be the way

it would be done. But this, Mr. Clayton was looking

for something over and above that, that he didn't want

anyone else other than you to see it in your office,

any other officials?

A. Oh yes, yes, he said that.

Q. Is there any particular reason why that should have

been?

A. We went through all that yesterday, that he, he was

anxious that any correspondence that was drifting

around in the office wouldn't be unnecessarily seen by

anybody else. That is also quite a usual Revenue

thing.

Q. In any event

A. I am referring now to matters of inquiry or, I mean, I

don't just mean returns of income or things like that.

But any kind of correspondence the whole

confidentiality thing in the Revenue is that only the

person dealing with the case should know about it.

Because anything else is a potential breach, you know,

the more spread out of it it's only just there

are all kinds of conventions or there were in my time anyway in the Revenue about confidentiality.

Q. And that's not to in any way suggest that any Revenue official would breach his obligations under the Official Secrets Act but just in the normal course of human nature, one has to impose extra layers of confidentiality in certain aspects of the Revenue?

A. There is always public stock.

Q. Now, what was then sent was the copy of the letter which the agents, Mr. Haughey's agents, had sent Mr. Clayton and a draft which Mr. Clayton proposed sending, isn't that correct, according to the documents?

A. Yes. Anyway, there were certainly copies yes, and anyway I marked them sealed and agreed.

Q. I'll come to that anyway.

A. I have the somewhat shortened version of the material, you know, I got this from the Tribunal separately and I am operating out of that, so I may not have all the documents, because the weight of the rest of it is rather formidable, so I didn't bring it with me.

Q. We'll try to deal with it on this limited basis as well.

And that draft informs the agents, thanking for the letter, and "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."

Then item number 2: "Please forward your computation of chargeable gains arising on the disposal of Rath Stud." Fairly straightforward, that had been disclosed.

"3. Your client's return, which was made in April 1981, did not show any chargeable gains accruing in the year ended 5th April 1908 and no return has been made since. Would you please review the matter and let me have information about any disposal in the period from the 6th April 1979 to the 5th April 1984. You are, of course, aware of the provisions of Section 47 re options and deposits of the Capital Gains Tax Act 1975. Yours faithfully, Mr. Clayton."

This is a hint or a suggestion

A. A strong hint.

Q. A strong suggestion being made to the agents to provide information?

A. Well, it's Revenue speak for what it covers.

Q. I think Mr. Kenny will give evidence. He would understand that

A. Indeed.

Q. Then the note is: "Chairman, copies herewith as arranged." And then there is a note by you: "Sealed

and agreed. Thanks. S Pairceir. 3/8/84." Isn't that correct?

A. Yes.

Q. So you agreed with what Mr. Kenny was to do, isn't that correct, or what Mr. Clayton was to do, I beg your pardon?

A. Oh yes. Well, he must have communicated to me in some way that he wanted to know was I okay, something like that, I opened his letters and I assured him that they were. What I am saying by that is when I say "seen and agreed", I don't mean I went on to what he meant by Abbeville or Rath Stud or all of these items. It seemed to be okay with the letter and I thought the hint about the Section 47 was adequate.

Q. That would have been your real interest, I suppose. The question of Rath Stud was not a matter that was of any concern to you. That was being processed in the normal course of the Revenue's business?

A. Yeah, I would have dealt with this in the time that it would have taken me to read the letter.

Q. If you had disagreed or made a suggestion, would you have expected Mr. Clayton to take account of your disagreement?

A. I wouldn't have expected him to disagree, because he was the person who knew about the Capital Gains Tax as we said to begin with. And I think you know, we went in yesterday, that he seemed to have this need for

reassurance and I gave it to him.

Q. He seemed to have a need for reassurance do you think?

A. Well, he did, yes.

Q. Was that your impression of him during all of this?

A. Yes.

Q. Very well. Now, I'll come back to that if I may,

Mr. Pairceir. The next document then is the letter, the draft of which had been seen by you and the letter was sent. There then, in October of 1984, Mr. Clayton is again writing to the agents looking for a response to his letter. It's a reminder.

On the 14th November, there is another reminder. And then on the 5th December 1984, there is a response from the agents. "I wish to refer to your letter of the 9th August and subsequent reminders. We regret the delay in replying to you but shall return to you in the very near future with the submissions you have requested."

On the 21st January 1985, Mr. Clayton is again reminding the agents.

On the 9th April 1985, he writes to the agents: "Dear sirs, I refer to previous correspondence. It is now eight months since I wrote to you about Capital Gains Tax liabilities. The delay in dealing with the matters in question is a matter of concern and I must ask you to forward the required information and

computation in the very near future."

There then appears in the bundle of documents, a I suppose it's Mr. Clayton's review and summary of the tax situation in relation to the particular taxpayer.

And he deals with, that he has reviewed the public department district documents, the Dublin Farming District and the Dublin No. 5 and he consulted with Mr. Walsh of the capital taxes branch re wealth tax file. And it notes that: "Apart from acknowledgment the agents have not replied to my queries on the capital gains tax."

He then deals with the various summaries of disposals.

Item number 5 is the disposal of Rath Stud which of course had been notified, the deposit of $\text{€}1\frac{1}{2}300,000$, apparently received in January 1980, the Gallagher money. And he notes that he has not consulted the valuation office about the values of these properties on any date, "but I know from experience in other cases that the Valuation Office has a general view that there was no substantial increase, if any, in property values between '74 and '75." That was specifically relative to the Rath Stud matter.

Then he sets out a proposed course of action

First of all, in relation to Rath Stud 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." Then he carries out a calculation of the tax on that.

Then dealing with the question of the forfeited deposit. He notes that: "If the agents do not deal satisfactorily with this matter by 30th September next I would propose to ask them to call to discuss with me and Mr. Donnelly (Inspector Dublin Farming No. 2 District) the matter of possible transactions between his client and Crowley Group Limited. The source and precise nature of our information would not be revealed and the agent would be asked to make the necessary inquiries as a matter of urgency." Then that would be fairly standard practice, a Revenue meeting.

A. Yes.

Q. "If there is no satisfactory response, an assessment would be made in January 1986." And he sets out the basis of how he would compute the tax. In fact, there was a slight adjustment in that. It would be $\frac{1}{2}$ 500 higher. "Agents would be told at a further meeting beforehand of the imminent assessment.

"Deferment of this assessment to January 1986 is justifiable by reference to the possibility that the agents may be in a position to provide further information about the apparent transaction or (more

unlikely) that the basic contracts might theoretically be renegotiated between now and the 31st December 1985 in which the case the year of disposal would be 1985/86. An assessment now could cloud the basic point involved and raise arguments about proper year of assessment, due dates for payment of interest, etc.

"A draft letter to the agents is attached accordingly."

And there is the draft letter then, which is the next document, and dealing with the question of disposal of Rath Stud. He deals the draft letter sets out the chargeable gain and it indicates that: "...near future. In addition to your agreement to 1 above, I wait to hear from you on point 3 of my letter of the 9th August 1984." That is whether there had been other gains. Again, the hint is being given.

A. I am not looking at those papers. I am looking at the memorandum of the 18th June, but I heard Mr. Clayton and I saw the papers on the screen yesterday, so I recognise them.

Q. Of course. Now, I think he the next document is a note of the 20th June 1985 and it's headed: "Chairman, re CJ Haughey. I have reviewed the Capital Gains Tax aspect of this case. The attached note summarises the position and my proposed course of action." In the interest of confidentiality he sets out a code whereby he will deal with the matter with you.

There is then the note of the 21st June 1985.

"Chairman." Then dealing with the year '75, '77 and '80, he says that at this meeting this is a note of a discussion he had with you or a meeting he had with you and the indication was given that he should hint more strongly. There is reference to rope and pig which he says is not his phrase, and then:

"Revenue obliged to act, serious problem, justify for delay.

"1, get agents in.

"2" I can't make that out, something "more urgently.

"3, mid-September deadline." I think that's not a relevant matter to this.

A. No.

Q. So can we take it that Mr. Clayton brought you up to date or informed you of the situation as of around this date anyway?

A. Yes, yes, and he notes as he discussed it he seems to have made this note including the rope and pig.

Q. Just a matter of personal interest, what is that reference?

A. Well, of course I don't remember making that reference, but it's a metaphor derived from a schoolboy joke about confession. It's seems ludicrous to introduce into these proceedings, that: "Anything else my child? Father, I stole a rope. Anything else my child?"

There was a pig attached to it." So the analogy is to lead up with the rope and follow with the pig. I am amazed that he should have recorded this piece of facetiousness to be recounted here sixteen years later.

Q. You would agree that you advised him to hint more strongly?

A. Whatever that means, yes, yes. Well, I would imagine that we'd been at it now for quite a while and it was time to get to the action point.

Q. Yes.

A. By the way now, I don't remember saying that, but reading this note, I would surmise that's what I did.

Q. You have no reason to doubt Mr. Clayton's recollection or the note that he made?

A. Oh no, no.

Q. Then

A. But what I don't know is whether he is saying that to himself or is he writing that because I said it to him.

You see, that's what I don't know.

Q. Well, Mr. Clayton I think indicated that

A. He wrote down

Q. You suggested to him that he'd hint more strongly. I think that's

A. That's fine, I accept that.

Q. And then there is the letter to the agents of the 28th June 1985. "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" and he gives the "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 the 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."

Underlined. "Yours faithfully, CA Clayton, senior inspector."

That was a strong hint to Mr. Kenny as a tax agent and as a former Revenue official himself, isn't that right?

A. Yes.

Q. Being asked to come to the office was an indication that matters were getting to a stage where some action had to be taken?

A. Yeah. Also not an unusual proceeding.

Q. Then in January of 1986, Mr. Kenny still hadn't replied. And Mr. Clayton sends him a reminder.

Then on the 10th January 1986, I think Mr. Clayton

sends you a memorandum, isn't that correct? "Chairman re Murphy Capital Gains Tax."

A. He seems to have shown it to me.

Q. I see.

A. Which suggests that he came and showed it to me.

Q. Well, I'll just deal with it, so, in any event.

"Further to my note on June 18th 1985, I am now proposing that an assessment should be made before the end of the month(January 1986) in respect of the forfeited deposit received in January 1980, and which in accordance with the terms of the agreement became non-refundable on December 31st 1985.

"2. Copies of recent letters to the agents are attached for a reference. If the agents do not respond within 21 days of my letter of January 3rd 1986, I propose to ask the Inspector Public Departments to assess accordingly copy of my draft minute to him is also enclosed.

"3. If after the assessment is made I am queried as to the reason for the assessment, I would propose to respond preferably at a meeting in the following lines :

"Information arising in connection with the receivership of Crowley Group Limited suggests that a substantial sum was received by the client in 1979/80.

It would seem reasonable to expect that full information about the matter would be available to the

agents or the clients or obtainable by them. If the assessment is being appealed, the basis of these should be clearly specified."

And there is a handwritten note which is: "Shown to "Chairman, 10/1/86." Do you think that this was the memorandum or was it the proposed assessment or

A. No, he would have shown me this it's the same date, you see, the 10th January, this is also the 10th January. I think he would have prepared it, spoke to me and the date then that he spoke to me, he would have put that on the memorandum. In the long run he is just telling me he is going to make an assessment.

That's what it amounts to.

Q. And then what he was going to do after the assessment, if they responded by way of in a certain way, isn't that correct?

A. Yes.

Q. How he proposed to respond in the event of any queries?

A. Well, the general tenor, I hardly think he was going to address Mr. Kenny in those words.

Q. Well

A. He says: "On the following lines".

Q. It's very carefully drafted, either speaking note or note to be incorporated into a document U would you agree?

A. Oh yes. He hardly said to Mr. Kenny: "If the

assessment is being appealed the basis of the appeal should be clearly specified." I mean, Mr. Kenny would have known that.

Q. I think he the next document is Mr. Clayton's letter to the inspector of the Public Departments setting out the basis for the raising of the assessment, isn't that correct?

A. Well, I remember that document. Haven't got it but I agree.

Q. You remember it?

A. I do. That's because the district had to raise the assessment.

Q. Yes.

A. Yes.

Q. The assessment was raised at 30% I think, isn't that correct, according to the document now?

Now, I am not this is just a matter of information really, because I don't know anything about this, you remember Mr. Clayton, in the handwritten note that he made when he first received the information from you, he carried out certain computations himself as the expert in the area and he was obviously raising the question with himself as to whether it was chargeable charged at 50% or 30%. In any event, the assessment is raised on the basis of 30%. It perhaps is a technical matter that we are trying to find out anyway.

A. I think that Mr. Clayton was through all this yesterday. It's all on the record.

Q. We will raise the query with Mr. Clayton.

A. By the way, I would have never seen any of these documents until they were sent out to me by the Tribunal. They would be sending me notice of assessments and stuff like that.

Q. But Mr. Clayton informed you of the basis on which he intended to proceed which was

A. Yes, but not we wouldn't have caused the rate.

Q. The rate, that was

A. It's not a discussable matter anyway. It's the law.

Q. There may have been a change in the rates, because on the printed form, it's handwritten and there are printed rates, but it's a matter it's not a matter for you anyway?

A. Anyway, he raised an assessment of approximately $i\frac{1}{2}$ 90,000.

Q. There then is, as Mr. Clayton informed us, the standard letter you might receive from the agents coming in then and informing of intention of appealing the assessment.

A. Yeah.

Q. And then there is the letter from the agents of the 25th May 1986 to the Inspector of Taxes Public Departments informing the Revenue of the transaction, isn't that correct?

A. Yeah.

Q. "We wish to refer to notice of assessment"

A. This is the point where I was listening to Mr. Clayton yesterday. It was in the appeal list, because it starts off by saying "appeal list." On the day of the appeal Mr. Clayton got this letter which in fact is a withdrawal of the appeal.

Q. It's a withdrawal of the appeal and

A. And a statement by the agent.

Q. What the state of affairs was. There then is a handwritten note of Mr. Clayton's where he is informing you: "Chairman, the enclosed received this afternoon," I presume it's the letter from Haughey Boland.

A. Mmm.

Q. "This afternoon would seem to close the CGT aspect of the case, subject, of course, to the payment of the tax of, as you say, close to $\dot{i}_{\dot{c}}^{\dot{1}/2}90,000$.

A. Yeah.

Q. Now, on the 30th October of 1986 there is a note, again Mr. Clayton to you, "Chairman, re CJ Haughey TD Capital Gains Tax.

"1. Enclosed is a copy of form CC 73A for above-named. You will recall that Mr. Haughey incurred two CGT liabilities, the Rath Stud and then the forfeited deposit amounting in total.

"2. 102-odd-thousand pounds.

"3. He has paid $\dot{i}_{\dot{c}}^{\dot{1}/2}50,000$, brought to account on the 15th July 1986 on a balance of 52,330, excluding

interest is therefore outstanding.

"4. I am not aware of any reason why the form CC 73A should not be certified for the amount of 52,330 and I propose to advise the Inspector Public Departments to certify the form accordingly."

Do you know, and over the page then is CC 73A form and then on the next page is a reply: "Chairman, re CJ Haughey TD Capital Gains tax" your reply is at the bottom. "Mr. Clayton, form CC 73, may be certified for recovery through action by the Revenue Solicitor."

I think what Mr. Clayton now was informing you and he informed us that the money had come in and had been, in the first instance, I think applied on the income tax side, and that matter was resolved, in any event, with the inspector in the public districts and he was

A. I think that is later than this document.

Q. Sorry, you are correct. You are correct. That this money came in and it was only about half the money?

A. That was later. This document is at a stage when he proposed and as he mentioned, I notice in, correctly in his memorandum, I didn't have to agree this. But he showed it to me out of courtesy and I marked it then to be, ready for action for the Revenue Solicitor which would be the normal procedure for large amounts.

Q. Why would you have any involvement in that?

A. Well, there is no need why I should have. Mr. Clayton

acknowledged that he only showed it to me, that it wasn't necessary. I had no involvement in it.

Q. You did, you actually made

A. Oh sorry

Q. You made a note and you signed it. When somebody of your standing

A. Sorry

Q. makes a note and signs it, it is confirming that that is to be followed, isn't it?

A. I am merely saying that what is proposed should be done. It's not a decision. He says: "I am not aware of any reason why the form CC 73 should not be certified - for the amount of $\text{€}52,330$ - and I propose to advise the Inspector Public Departments to certify the form accordingly." I say: "Form CC 73 may be certified for recovery through action by the Revenue Solicitor."

CHAIRMAN: It seems very similar, Mr. Pairceir, to the forms from the Attorney General's where a submission for a proposed course is made to the Attorney General and then the attorney will simply sign approving the proposed course. The form of that document seems very similar.

A. All right, I accept that. I would like to make this point though in relation to that: Is that form CC 73 were produced all over the place and frequently had to be certified by somebody. I accept the analogy about

the practice if something was referred to the Attorney General, but I am just saying that it's slightly different degree of importance. This is a procedural matter.

Q. Now, on the very last document in the bundle of documents you have, there is a note of Mr. Clayton's, portion of Mr. Clayton's conversation with Mr. Kenny, the agent. This relates to the telephone conversation he had with Mr. Kenny to try and get him to speed up the process of payment so as to avoid court proceedings, in view of Mr. Haughey taking office of Taoiseach within a very short period of time. And the very last line of the note reads: "Advised Chairman and Collector-General." It's the 20th February.

A. Yeah.

Q. Now, that was promised or sorry, Mr. Kenny hoped to be able to bring matters to a conclusion around that time. I think he was indicating that to Mr. Clayton, both you and the Collector-General, Mr. Hern, were advised of this. Was that your last involvement in the matter to the best of your knowledge?

A. I would think so, yes.

Q. The tax, in fact, wasn't collected until January of 1988, the balance, that is, did you know that?

A. No, I don't think I know that. Do you mean the tax on the $\frac{1}{2}$ 300,000? It wasn't paid until

Q. The balance, you know, some of the money had come in

and had been apportioned and the balance was still outstanding. And that's what Mr. Clayton

A. Well, I don't recall that, but I think I saw that in the papers, yeah.

Q. Just from a review of these various memoranda, what would your response be, Mr. Pairceir, if a member of the public were to express the view or form the opinion that Mr. Clayton was, in effect, reporting to you in relation to this matter?

A. How do you mean a member of the public?

Q. I am carrying out this particular work and asking the questions on behalf of the public, Mr. Pairceir?

A. Oh I see, I am sorry.

Q. I am affording you an opportunity of responding. If a member of the public were to say, well look, these documents show Mr. Pairceir was very much involved, Mr. Clayton was reporting to him and he was advising Mr. Clayton in certain circumstances as to the steps he should take. What do you think your response to that would be?

A. Well, you gave me notice of this question last evening.

Q. Yes indeed.

A. So when I went home I looked at these documents. And one of them, that's the one of the 21st of June of the memorandum, that's certainly sent to me to make a decision about it. Now, the others were responses by oh yes, and the last one that you mentioned about

the CC 73, where we said that was a decision. Now, when Mr. Clayton came to me on the 15th May, it was for the purpose of my telling him about the event of the transaction of the agreement for sale. My call to him on the 30th July was to know whether he had got any response from the letters that he had written. I think I explained yesterday that until such time as we got some kind of acknowledgment from the vendors in the proposed agreement sorry, in the proposed sale, that they accepted that this document was what we now were treating it to be, that is an agreement for sale, the forfeited deposit which gave rise to Capital Gains Tax. It was a matter of interest to me, because it, in a way, supported the decision that I had made when after I had spoken to Lawrence Crowley and to Raymond O'Neill. I know now, by the way I accept that that circumstance did not validate the agreement, but at the same time, it tied the two ends together. So I was interested in that.

Thereafter, in the administration of the tax, Mr. Clayton by the way, I made, in my response to the queries from the Tribunal, the general point which I have mentioned already that this was a matter of certain sensitivity and that I was given the support and affirmation to Mr. Clayton in the actions he was taking for the reasons I have explained, I won't go

into all that again.

So on the 30th July he told me that the agent hadn't replied. On the 2nd August he showed me a draft letter which I just looked at and agreed. On the 21st June, as I say, that was the one in which that's that long memorandum and this course of action and all the rest. And on the 10th January was when he said that he proposed to raise an assessment. That's what I'd expect him to do anyway. The notice of assessment was issued and he told me about that and that the agents had appealed on the 7th February. On the 22nd May, he told me about the one we discussed recently, that Haughey Boland have agreed the liability and that the enclosed seemed to close the CGT aspect apart from the collection. Then there is the thing about the CC 73. There is approximately eight, there may be one that I missed

Q. The final one, I suppose, just before Mr. Haughey of coming into office?

A. There are nine in which I would regard six not involving any decision from me. The principal one I would say where I was exercising some kind of minor supervisory role was in the 18th June because there was a lot of material in that and he would be entitled to my opinion about that. But for the rest of it, therefore, in replying to your member of the public, I would say that Mr. Clayton informed me of the actions

which he had taken or was about to take in carrying out his official duty of dealing with the Capital Gains Tax liability which arose on foot of the document.

Q. Now, if I may come back to a matter which the Sole Member of the Tribunal raised with you yesterday afternoon when he asked you if the prominent person, Mr. Haughey, affected, or the position or status of that person affected the decision the decision you made after the meeting with Mr. Crowley by reason of the fact that if you were to pursue the line which perhaps had been urged upon you, is too strong a word, perhaps being suggested to you, that is to apply for the appointment of a liquidator, or a provisional liquidator, that you would, in the long run, have to, in effect, make the suggestion that fraud attached to the document in question and I think your response to that was no, isn't that correct?

A. I don't think the Sole Member of the Tribunal mentioned fraud.

Q. No, but I am bringing it that much further, that you would have to the suggestion would be that this document was not what it purported to be.

A. I do take exception to the word "fraud". I have explained before, nobody said fraud. Nobody said sham when they came to me. If they said either fraud or sham then they were in the wrong place.

Q. Let's take it step by step. That it wasn't what it

purported to be?

A. I'll accept that, yes.

Q. I needn't go into the legal aspects of that, of what then it might amount to, but it would have been very serious, it would have been very serious, wouldn't it, to effectively make such an allegation?

A. Well, the question no, I wasn't going to make any allegation. What I was being asked to do, and I think what the Sole Member asked me the question about was my decision about whether or not I would move to have a liquidator appointed. That's a totally civil matter.

If I go down that road, then the Court would inquire into the bona fides of the document under Section 245.

I have no difficulty whatsoever in the personality of Mr. Haughey about going down that road.

Q. You didn't consider it, though? It wasn't something that exercised your mind at that time, was it?

A. I said before, I dealt with this matter to the best of my ability as a Gallagher Group matter.

Q. Well, I want to ask you is, and I am suggesting to you that you made a decision for the reasons you considered appropriate at the time and they were primarily the question of the expenditure of public funds on what might be a long shot, isn't that right?

A. And the cold prospect of success.

Q. I use a long shot to cover that.

A. Yes.

Q. By 1986, when you were aware that there was no response from the agents to the hints being given by

Mr. Clayton, do you think that perhaps you should have reconsidered your decision?

A. Well, I didn't.

Q. I understand you didn't. I know it's a difficult question to answer perhaps, but do you think that perhaps looking at it now, that you should have reconsidered that decision, say by 1986?

A. No, I don't. I don't consider it now either. By the way, because I know what tentatively decisions have been made here, I accept that that decision may now be regarded by people as being the wrong decision, but I personally did not think at any time that it was the wrong decision. But if somebody finds that it was, I don't mind. I mean, one makes right decisions and wrong decisions.

Q. Of course, and I don't think anyone can be criticised for making a wrong decision provided they have taken everything into account in arriving at their decision.

One may not necessarily agree with the decision, but if somebody in the position of Chairman of the Revenue Commissioners takes all appropriate matters into account in arriving at a decision, it may differ from one's own view, but that is all.

But what I am asking you is in the context, is perhaps in the context of 1986 you were now aware of the fact

that notwithstanding the hints being given by the Revenue, which would have been clearly understood by the agent, no response was forthcoming. Do you think that that is a matter that perhaps should have gone into the equation to be considered whether the decision made after the meeting with Mr. Crowley should be reviewed?

A. No.

Q. And you never considered the question of the Investigation Branch?

A. I was being kept informed about a Capital Gains Tax matter by an officer who was dealing with Capital Gains Tax matters. I did not extend any inquiry beyond that rather narrow scope. I didn't ever inquire as to what the rest of Mr. Haughey's taxation affairs were. But let's strip off some of the mystique about this Investigation Branch. Investigation Branch was I don't know what it's like now, but in my time it was a way of taking difficult cases out of the district to be pursued within a tight group at headquarters. The cases were referred to Investigation Branch which reference to a series of criteria and inspectors of inspectors, you know, inspectors were inspected by superintending inspectors, they would identify cases which maybe should not have gone to Investigation Branch or should go to Investigation Branch. Now, Investigation Branch did not have any additional powers

to the ordinary powers that inspectors had in the districts. Investigation Branch was not it's not like A/AB or any instructor. I am just filling that in as a background. I personally, I mean, I repeat what I said yesterday. It never came into my mind that I should send it to Investigation Branch and even if I had, I don't quite see what Investigation Branch could have done, because they would be subjected to the, what I know now, to be the extraordinary powers of resistance that the particular taxpayer is able to display and they would have just got themselves into various court actions.

So, I just felt that well particularly, I thought about it because I would like to mention that when I went home last evening, I was in time for the radio evening news and they announced that I had said that the here, that the taxation affairs of the Haughey family shouldn't have been investigated in 1984, nor should they now, which I think is a terrible distortion of what I said yesterday. Sorry for that digression, but as a matter of clarification.

Q. Thank you Mr. Pairceir.

CHAIRMAN: Mr. Kettle, have you anything you want to raise?

MR. KETTLE: No Chairman.

CHAIRMAN: Mr. Connolly?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. CONNOLLY:

Q. MR. CONNOLLY: Mr. Pairceir, I have a number of questions on behalf of the Revenue Commissioners.

Firstly, from your own position, apart from what you have described here in relation to the Capital Gains Tax liability of Mr. Haughey, did you have any involvement during your time in the Revenue in relation to Mr. Haughey's affairs, tax affairs, other than what we have just dealt with here?

A. None.

Q. And just to follow-up on what you have described there in relation to the Investigation Branch, that they had no powers above and beyond the district officials in any event. The powers such as they were then in 1984 were limited to this extent, firstly, there was a limited opportunity to go to the Court to get a direction for discovery of bank documents on certain grounds, and secondly, there was an opportunity to raise an assessment which would put pressure on the taxpayer. They were effectively the two weapons in the armory which were available to officials and there was nothing extra in the powers of the Investigation Branch, is that correct?

A. But even with the bank one, you couldn't go on a fishing expedition, you had to have a specific target.

So it was not often availed of.

Q. That was effectively the extent of the powers?

A. That's quite so.

Q. And just to follow-up on what you were saying to me there about the bank. Firstly, you had to know about the existence of the bank account before you went to the High Court. You couldn't simply go to AIB and say tell me everything you know about Mr. X. You had to know there was a bank account, first of all, and secondly, you had to go to the High Court and say we have reasonable grounds for asserting that there has been non-compliance on the part of the taxpayer in relation to his statutory obligations?

A. Yes.

Q. Now, neither of those factors were present which would have justified going to the High Court in relation to any bank accounts of Mr. Haughey at that time?

A. Well, I don't really know, because I didn't go into that.

Q. But none of that was signalling itself to you at that time?

A. No, no, it hadn't been brought to my attention.

Q. Now, as far as the second weapon is concerned. To raise an assessment simply for the purpose of bringing a taxpayer to heel, that was something that was open to appeal for the Appeal Commissioners and in turn to the Circuit Court on the instigation of the aggrieved

taxpayer, isn't that correct?

A. Yes.

Q. And the Appeal Commissioners, or the Circuit Court could say, on what basis have you put these large figures in place? They would have questioned whether this was of vexatious assessment?

A. Well, the taxpayer who would have, would have made that kind of representation. At any rate, they were

Q. But you would have to have good reasons to put in place an assessment. There would be no question of putting in place an assessment in order to bring the taxpayer to heel. You would have to information to justify a stance

A. By the time it came to 1984, '85, '86 and by virtue of the fact that they had that the whole structure of the direct assessing had been changed by advancing the date of payment so that the majority of assessments were estimated anyway. So that the whole system was clogged with assessments which had been introduced by process, had very little foundation and were under appeal and this was one sorry for this long answer but this was one of the reasons why the pressure came on to introduce self-assessment, because the whole direct assessment process was jammed into incapacity.

Q. Well, in any event to justify the matter being referred to the Investigation Branch, the criteria in place at

that time in the Revenue were that there had to be some clear indication of material knowledge disclosure on the part of the taxpayer?

A. Yes, that would be general.

Q. Mere suspicion would not have been enough?

A. No.

Q. And at that stage

A. It wouldn't get you anywhere.

Q. At that stage, the extent of what was available to you or for that matter anyone else in the Revenue in relation to the Gallagher document was an element of suspicion, isn't that right?

A. Sorry, would you ask me that again?

Q. At the very highest, the criticism that would have been present in your mind or on the part of anyone else in the Revenue in relation to the Gallagher document, was suspicion?

A. Yes.

Q. It was no higher than suspicion?

A. Well

Q. If it was even that

CHAIRMAN: Surely, Mr. Connolly, the suspicion was the initial inquiry into perhaps seeking to have the provisional liquidator appointed, but Mr. Clayton agreed with me yesterday that it very promptly became clear that as a minimum there was about $\frac{1}{2}$ 102,000

between the two capital transactions that he was aware of. That was scarcely suspicion, was it?

MR. CONNOLLY: What I am looking at is not in relation to the document as it stood on its face but the inquiry has been raised through the legal representatives of the Tribunal that there were other aspects which would have raised suspicion to look at other matters of tax affairs and that's what I am exploring. Perhaps I should have been more precise, Sir.

Q. The extent to which the document raised any queries on the part of the Revenue officials went no further than suspicion?

A. I am slow to answer that question, which seems to be slightly simplistic in view of what has gone on here for two days.

Q. Well, perhaps I'll approach the matter another way

A. What I mean is that there are the documents seem to me to go through various phases of suspicion giving rise to doubts about the bona fides of the document.

That's the bit where we deal with the Gallagher Group.

When we start dealing with Mr. Haughey, when we are dealing with, on the basis that the document is a transaction which has given rise to a Capital Gains Tax liability.

Q. Well, what I am exploring with you is the ground which was has been covered by the Tribunal legal

representatives, leaving that aside they are indicating that that ought to have given rise to discomfort in relation to Mr. Haughey's tax affairs. Perhaps I'll approach it in a number of ways, in the way of further questions.

Firstly, in order for you to take the matter further, there had to be the instigation of proceedings by way of liquidation of the company. That was the starting point by which any further hard information would become available to the Revenue at that time?

A. To the liquidator.

Q. To the liquidator.

A. Yes.

Q. And via him to the Revenue of course?

A. Yeah.

Q. And as things stood at that time, given the strong legal advice you had made available to you through Mr. Crowley to the effect that the proceedings were speculative, there was nothing in the way of hard information that would have justified any further steps being taken along the liquidation route. You had nothing more in the way of information beyond what was put in front of you by Mr. Crowley?

A. I hadn't, no.

Q. And what emerges from the letter from Arthur Cox which was put in front of you is that Mr. Gallagher was taking a strong position in the interview with Mr. Cox

and that if the liquidation was to be of any benefit, it would have to be based on a presumption that Mr. Gallagher was going to turn around from the position which he was asserting in interview with the solicitors in Arthur Cox, isn't that correct?

A. Or that at least the Court processes would succeed in getting a different version from the various parties.

Q. So the first step in order to achieve the situation of perhaps having strong information to set aside the documentation, there were three steps required.

Firstly, you had to put the company into liquidation.

Secondly, you had to get an order under Section 245 for the cross-examination of a director.

A. Sorry for being so technical, but the liquidator had to.

Q. Yes. All right. Secondly, you had to get an order

A. I am making the point that if we went down that road, as soon as the Revenue decided to petition for a winding-up Order, then it would pass to the Court and to the liquidator. The Revenue would be in the background as a creditor. I am sorry for this

Q. I follow that. The Revenue were being asked to provide financial support for the liquidation as an interested creditor who would potentially benefit from the extra money being available, so you were a seriously interested creditor in the outcome of the

liquidation?

A. Yes.

Q. So of the three steps that were necessary, the first was to put the company into liquidation. Secondly, the liquidator would then have to get an order for the cross-examination on oath of Mr. Gallagher. And then the third step was to get leave of the Court to go on with the proceedings in pursuit of the money. Isn't that correct?

A. Yes, as the law stood then, yes.

Q. Now, the third step was a necessary step so that the courts were satisfied that money wasn't being wasted that otherwise would be available for creditors, isn't that the position?

A. I would hope so, yes.

Q. And in order to persuade a court, usually a senior counsel's opinion as to the viability of the proceedings, were required before a judge would let the proceedings go past the third page stage, isn't that the position?

A. I didn't know that. I have never participated in this kind of activity.

Q. But in any event, it's not the simple case of speculating on the issue of proceedings and see what happened. The prospect was that a considerable amount of time and money would be taken up in costly and lengthy litigation; the outcome of which, if it was to

be of any use to the Revenue as a creditor, depended substantially on Mr. Gallagher turning around in the presentation of his sworn testimony from the position he had taken up to that point?

A. Yes.

Q. You were speculating that he would do so if you were to go on with the liquidation, isn't that so?

A. Yes.

Q. And there was some prospect that if Mr. Gallagher was to stick to his position, that he would very possibly be corroborated by the then Taoiseach or next Taoiseach and also his wife in the position he was taking at that time. They were factors that couldn't be ignored, in measuring the strength of the case that ultimately would be made?

A. That is true, but I don't think I went into that detail.

Q. But in any event, you took an overview of the situation and decided that the limited funds which were available to the Revenue at that time for liquidations were poorly spent in the pursuit of a liquidation in the Gallagher Group, isn't that the position?

A. Also at the same time, in the eighties, liquidations were costing us a lot of money.

Q. That was what I was going to come to. There were plenty of liquidations at that stage given the state of the economy.

A. Yes.

Q. And did you follow the as an interested bystander, did you follow what happened subsequently to see what became of the Gallagher Group?

A. Honestly, no.

Q. Well, you know for instance, that firstly Mr. Crowley wasn't binded to recommend to the persons to whom he owed a duty as Receiver, namely the debenture holder, the bank, debenture holder, he wasn't binded to recommend that they spend money on liquidation. He was coming to the Revenue to see if it was of interest to you, isn't that the case?

A. As I recall it from the paper, is that as the holder of the fixed charge and the floating charge is that they were at that time there was not estimated to be enough to satisfy his particular interest as the Receiver and that there was nothing else.

Q. Nothing else?

A. Yes.

Q. So the only asset would be coming downstream in the company was the $\frac{1}{2}$ 300,000, if the outing for the pursuit of that money was ever successful?

A. Yes. These were the points made in Mr. James O'Dwyer's letter.

Q. Yes. And as it turned out when the company went into liquidation, the liquidator, who obviously would have had to take all this on board, he didn't choose to

pursue the setting aside of this document. You know that much, from your following up of the events?

A. Well, I would have assumed that we wouldn't be talking as we are here today if he had.

Q. Turning to your own situation as Chairman, was it your position as Chairman to instigate involvement of the Investigation Branch of the Revenue in relation to any taxpayer's affairs?

A. No, I never did such a thing.

Q. Well, apart from the sensitivity in relation to Mr. Haughey's tax affairs described in relation to this CGT item so as to narrow the extent of persons having sight of the documents, to your knowledge, was any special indulgent treatment falling to Mr. Haughey in relation to his CGT treatment on these two items?

A. Not that I know of.

Q. Thank you very much, Mr. Pairceir.

MR. COUGHLAN: Just one or two questions, Sir, if I may ask.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Just in relation to Mr. Crowley and the document. It does not appear that Mr. Gallagher informed Mr. Crowley when Mr. Crowley interviewed him, that on becoming Taoiseach in 1979, Mr. Haughey invited

Mr. Gallagher to his house the Sunday afterwards and asked him for a very large sum of money because he had financial difficulties. That information was not made known to you by Mr. Crowley at the time that he and Mr. O' Neill met with you, isn't that correct?

A. Certainly not.

Q. And it was arising from that request

A. I would imagine that Mr. Crowley wouldn't have known that.

Q. Absolutely. I am not suggesting that he did. I am suggesting that Mr. Gallagher did not inform Mr. Crowley of that. Mr. Gallagher, in questioning at this Tribunal, informed the Tribunal of how the document came into being, that it was as a result of a request for money to deal with Mr. Haughey's debts.

A. I read the report in the papers.

Q. I think you read the report.

A. Yeah.

Q. That was a significant piece of information, wasn't it, in having a view at least of the document?

A. When the information came about in this Tribunal

Q. I am looking at it now, I am talking about that, a significant piece of information. And if that had emerged in any examination under 245 of the Companies Act, it would have been a significant piece of information which may have affected the view the Court might have taken of the document, isn't that right,

might have?

A. Any kind of hypothesis is obviously correct.

Q. But this was significant. This is not just a minor piece of information.

Now, may I also ask you this, once it went down the Capital Gains Tax route, did that mean that it was incapable of review thereafter?

A. I don't know. I never thought about that. I think the two matters were separate.

Q. Yes, I know, but once it went down that route, was it just left there and I don't mean

A. Oh, I certainly never reviewed it.

Q. And by it going down that route, in practical terms, did it make it incapable of review, in practical terms?

A. Well, yes, would I think so. I have said that for the purposes of dealing with the consequences of the meeting that I had with Mr. Crowley, that the and because I could not see my way to get the Revenue to do what we were discussing, then the consequences of that was to accept the bona fides of the agreement. Yes, so that is true.

Q. And

A. I also did make the point that that would be from my perspective and that was where I was at the time, but I also recognised, I have said this already, that the charge to Capital Gains Tax and the payment of the tax, I also recognised does not validate the agreement. I

mean, I am finishing out the point.

Q. I am not entering into any debate with you about that.

But did the failure of the taxpayer to respond to the capital the inspector on the Capital Gains Tax side of the house, did that ever affect your thinking or lead you to a view that you should have reviewed your decision?

A. No.

Q. Looking back now, with the benefit of hindsight, what do you think?

A. I agree with myself.

Q. I see.

CHAIRMAN: Thanks very much for your attendance, Mr. Pairceir.

THE WITNESS THEN WITHDREW.

MR. HEALY: Just two small matters, Sir, that can be readily disposed of before the lunch time adjournment.

If I could recall Mr. Clayton to deal with one matter mentioned by this witness and also to deal with the query concerning the rates applicable or at least the rates referred to in the notice of assessment which I gather he can deal with more readily than anyone else.

Mr. Clayton please.

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

Q. MR. HEALY: You are still under oath. There are just one or two matters I wanted to take up with you in the light of Mr. Pairceir's evidence. And firstly, if you wouldn't mind deal with a technical matter. If I could turn up or if we could have on the overhead projector, the actual notice of assessment in this case.

The notice of assessment under reference 0648386900-97.

It's on the overhead projector now. Can you see it?

A. Yes, indeed, I can.

Q. Do you see that the heading in the first column "Rates of tax"?

A. Mm-hmm.

Q. 60%, 50%, 40%, 15%, and then it looks like there is a space for 3 percentages where the percentage is written in, do you see that?

A. I do indeed, yes.

Q. You have filled in, in one of those columns, the figure 30%.

A. Yes, indeed.

Q. Maybe you'd just explain to me why it is 30% because I don't think

A. Perhaps if I could explain firstly the form itself.

That form is drafted sometime, I would think, after 1982. From 1974 onwards, there had been several changes, in fact, quite a number of changes in the

rates of Capital Gains Tax, so we designed an omnibus Capital Gains Tax assessing form. The first few rates the first three rates would have been, I think very standard rates of Capital Gains Tax in the year '84/'85 and onwards. The fourth rate, 15%, would have been the rate applicable to paragraph 11 cases, where money had to be deducted from payment of a consideration in certain cases. The last three columns were blank. In this case I filled in the rate of 30%.

Q. Why was that the applicable rate?

A. By reference to the disposal in the year 1979/80. That was the appropriate rate for that year. The rate from 1974, the standard rate of Capital Gains Tax '74 to '78 was 26%. In 1978, the law was changed in fundamental ways and taxation relief was introduced and there were tapering rates introduced as well. The standard rate was increased from 26% to 30%, but except in certain cases, that rate was reducible by reference to the length of ownership of the asset ranging downwards from 30, as I say to 25.5, 21%, 16.5, 12%, 7.5, 3%, and to zero if the asset had been owned for more than 21 years. So, in other words, if a person disposed of an asset in 79/80 which had been owned for more than 21 years, there was to Capital Gains Tax payable on that

CHAIRMAN: And is it the case then, Mr. Clayton, that the handwritten memorandum that refers to 30/50%, may have indicated that because of the belated nature of things, that some consideration was given as to whether the higher and latter rate could apply?

A. That note, as I recall it, and of course I saw it as recently as yesterday, was written as during the course of a telephone conversation. I hadn't in fact seen the documentation at the time. Now, that date was May of '84 after the new regime had been brought in in 1982. And the rates of Capital Gains Tax were changed in '92 to provide a I think a standard rate of 40% rising up to 50% or 60%, 50% in the case of assets which were held for more than three years. In the case that is in the case of development land, the rate would have been 50% on disposal 50% on disposal of development land in 1985/86.

Q. MR. HEALY: Can I just clarify that development land aspect of it. Was there any distinction between development land and non-development land in the computation of the applicable rate as of the year ended April 1980?

A. The rate yes, in 1980, there would have been, the tapering rate was not available in relation to development land. If it had been, if there had been sale of ordinary land owned for 21 years in 1980, there would have been no Capital Gains tax payable at all.

In this case it was not a disposal of development land.

It was the forfeiture of a deposit which had arisen and that was chargeable at the standard rate of 30%.

Q. And is that under a specific provision of the Finance Act?

A. Well, indeed. In my witness statement I have referred to Section 47 of the Capital Gains Tax Act of 1975 which, under Subsection 10, specifically brings into charge, ensures that forfeited deposits are brought into charge.

Q. And they are brought into charge at a standard rate regardless of the nature of the contract under which the deposit is forfeited?

A. Absolutely, yes.

Q. So, am I right in thinking, therefore, and you have just clarified this for me, if I had a contract for the sale of development land under which there was a substantial deposit, and that deposit was forfeited, I would pay tax, Capital Gains Tax, as of 1980 now, at the standard rate whereas if I had gone through with the contract, I would have paid Capital Gains Tax at a higher rate, is that right?

A. The highest rate of Capital Gains Tax in 1979/80 was 30%. The rate might have been less if the underlying asset were not development land.

Q. But if it were development land, it would have been 30% anyway?

A. It would have been 30% anyway.

Q. So in this case as of 1980, whether you treated it as a forfeited deposit or whether the taxpayer went ahead and completed the deal, the rate applicable was the same, 30%?

A. Absolutely. Under that would be so, under section 10, Subsection 3, it is provided that the time of disposal is the time when a capital sum is received which was, in fact, January of 1980, which perhaps brings in a point which didn't arise yesterday and I might perhaps clarify at this stage.

Q. Yes.

A. The contract was a conditional contract as is clear.

And there are special provisions relating to the time disposal on provisional contracts. Section 10.1(b) says a that if the contract is conditional, the time of disposal is the time when the condition is satisfied.

Now, the condition was not satisfied here. So in fact, the under the provisions of subsection 3 of Section 10, the time of disposal was, in fact, 79/80, not, if the contract had been fulfilled, in late 1985, it would have been 1985/86, so, and I apologise, this is all rather complicated

Q. I understand.

A. At the time at the end of 19, of the tax year 1979/80, there was there had, in fact, been no disposal by Mr. and Mrs. Haughey because of the fact

that the contract was conditional. And, in fact, there wasn't, in fact, an obligation on Mr. Haughey in making his return for that year to show that, show such a disposal on the return for that year. When it came to the end of 1985 and the contract hadn't been completed, or the conditions hadn't been fulfilled, the time of the contract swung right back to 79/80. So there was no disposal in 1985/86 either. So at the times of relevant events, there were, in fact, no disposals. One might well say, surely there is a hiatus in the legislation, but there is not, in fact. Section 507 of the income tax of the 1967 which is adapted for Capital Gains Tax purposes, in a short five-line section provides that a person shall be deemed not to have failed to do anything required to be done within a limit of time if he did it within such further time if any, as the commissioner or other officer concerned may have allowed and where a person had a reasonable excuse for not doing anything required to be done, he should be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased."

So, in fact, in the events which happened, Revenue knew about the disposal in 1979/80. And that was confirmed in the letter from Mr. Haughey's agents.

Q. Not until 198

A. Not until then, because

Q. I appreciate that, but you certainly weren't of that view at the time because you were writing letters to Mr. Haughey, taking the view that he should have disclosed it to you?

A. No, I was inquiring about the position.

Q. I think you wrote a letter I think you did write a letter to Mr. Fitzpatrick at one point indicating that as far as you were concerned as of January of 1986, the taxpayer had not revealed the transaction on returns of income and chargeable gains and the agent had not responded to your letter of August of 1984.

A. Indeed, at that stage I was inquiring into the position as to what had happened. But looking at it now with the full hindsight, full knowledge, that is the legal position as I outlined would seem to apply.

Q. I appreciate that. I am not concerned with the legal position precisely, Mr. Clayton, in fact, I may take a view altogether as to the nature of the contract.

It's really of no concern to me. My own view is that this money became Mr. Haughey's utterly from the moment that Gallaghers could no longer and were no longer indeed intent on completing the contract, but I am only concerned with the activities or the actions of the Revenue Commissioners and certainly you were of the under the impression as of August of 1984 that you were entitled to information and by 1986 you were certainly

of the view that you had been entitled to it and you hadn't received it. Isn't that right? That was your thinking at the time?

A. You have said a lot of things there in that question, Mr. Healy, but that I was certainly inquiring into what had actually happened. And I was failing to get information as we know.

Q. Indeed, I think your thinking would have been very close to mine, if you look at your memorandum of your first conversation with Mr. Pairceir concerning this matter. This is your memorandum of 1984 of your telephone conversation of the 15th or the 13th May of 1984.

A. 15th May.

Q. 15th May. The bottom line of that memorandum where you say, "1982, null" do you see that?

A. On 15th May?

Q. 1984 if you go to the very bottom line.

A. I see that. Those were words which were being used in conversation. They are not a summary of the position by any person.

Q. I understand, but what I am saying at that stage, the view was being expressed by somebody and you were certainly noting it, that this was a contract that was in some way null

A. No, I would

Q. That someone was unavailable to fulfil it?

A. The question was arising, the fact that I put down that word doesn't mean it was an absolute factor that had been uttered in a statement.

Q. I don't want to go through all the legalities of this.

Can we just simplify a couple of legal propositions.

The Receiver had come and spoken to the Chairman and said we have this contract. We have our doubts about it. I put it no higher than that at the moment.

There was a discussion whether the $\frac{1}{2}$ 300,000 was recoverable or not, either from the vendors or from somebody else. Now, that discussion could only have taken place in a context in which Mr. Crowley, the Receiver, was not going to fulfil this contract, isn't that right?

A. There was obviously a very serious doubt about fulfilment of the contract, no doubt about that.

Q. There was no doubt about it, Mr. Clayton. There was no question that Mr. Crowley was going to fulfil this contract. There wasn't a shadow of a doubt about it.

He wasn't even prepared to investigate a liquidator of the company?

A. As a Receiver, but as a matter of strict law, I am not altogether sure of that position.

Q. Do you think that the company could have fulfilled it?

A. When I wrote that, I didn't have the documentation in front of me.

Q. With the benefit of hindsight, did the company did

the company have over a million pounds to fulfil the contract?

A. It had assets, as far as I am aware, but I wasn't au fait with the affairs of the Gallagher Group.

Q. Your subsequent dealings with this matter all proceeded on the basis of your impression, whether it's right or wrong, all proceeded on the basis of your impression that you were entitled to information about what you perceived to be a potential chargeable gain?

A. Oh, I certainly would have liked information. Whether I was actually entitled to it or not under the powers I had available, I am not too sure.

Q. Now, you weren't here this morning Mr. Clayton, when Mr. Pairceir made a remark and I just want to clarify your own understanding of the situation.

Q. I can assist My Friends by saying it's on line 1 of page 12. In discussing the dealings that Mr. Pairceir had with you, Mr. Pairceir said, I think there is reference to that long memorandum that you prepared, and: "I think you know, we went into it yesterday, that he" meaning you "seemed to have this need for reassurance and I gave it to him." He was then asked by Mr. Coughlan: "He seemed to have a need for reassurance do you think?" And Mr. Pairceir added: "Well, he did, yes."
"Was that your impression of him during all of this?"
"Yes."

Can you just explain to me, did you need reassurance and was that the basis of your going to Mr. Pairceir?

A. I went to Mr. Pairceir because it was he who had raised the matter with me in the first instance and I thought it appropriate to keep him advised as to developments in the case. I have no recollection of a feeling of needing reassurance in relation to what I was doing.

I was certainly keeping him informed. But I considered that I was doing the right thing and as such, I wasn't particularly worried about that provided the matter was being dealt with properly.

Q. So if he formed the impression that you needed reassurance, he was wrong about how you felt about this matter?

A. He, I think, would have been correct, shall we say, in feeling that a junior officer might, in the ordinary course of events in dealing with a matter of this nature, might have appreciated reassurance, shall we say, but it wasn't my

Q. We are going around houses now, Mr. Clayton. Did you need reassurance? You were a senior inspector, did you need reassurance?

A. I considered I didn't.

Q. And if he thought you did, he was wrong?

A. It depends on how he would have expressed my I didn't have I didn't feel any need for any reassurance, but he may have thought there was some

need for it. He may have speculated on that.

Q. I am sorry, that would be understandable. Why would it be understandable that he would have thought you need reassurance? He was the person coming to you for the expert advice in relation to how to deal with this matter. What reassurance did you need?

A. I can't I obviously didn't feel that way. And as you say, I was the a specialist in that area and I was confident in what I was doing.

Q. One last matter. This is something that was taken up with Mr. Pairceir as well. Just to clarify the position where your particular role in assessing the tax is concerned.

From the time that you decided that you should pursue this as a Capital Gains Tax issue down to the time that the assessment was sent out and the response was obtained from the taxpayer, did you have any role in considering whether any other course might have been appropriate in view of the non-response or the poor responses you were getting from the taxpayer?

A. No, I had no other role.

Q. So your job was to collect Capital Gains Tax. If you formed the view in the course of doing that, that there was something questionable about the behaviour of a taxpayer, you would have had no role to divert yourself from the route upon which you had embarked?

A. No. That is not that wouldn't be so. It would have been entirely proper for me to have drawn it to the attention of other parties to matters which arose on that, for example, matters arose which affected parties other than Charles and Maureen Haughey which I notified to Capital Taxes Branch, but I dealt with it as a Capital Gains Tax matter.

Q. But in the course of dealing with it, you were, as you put it yourself, to some considerable degree, frustrated by a failure on the part of, as you put it yesterday, either the taxpayer or the agent. We know from other evidence that will be given that the agent was trying to get information, but you were under the premise that he were not getting full cooperation from one or the other, was that a factor that you had any role in considering?

A. Not really. That was a commonplace event.

Q. Of course

A. At that time. Mr. Haughey was not unique at all in that regard. We were well accustomed to non-cooperation, shall we say. Those were times when we were when to advance matters, about the only course open to us was to make estimated assessments, have appeals listed, adjourned, relisted and so on up to Circuit Court, trying to force matters, that's why we brought in self-assessment in 1988.

Q. I understand all that. You are saying that you

wouldn't have had any reason to consider the response or non-response of the taxpayer in this case because you would have treated it as normal?

A. Yes, quite normal.

Q. But wasn't there an additional factor in this case to be borne in mind in assessing or evaluating the taxpayer's response and wasn't it this factor: That from the very outset there was a question mark over whether this was a bona fide agreement?

A. No, I had made the decision in relation to the contract, taking it at face value and I wouldn't have taken a lack of response by an agent in the context of the time, as indicating anything other than the usual non-cooperation.

Q. I see. Maybe you were perhaps maybe you found yourself in a position where because this was the normal response, you saw no reason to review your decision, but could I ask you to look at it now. You had a taxpayer here who was failing to respond to questions about the existence of a transaction and one of the issues which had arisen at the time this transaction was first brought to your notice was its bona fides. Would you agree with that summary of events?

A. A question had arisen, yes.

Q. And if a taxpayer had been engaged in a transaction which was not bona fide, isn't it obvious that it's not

one he'd be owning up to in response to queries from the Revenue or anyone else?

A. Well, he would be the taxpayer would be in the same boat as thousands of other taxpayers not responding to queries.

Q. These were two factors that, I suggest, that should have been allied to one another, and if so, they might have raised further questions in your mind.

A. I wouldn't see that as being a logical response.

Q. And you wouldn't see it even now as being a logical response?

A. Well, we all have hindsight in the month of December 2000.

Q. I know that. Would you say now, that those two factors, if you put them together, might now prompt a review of the action taken?

A. You are talking hindsight?

Q. Yes, I am talking hindsight.

A. No, at the time I wouldn't have regarded it as being the appropriate thing to do so link the two.

Q. You wouldn't have regarded it as appropriate?

A. The fact of non-response, non-cooperation from an agent was, as I said, quite commonplace.

Q. You have made that point before, Mr. Clayton. I am asking you whether you would have linked the non-cooperation in this case, the failure to disclose the existence of a transaction where there was a doubt

at an earlier point about the bona fides of it, those two features of the agreement, I suggest, put the non-cooperation into a different category.

A. I would have to apply hindsight to produce that action.

Q. Thank you very much.

MR. CONNOLLY: Just one or two matters.

CHAIRMAN: Mr. Kettle?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. KETTLE:

Q. MR. KETTLE: Yes, just to reiterate one point which I think Mr. Healy made yesterday and today and that's that Haughey Boland as tax agents were not the taxpayer, so if there was an issue of non-cooperation, surely that that was an issue for the taxpayer and not the agent, would you agree Mr. Clayton?

A. Well, I wasn't aware of the distinction between the taxpayer and the agent when I was handling the case, except in the matter of the collection when, in fact, I phoned Mr. Kenny who told me that he would be approaching Mr. Haughey with a view to payment of the tax.

Q. Right. But if a tax agent is endeavouring to get the information requested from the taxpayer that is not non-cooperation from the tax agent rather than if the information is not forthcoming, that would be non-cooperation from the taxpayer, wouldn't that be

correct?

A. Again, it happens routinely, where taxpayers do not keep their agent informed, they do not help the agent in their dealings with the Revenue.

Q. So in that case, it's not an issue of non-cooperation of the tax agent.

I think we'll be hearing evidence on that, Chairman, but just to make that point clear.

CHAIRMAN: I think we will leave that until we have had heard Mr. Kenny publicly, obviously any observations that you or Mr. Allen made

MR. KETTLE: Thank you, Chairman.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. CONNOLLY:

Q. MR. CONNOLLY: Mr. Clayton, firstly, your contact with Mr. Pairceir that was the subject matter of inquiry which Mr. Healy as to whether or not this was reassurance being sought on your side looking back on it, given the initial contact on this item, the Gallagher contract was made to you by Mr. Pairceir after he had been contacted by Mr. Crowley. I suggest to you it would have been at least discourteous if he hadn't kept informed after following the matter up?

A. At the very least.

Q. It would have been out of place of normal practice not to keep him in touch in a normal matter, given it had

started at his desk and come to you that route?

A. Absolutely, that is correct.

Q. Can I just deal with this question of non-cooperation.

That in itself, I suggest to you, was never a ground for involving the Investigation Branch of the Revenue Commissioners?

A. Well, considering that in the early 1980s, the Investigation Branch was processing perhaps a hundred or maybe a hundred cases per year. If we were to refer every case of non-cooperation to Investigation Branch, we would need an Investigation Branch about a thousand times

MR. HEALY: I don't think I was suggesting that, it would be a waste of time to detain the witness. Nobody suggested non-cooperation warranted the involvement of the Investigation Branch. I think I can shorten that for My Friend.

Q. MR. CONNOLLY: Mr. Clayton, the situation was back in the 1980s, that the Investigation Branch became involved only when there was a very clear cut case of back duty being withheld?

A. That is so. Where there was evidence of non-disclosure of income or nondisclosure of assets, yes.

Q. And mere suspicion was never regarded as a criterion which would justify the involvement of the

Investigation Branch?

A. One had to have evidence to advance a case.

Q. Now, going back then to the forfeiture of the Gallagher deposit, while the actual gain was the actual gain arose in 1979/1980, it became a taxable gain only in 1986.

A. Yes, I deferred making the assessment until January of 1986, you might say at the first possible opportunity .

Q. It was raised by you at the first opportunity where it became a taxable gain?

A. The expiry date was 31 December and I arranged for the assessment to be made in December or in January of 1986. I was I was conscious of the fact that I was dealing with Mr. Haughey and dealing with a large sum of money and when assessing him, I wanted him to stay assessed. I didn't want technicalities to arise which would have occupied a large number of people in the appeal Tribunal, Circuit Court and High Court for years after that; possibly or probably resulting, if I had made assessment in a wrong year, of cancellation of the assessment and lead to make a fresh assessment.

Q. Let's look at it this way, if you had raised the assessment sorry, in relation to any other date as being the date of the taxable gain, there might have been a prospect of the matter being sent to the Appeal Commissioners and in turn onto the Circuit Court?

A. Yes.

Q. And the only basis for you picking out an earlier date was as suggested by Mr. Healy, you would have had to have taken a view that the Receiver was never going to be taken out of the situation in the company let me put it more correctly, the company was never going to be taken out of receivership. You had to take that view at some stage?

A. That is so, yes.

Q. And while we now know certain things about the Gallagher Group, I have to suggest to you that there were companies being taken out of receivership in the mid-1980s?

A. Yes, one hears of such cases. Fortunately, not on a regular basis.

Q. And I suggest that there were good reasons for you being circumspect in taking a view as to whether this company might or might not have been taken out of receivership?

A. Well, I would certainly feel that if one had assessed prematurely, it would have been appealable on legal grounds.

Q. So you plumped for the date where absolute certainty arose and your earliest opportunity was January of 1986?

A. So the matter would be beyond any doubt, beyond legal argument.

Q. And the full amount of CGT which would have been

capable of being levied at that stage was, in fact,
imposed?

A. The full amount, yes.

Q. Thanks very much, Mr. Clayton.

CHAIRMAN: Just

MR. HEALY: One point, it may be that My Friend
it's not a question for the witness. My Friend can
deal with it in making an inquiry in the Revenue. I
think it was put to Mr. Pairceir, and there may have
been some intimation that the Gallagher Group did go
into liquidation. I have the impression from
something Mr. Davis has told me, that this particular
part of the Gallagher empire never went into
liquidation. Maybe My Friend can clarify that.

MR. CONNOLLY: I'll have to make inquiries. I
thought a liquidator was put in place but maybe not in
relation to that item. I will check that over lunch.

CHAIRMAN: Just on the question of the rate,
Mr. Clayton, with our, even our public transcripts now
comfortably exceeding 10,000 pages, I have neither the
inclination or expertise of writing monograms on the
finance acts, but is the position clear-cut to the
extent of this, that if a colleague, in Capital Gains
had assessed a higher rate on Mr. Haughey and they had
appealed and you had come before the Appeal

Commissioners, you would have had to concede.

A. Undoubtedly, I'd have had to concede. I dealt with the case at all stages on what I had before me, strictly properly. I didn't overestimate, I didn't underestimate. And I didn't either use an excessive rate or use a rate that was lower than appropriate.

CHAIRMAN: Yes, but clearly in your view, as the expert in that field, 30%, neither less nor more, was the appropriate rate?

A. Neither less nor more, yes.

CHAIRMAN: Over the dealings that you had with Messrs. Haughey Boland and Mr. Kenny and as has emerged from observations from Mr. Allen and Mr. Kettle, one will need to await hearing from Mr. Kenny, it seems that your dealings went through a number of phases, I think you had indicated that it is Revenue practice not to alert a taxpayer to the precise chapter and verse of a suspected liability in case there may be other contingent liabilities.

A. If one can get away with not telling the taxpayer what one knows, as a matter of practice one shouldn't do so.

CHAIRMAN: So would it be fair to say there was some little element of a poker game, to put it very colloquially, that in the first phase you told Mr. Kenny that you believed there may be another aspect of capital gain beyond the Rath Stud and encouraged him

to make disclosure and then at a later stage your hints became somewhat broader and you both directed him to the 1979/80 year and directed him to the Section 47 that related to options which obviously made it somewhat more rarified ground.

A. That is so. I had no choice with the powers that I had at the time. As I indicated yesterday, the basic power that inspectors had at that time was to enter an estimated assessment. Now, if, in fact, I had entered estimated assessments in this case for Capital Gains Tax, say, for $\frac{1}{2}$ 100,000 for each year or $\frac{1}{2}$ 500,000 each year, on entering before the Appeal Commissioners, or a judge, I would have immediately have been asked what is the basis for this assessment? I would have had to reveal what I knew of the case. So there was no point in concealing. That was the position as obtained in the 1980s, those powers have been fortunately changed radically since.

CHAIRMAN: Well, that was the second phase and the last phase I think was when after discussion with Mr. Pairceir, you wrote the letter in somewhat more peremptory terms requesting a meeting and you had prepared that you were going to indicate in broad terms that it was effectively the Gallagher transaction.

A. That is correct, yes.

CHAIRMAN: So is it your appraisal then of your

powers, that you could not have seized the metal to bring matters to a head by alerting Mr. Kenny to the fact that it was this Gallagher money that is somewhat stale and long outstanding that that is my concern.

A. I really had no choice in the matter. I had to do what I did. I had to I had to write the letters in the way that I did write them. If I had forced the matter to an appeal hearing, by way of an estimated assessment, I wouldn't have lasted five minutes before the Appeal Commissioners if I had to reveal a basis for the assessment.

CHAIRMAN: Could the correspondence discreetly and confidentiality have actually alerted Mr. Kenny when he wasn't responding to you, and of course I take Mr. Kettle's points, and the evidence that has to be heard, would it have been possible for you in that correspondence, could have indicated then, rather than at a later meeting, it's the Gallagher deal I am interested in?

A. I think it was clear enough from one of the letters when I referred to Section 47 that if Mr. Kenny had been in touch with Mr. Haughey on the subject, Mr. Haughey, I would imagine, I would expect, would have known exactly what I was talking about.

CHAIRMAN: Very good. Thanks for your further assistance then, Mr. Clayton. It's a quarter to or

nearly ten to one. We will resume at two o'clock.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AS 2PM:

MS. O'BRIEN: Mr. David Fitzpatrick please.

David Fitzpatrick

MR. CONNOLLY: Just before the witness comes to the stand, Sir. I was asked just before lunch to verify a matter that I put to Mr. Pairceir in cross-examination.

The information I have over the lunch break is that there was, in fact, a court order made on the 18th March 1986 by Ms. Justice Carroll in relation to Gallagher Group Limited, which is the company on this contract, and that the Revenue were present through their counsel and they supported the position and following on that petition Mr. Patrick Duffy was made the liquidator.

CHAIRMAN: That effectively was the end of the formal orders that might be potentially relevant that you know of?

MR. CONNOLLY: Well, I think there was some sort of a final order made in 1996 but it's that was just the finalising of the matter. That's the extent that is all

CHAIRMAN: Thanks for finding that out, Mr. Connolly.

Very good.

DAVID FITZPATRICK, HAVING BEEN SWORN, WAS EXAMINED AS
FOLLOWS BY MS. O'BRIEN:

Q. MS. O'BRIEN: Thank you, Mr. Fitzpatrick.

Mr. Fitzpatrick, you have provided the Tribunal with a
statement of the evidence you are in a position to give
and I wonder do you have a copy of that with the
documents in the witness-box?

A. I have, yes.

Q. Just before I deal with that statement,

Mr. Fitzpatrick, I think you are an Inspector of Taxes
and you have been so since 1985, is that correct?

A. That's correct, yes.

Q. And I think that you were Inspector of Taxes with the
public department of the Revenue Commissioners, is that
correct?

A. I wasn't the inspector for public departments. I was
an inspector working in public departments.

Q. I think your involvement in connection with the Capital
Gains Tax liabilities that would have been the subject
matter of the sittings over the last two days is that
you became involved in both the Capital Gains Tax
arising from the disposal of Rath Stud and from the
forfeiture of the Gallagher deposit from the issuing of

the assessments, the assessments to tax to the issuing of the form CC 73, which we have been hearing about in the course of evidence, is that correct?

A. That's correct, yes.

CHAIRMAN: It's the public department, Mr. Fitzpatrick, it's probably fairly self-explanatory, but what department?

A. We dealt with the public service.

Q. MS. O'BRIEN: That's the public service department deals primarily

A. With civil servants, guards, school teachers and that.

Q. In your statement, Mr. Fitzpatrick, you state that you were an Inspector of Taxes, a position which you have held since April of 1985?

A. That's correct.

Q. You state that prior to that you were a higher tax officer from 1978 to April 1985 inclusive?

A. Yes.

Q. You say that for the period 1978 to April 1987 you served in the office of the Inspector of Taxes for Public Departments and for the period 1980 to April 1987 you were responsible for the allocation dealing with the tax affairs of the president, the Taoiseach and cabinet members, ministers of state, members of the Oireachtas and the judiciary?

A. Correct.

Q. You state that you have examined the official papers available for this period; that your first involvement in the matter of the Capital Gains Tax assessments was in relation to the assessment for 1976/77, disposal of Rath Stud in June of 1985.

A. Yes.

Q. You state that your office dealt with operational matters in relation to Mr. Haughey's income tax being the issue of tax free allowance certificates, any PAYE reviews and so forth?

A. Correct, yes.

Q. You state, therefore, that your office would enter any assessments which were necessary?

A. Yes.

Q. So would I be correct in saying there, that you were the official point of contact between the Revenue Commissioners and the taxpayer which in this instance was Mr. Haughey?

A. Correct.

Q. You state that in June of 1985 Mr. Clayton called to your office in Hawkins House and he gave you the memorandum dated 25th June of 1985?

A. Yes.

Q. And I'll open that shortly when you have finished your statement. You state that an assessment in the amount of $\text{£}12,480$ tax was raised on the 7th July 1985 and that the due date of tax was the 7th September of 1985?

A. Yes.

Q. You state that the assessment was issued to Mr. Haughey with a copy to Messrs. Haughey Boland on the 7th July 1985?

A. Yes.

Q. And just to clarify, do you mean that the assessment was sent both to Mr. Haughey and to his tax agents?

A. That was normal procedure. If there was an agent acting in the case, he automatically got a copy of any assessment.

Q. He got a copy in addition to the taxpayer receiving a copy?

A. Yeah.

Q. You state that the assessment was appealed by Haughey Boland on the 9th July 1985 and the specified amount offered pending determination of the appeal was

£12,480?

A. Yes.

Q. You state that this amount was, therefore, available for collection?

A. Yes.

Q. You acknowledged receipt of the appeal on the 12th July 1985 and a copy of your acknowledgment was sent to Mr. Clayton.

A. Yes.

Q. You state that Mr. Clayton phoned you on the 24th March of 1986 and he asked that you listed appeal for

determination by the Appeal Commissioners.

A. Yes.

Q. You state that the appeal was listed for hearing on the 17th April of 1986 and that notice was issued by registered post to Mr. Haughey and normal post to his agents on the 24th March of 1986.

A. Yes.

Q. So again both the taxpayer and the taxpayer's agent were both notified of the date of the appeal?

A. Which is normal practice.

Q. The file was sent to Mr. Clayton on the 16th April 1986 as he was taking the appeal. On the day of the appeal hearing, at 9.45am the appeal being set down for hearing at 12 noon, a representative of Haughey Boland called with a letter of the 16th April 1986 and on the basis of this letter the appeal was settled.

A. Yes.

Q. You state that you were to phone Mr. Clayton to advise him of this letter, to obviate the necessity of his attendance before the appeal commissioner; that you wrote to Haughey Boland on the 21st April 1986 advising them that you were treating the appeal as settled and asking about the 1979/80 appeal.

A. Yes.

Q. Now, the remainder of your statement then deals with the 1979/80 appeal. You state that your involvement with this aspect began with a memorandum sorry, I

should just pause there, Sir. You will find the remainder of Mr. Clayton's statement behind Divider 11 in your book.

Mr. Fitzpatrick, I should say, of course, you state that your involvement with this assessment, which was the assessment arising from the forfeited Gallagher deposit, commenced with a memorandum of the 23rd January of 1986. You state that you cannot remember whether Mr. Clayton called to your office, you called to him or the memo was posted to you. You state that the assessment was in the amount of $i; \frac{1}{2} 89,850$ tax and was issued by registered post to Mr. Haughey on the 24th January 1986 with a copy to his agent. So again you followed the usual practice?

A. Yes.

Q. You state that the tax was due on the 25th March of 1986. A letter of appeal dated 7th February 1986 was received. The appeal did not specify any payment on account. The agents, that's Haughey Boland, said that they would get back to you on this point.

A. Yes.

Q. And you explained that consequently the tax as assessed was due and payable?

A. Yes.

Q. You state that you acknowledged the appeal on the 19th February 1986 and you sent copies, presumably, of that correspondence to Mr. Clayton?

A. Yes.

Q. You state that the appeal was listed for hearing by the Appeal Commissioners on the 23rd May, 1986, the summons issued on the 30th April 1986 on Mr. Clayton's instructions and copies were forwarded to him, meaning Mr. Clayton.

A. Yes.

Q. You state that on the 22nd May 1986 Mr. Andrew Carbini from Haughey Boland called to your office with a letter of the 22nd May 1986 and on the basis of this letter, the appeal was treated as settled?

A. Yes.

Q. You formally wrote to agents, meaning Haughey Boland & Company?

A. Yes.

Q. On the 28th May, treating the appeal as settled, you sent a copy of this letter also to Mr. Clayton?

A. Yes.

Q. And then finally, in relation to the payment of the tax liability, you have informed the Tribunal as follows:

You state that $\text{€}50,000$ was paid on the 15th July 1986, but was in error brought to the account against income tax. You state that as the payments were unappropriated, the Collector-General's office were advised on the 29th August 1986 to set $\text{€}12,480$ against the 1976/77 CGT assessment, that's the assessment on Rath Stud?

A. Rath Stud, yes.

Q. And i£½37,520, which was the balance of the i£½50,000 payment to be set against the 1979/80 CGT assessment, which was the forfeited Gallagher deposit

A. Yes.

Q. you state that you advised Mr. Clayton of this on the 9th September of 1986.

A. Yes.

Q. You state that the Collector-General's office were also contacted on the 9th September 1986 and said it would take two weeks to effect the transfer?

A. Yes.

Q. You state that a form CC 73 to certify tax was free for enforcement, was received by you circa 15th October 1986?

A. Yes.

Q. You state that the form was dated 1st October 1986. You phoned Mr. Clayton on the 15th October 1986 regarding this and you sent him the form and your file on the 16th October of 1986.

A. Yes.

Q. You state that the original form included the amounts as assessed, as the payment transfer method was not on record when the form CC 73 was produced by the computer?

A. Yes.

Q. So I take it to mean there that the entire liability of

just in excess of $\frac{1}{2}$ 102,000 was on the form?

A. Correct, yes.

Q. You state that authority to certify the CC 73 was given to you by a memo of the 31st October 1986 and the form CC 73 for the correct amount due, $\frac{1}{2}$ 52,330 was certified by you on the 31st October of 1986.

A. Yes.

Q. You state that the papers available to you do not indicate what happened next, but you assume that you would have sent the certified form CC 73 to the Collector-General to commence proceedings for the recovery of the amount due and that your involvement ended with a certification of the CC 73.

A. Yes.

Q. Mr. Fitzpatrick, before I refer you to some of the documents, I'll just take up one or two specific matters in your statements.

Can I ask you this: Can you just tell me what you considered to be your functions with regard to this assessment and the subsequent steps that were taken after the formal service of the notice of assessment?

A. My function basically was to carry out the instructions of a senior officer.

Q. Yes

A. That's as far as I considered, you know, my position to be.

Q. So what you are saying is that at all times, it would have been usual for you to act on the instructions of a more senior officer?

A. Yeah, there is a certain chain of command as you probably would be aware, and I would consider that would have been my position to carry out the instructions of a senior officer.

Q. So when it was when you were instructed to issue the notice of assessment, you then received the indication from Haughey Boland that they wished to appeal that assessment and you acknowledged it?

A. I would have acknowledged it, yeah.

Q. And would it have been usual for you to wait until you were instructed by the senior officer to actually list the appeal or to serve the appeal summons?

A. Well, the particular point at issue was Capital Gains Tax, which was beyond my area of competency anyway, so I would have awaited Mr. Clayton's instructions in relation to that matter.

Q. So you would have always been of the view that you were subject at all times to the instruction of Mr. Clayton?

A. Correct, yes.

Q. Would that have applied because the matter was a Capital Gains matter or would it have applied irrespective of the type of tax that was being levied?

A. No, it was purely because it was a Capital Gains Tax matter.

Q. And would that have been the position in all cases where you were raising an assessment to Capital Gains Tax?

A. Not where the particular issue was being dealt with by the Capital Gains Tax unit in Setanta Centre. They were perceived to be the technical area dealing with Capital Gains Tax. Capital Gains Tax was beyond the area of my competency at that time.

Q. So you would, in the ordinary course, you would have expected to receive the memorandum of the type that you did setting out exactly what level of tax you should assess and how you should assess it?

A. Yes.

Q. Maybe if we just look at some of the documents then, we can go through them. Now, I think the first document is the memorandum that you received from Mr. Clayton and it's dated June of 1985, the 25th June of 1985.

And I think it's there on the monitor.

A. Yeah.

Q. It says: "The above-named disposed of known as Rath Stud Farm, County Meath, on the 25th January 1977 and liability arises as follows," and sets out the computation. He says: "Please arrange for a '76/77 assessment accordingly as soon as possible and let me have a copy of the notice of assessment. The agents are Haughey Boland & Company."

A. Yes.

Q. That would be the usual form of instructions which you would receive from Mr. Clayton in the case of a Capital Gains Tax liability?

A. Yes.

Q. Where you were being asked to raise an assessment?

A. Yes.

Q. Then the next document I think is the actual notice of assessment, that we have seen before, and that was the formal document that was issued by you. Can I take it it is your responsibility and you do have authority to actually issue that document yourself?

A. I would complete the document. I wouldn't have the authority to, you'll see there, there is a signature, a stamped signature on it.

Q. It's a bit difficult to make out who the stamp signature is?

A. I would have the authority to actually physically draft the document and issue it, but it would be part of a book of assessments signed by the district inspector.

Q. So you'd bring it to the district inspector. He'd sign it. You'd stamp it and send it by registered post to the taxpayer and send it by whatever ordinary post or whatever form of post to the tax agent?

A. Yeah.

Q. You then received, on the 9th July 1985, a letter from Haughey Boland & Company, acknowledging receipt of the notice of assessment, indicating intention to appeal on

the ground that it was an estimated and might prove excessive and indicated they wish to specify a payment on account of $\frac{1}{2}$ 12,480?

A. Yes.

Q. In fact, that payment that was on account is the amount of tax that was assessed in the notice of assessment.

A. That's right.

Q. I think in your statement you said that having specified that amount, that that amount was therefore, available for collection. And could you just indicate to us what that means?

A. The specific section, the Income Tax Act provided at that point in time, this was before self-assessment was introduced, that when a taxpayer appealed an assessment, he had to specify what, in his opinion, was considered to be due on the termination of the appeal.

Now, he could specify nil or he could specify any amount up to the amount of the assessment. So in this particular case, Haughey Boland specified the amount of the assessment which took which became due and payable. If they had have specified nil, there would have been no amount payable pending determination of the appeal or if they had

Q. Given this they specified that amount, what steps would then have been available to you or to the Revenue Commissioners arising from the fact that that amount was then due and payable as of July of 1985?

A. The normal collection process would continue for that amount.

Q. So, in fact, you could have issued a form CC 73, am I right, at that stage?

A. Well, there is a collection process. I am not a hundred percent sure of exactly what form it takes, but we don't proceed from issuing an assessment immediately to enforcement, there has to be specific demands. I don't know what cycle they take.

Q. But the actual collection process could have been technically put into train as of the 9th July 1985?

A. Again, I am not from the Collector-General's side of the house

Q. Just your understanding as being the officer who is responsible for issuing the note of assessment in dealing with the appeals.

A. The normal procedure would be that the collection process would continue which forms a cycle of demands, three or four, I am not a hundred percent sure, before CC 73s are produced. It just doesn't happen that an assessment is issued and immediately a CC 73 is produced. There is a cycle of demands that are produced automatically by the computer.

Q. I see. The demands could have gone ahead at that stage?

A. Yeah.

CHAIRMAN: I understand, Mr. Fitzpatrick, in this

case, you were acting on the instructions of Mr. Clayton, but was there anything to list by way of appeal if, in fact, they had conceded on account the actual amount of the assessment?

A. Because they had specifically appealed the assessment, we had to treat it as an open appeal, irrespective of the fact that they actually specified the tax as assessed, they had appealed the assessment.

CHAIRMAN: This, I take, is a pretty rare occurrence, usually it's a smaller sum?

A. No, it's not unusual for a taxpayer to actually specify the tax as assessed; that all changed since self-assessment came in, but prior to that, taxpayers could specify any amount up to the amount of the tax that was assessed.

CHAIRMAN: And then if they successfully reduced the amount, they'd be entitled to some interest recruitment.

A. That would be a ploy at the time.

Q. MS. O'BRIEN: It would be a ploy at the time, apply with the view to achieving anything?

A. Interest and repayment. I am not saying it would happen in this case. But it has happened.

Q. That would presumably only arise if the payment that was specified was actually made at the time?

A. Paid.

Q. In reality where they were specifying an amount due equivalent to the amount assessed, wasn't it the case when you had the appeal against the assessment was pretty well meaningless?

A. The Revenue wouldn't have taken that particular view.

The taxpayer has a right to appeal an assessment. And we would have followed the normal procedure even if the taxpayer had specified the tax as assessed and if he wanted to have his appeal listed for determination by the appeal commissioner.

Q. That would be considered to be his right?

A. We'd follow on from that and he would have that opportunity to be heard at the Appeal Commissioner or at a higher level, and of course this could be, you know, could be any reason behind that they wanted to take it to a higher level even to go to the Circuit Court, the High Court or the Supreme Court.

Q. I see. Then I think on the 12th July 1985 you simply acknowledged the earlier letter, that letter which you had received from Haughey Boland; that was a kind of standard form of acknowledgment?

A. Yeah.

Q. Then you referred the whole matter to Mr. Clayton.

A. Correct, yes.

Q. Now, would it in the ordinary course, would that have been your practice, once you raised the assessment

on a capital gains matter you received either whatever response you were receiving, but if you were receiving a response that the taxpayer wished to appeal the matter, that you would then refer the whole question of the assessment back to the capital department?

A. Yeah.

Q. And then sometime later, I think, in fact, there was a considerable delay to the 24th March of 1986, you received a communication from Mr. Clayton.

"Mr. Clayton phoned, asked if '76/77 CGT appeal be listed for 17th April 1986 and '79/80 appeal be listed for 23rd May 1986. Advise him prior to meeting of 17 April '86 of position."

A. Correct.

Q. I think that's your note recording the instructions you received?

A. Yes.

Q. So while the assessment on the Rath Stud CGT had been raised in July of 1985 and while notice of appeal effectively had been given also in July of '85, there was no instructions to you to list this appeal until the following March of 1986?

A. Correct, yes.

Q. Is it usual in your experience, that there would have been such a delay between the notice of appeal to the actual listing of the appeal?

A. Well, at that point in time, each district had a

specific date or time allocated in relation to appeals.

And we may have only had two dates between

Q. July of 1985

A. The Appeal Commissioner follows the same circuit as the Court, so I imagine there would have been no hearing sittings until September/October. And there may have only one available for our district between then and Christmas, you know.

Q. That might well explain why there seems to have been this lengthy time-lag between the notice of appeal

A. It's a possible explanation, but I couldn't be sure of that.

Q. You couldn't be certain?

A. Yeah.

Q. I think the next document in the file is the actual you forwarded an appeal summons, is that right?

A. Yes.

Q. That's just the formal document that you issued notifying the taxpayer and his agent of the date and time of the appeal?

A. Yes.

Q. And then again you notified Mr. Clayton, "I attach the file. Appeal is set down for hearing at 12 noon."

A. Mr. Clayton was actually taking the appeal.

Q. Yes, I understand that. He was actually running the appeal on behalf of the Revenue Commissioners, is that

correct?

A. Our normal appeal sitting would have been at eleven o'clock for that day and we would have had you can see it in that listing there as 60 B, we would have had 60 appeals listed for that morning.

Q. I see. You had 60 appeals listed for that morning, this would have been just one of them?

A. And Mr. Clayton would have been allocated number 60 B.

Q. He would have been dealing with this

A. He was dealing specifically with the Capital Gains Tax appeal.

Q. The next document is a letter of the 16th April of 1986 which you received from Mr. Haughey's tax agents.

A. Yeah.

Q. It says: "We wish to refer to the proposed appeal list hearing number 60 B for hearing on Thursday 17th April at 12 noon." Which was the following day.

"We can only assume that the Capital Gains Tax in question relates to the sale of Rath Stud farm.

"In this respect we refer to our letter of the 16th April 1981 to you with which we enclosed a computation of the gain showing a liability of $i_{\frac{1}{2}}12,545$.

"Per our records we do not appear to have had a response to this computation from you.

"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 I think you have a handwritten note at the bottom right-hand corner of that letter. Is that in your own writing?

A. It is, yes.

Q. You say that: "Agent called 17th April 1986 at 9.45am. He verbally agreed the position and I said I was treating appeal as settled. I pointed out that I held an open CGT appeal for '79/80." And that's just initialled by you and dated 17th April '86?

A. Yes.

Q. Did you have you were just saying there, that in dealing with these matters, you considered that you were dealing on the instructions of your higher officers?

A. Yes.

Q. Now, would you have consulted Mr. Clayton regarding this development or would you have had sufficient authority yourself to treat the matter as settled?

A. I imagine I phoned him but I would have phoned him. I had received this letter, as I mentioned in relation to the other appeal, to avoid his attendance at the appeal meeting. Because there is no point in him

Q. To save him going all the way, it was in Stephen's Green the Appeal Commissioners used to sit?

A. On the basis of the letter, that's a normal letter that we get in at appeal time and I would have had the authority to treat that appeal as settled.

Q. Presumably on the basis

A. It's a straightforward withdrawal

Q. They were agreeing who the entire assessment

A. I would have advised him that I had received that letter.

Q. I see. The next page I think we don't need to look at, again we have seen it before, it's just the computation of the tax. And then finally you have a letter to Haughey Boland of the 21st April referring to their letter of the 16th April indicating that the assessment for '76/77 refers to the gain of the sale of Rath Stud farm. Your computation was agreed with the exception of the exemption, which is $\text{€}1/2500$ and the tax due is $\text{€}1/212,480$.

"I have treated the appeal as settled. I should like to hear from you in the very near future as regards your appeal against the '79/80 Capital Gains Tax assessment."

A. Yes.

Q. Now then, just moving on to the documents relating to the second Capital Gains Tax matter which arose in connection with the forfeited Gallagher deposit.

Now, I just, in fact, refer to the computation for just one moment, which is on the second page of a letter of the 16th April from Haughey Boland. Just one matter I want to draw to your attention. You see there the computation, the tax, the sale of the farm at $\text{€}300,000$ which was the sale proceeds. You see there, there is a deduction of $\text{€}1,500$ for costs which brings, I suppose, the net proceeds to $\text{€}298,500$. Is it in the ordinary course would the Revenue Commissioners accept that as a normal cost or expense associated with the realisation of the asset or would they seek to have that item vouched? And again, it's nothing to do specifically with this, it's just a general matter.

A. No, we would normally accept that. Like, it covers legal fees, advertising, that type of thing.

Q. Advertising and so forth?

A. Yes.

Q. Costs and expenses incidental to the realisation of the proceeds?

A. It's not an unrealistic normally if it was 15,000 or 25,000 or

Q. You might then raise a query. But if it looks reasonable, would you accept it as being expenses and costs which would legitimately be incurred?

A. Yeah.

Q. And you'd expect those, I take it, to arise in every case involving a disposal either directly or

incidental?

A. Yeah.

Q. Just then to deal with the documents in connection with the Gallagher form fitted deposits. The first of those documents is the memo of the 23rd January 1986 from Mr. Clayton addressed to you. I think that's there. And it states: "Re Mr. Haughey" with a number. Is that a special reference number or a tax number?

A. It's a tax number.

Q. "Capital Gains Tax.

"1. In year ended April 5th 1980, the above-named and his wife made an agreement to dispose of certain property and received in connection with that disposal a deposit of $\frac{1}{2}$ 300,000. The disposal was not completed and in accordance with the provisions of the agreement the deposit became non-refundable on December 31, 1985 a chargeable gain under provisions of taxable Gains Tax 1975 arises accordingly for the tax year 1979/80.

"Sections 47(10) and 10(3) of the Act are relevant.

"2. The transaction in question has not been revealed on Returns of Income and Chargeable Gains and the agent has not responded to my letter of August 9th, 1984, copy attached. In the circumstances, please arrange to have a Capital Gains Tax assessment made as follows: For 1979/80." That sets out the computation of the

gain.

I think you will note from that significant matter is that that computation, which was ultimately agreed to and paid by the taxpayer, does not actually make any provision whatsoever for any deductions in connection with costs?

A. I wouldn't have been interested in any of the

Q. Any of the computations?

A. Other than the instruction to me to put in the assessment.

Q. I accept that, but just looking at the computation itself, I think you'd agree with me that there is no relief given or deduction made in respect of costs?

A. Oh, I would accept that there is no deduction given.

Q. You say: "Copies of partially completed assessment forms are enclosed accordingly. The due date (two months and one day from date of notice) requires to be inserted along with the assessment number and date of notice. Please have the notice of assessment issued by registered post.

"3. If you receive any correspondence from the agents on the matter or any queries as to the reason of the assessment, please refer them to me."

A. Yes.

Q. And in the ordinary course you would expect to receive an instruction of the type from Mr. Clayton which is

set out there at paragraph 3?

A. Yes, nothing unusual in that.

Q. The next document is the assessment, notice of assessment. And I think we have looked at this already. And I take it as in accordance with the notice of assessment that you issued on the Rath Stud Capital Gains Tax, that was issued by you, but would have been signed by

A. The Authorised Officer.

Q. The Authorised Officer?

A. Yes.

Q. I think that was payable on the not later than the 25th March of 1985, is that correct?

A. Yes.

Q. The next document you have here in the pages that I have is headed "Manual assessment." I am not certain what that document is. Can you be of assistance?

A. Back in those days, we weren't as fully computerised as we are actually still in relation to Capital Gains tax. We have to actually raise manual charges to put the charge on computer record. It's just basically you know

Q. It's like a computer instruction?

A. A computer input document it is, basically.

Q. The next document is a letter from Haughey Boland & Company of the 7th February 1986 requesting that you accept this letter as formal notice of appeal against

your assessment of $\frac{1}{2}$ 300,000 chargeable gain in respect of the year ended 5/4/1980 on the ground that it is estimated may prove excessive. We shall return to you in the very near future regarding specified amounts."

I think you indicated in your statement that, in the event they didn't come back to you as regards specified amounts

A. No.

Q. So that

A. I would have just processed the appeal on the basis of that letter and treated it as no amount being offered as a specified amount. Consequently the full tax would have been available.

Q. I just wanted you to confirm, the full tax would be available therefore for collection?

A. Yeah.

Q. You acknowledge then on the February receipt of the assessment and you attached a copy of the agents' appeal on your reply and you forward that had to Mr. Clayton in February, the 25th February of 1986.

A. Correct.

Q. And then I think Mr. Clayton, and we saw, in fact, the memo which you received from him in the previous set of documents, he asked you to list both the CGT appeal on the Rath Stud matter and the CGT appeal on the forfeited deposit on the one level?

A. That's correct well, it was a phone call actually.

Q. It was a phone call which you made a note of?

A. Yeah.

Q. And I think the next document then is the actual appeal summons, which is in the same form but is returnable for the 23rd May of 1986.

A. Yes.

Q. And then you have a note to Mr. Clayton, attaching a copy of the appeals summons, confirming that notification was issued by registered post to Mr. Haughey's agents, properly marked for the attention of Mr. Patrick Kenny?

A. Yes.

Q. Again, presumably, it was to let Mr. Clayton know and was Mr. Clayton also going to deal with this appeal?

A. He was indeed, yes.

Q. And then I think the next memo is also from you to Mr. Clayton of the 2nd March, attachment of file, confirming the appeal was set down for hearing at 12 noon?

A. Yes.

Q. And presumably that's the appeal number or the tax number there at the top right-hand side?

A. Yeah no, 900 is the unit actually, the unit that was dealing with it.

Q. Is that the capital

A. The tax number is the number on the right.

Q. I see. And then there is a letter of the 22nd May of

1986 from Haughey Boland & Company referring to the notice of assessment of the 24th January 1986 bearing the reference number. "In respect of £300,000 issued to our above client in respect of 1979/80 year of assessment, Mr. and Mrs. Haughey entered into a contract dated 27th January 1980 whereby it was agreed, subject to specific conditions, that 35 acres of land at £35,000 per acre would be disposed of to Gallagher Group Limited. Gallagher Group Limited subsequently went into receivership and the conditions were never fulfilled or the contract completed. A deposit of £300,000 was paid. The contract provided that in the event of a transaction not being completed by 31 December 1985, and the conditions fulfilled, the contract would lapse and the deposit would not be refundable to the purchaser. The transactions were not completed for the reasons outlined above and the contract lapsed, therefore, there was not a disposable asset nor Capital Gains Tax purposes, however the forfeiture of the deposit gave rise to a gain computation of which is as per your own assessment."

A. Yes.

Q. And I think the note there on the right-hand side which again I think is in your writing?

A. Yes.

Q. This also appears to have been hand delivered by a member of the staff of Haughey Boland. I think it's

Andrew Carbini. No doubt Mr. Allen will correct me if my pronunciation of Mr. Carbini's name is wrong. I think he delivered it to you?

A. That's right, yes.

Q. I think your note says: "Mr. Carbini called with his letter. I pointed out that although they did not specifically withdraw the appeal, I noted that they agreed the assessment." Is that it?

A. Correct, yes, it's just a technical thing

Q. "Mr. Carbini confirmed assessment and I said that I would write"

A. Confirmed agreement and I said I would write confirming our agreement. It's just a technical matter. I didn't specifically withdraw the appeal.

Q. And, in fact, you did then on the 29th May of 1986, write referring to their letter of the 22nd May and your conversation with Mr. Carbini and you note that the assessment was agreed and you are treating the appeal as settled.

A. Yes.

Q. Now, you then forwarded a memo to Mr. Clayton. You said: "I refer to your memo dated 23rd May 1986 and our subsequent telephone conversation. I have noted to forward a ledger sheet to you on the 1st December 1986 and I have also noted my file to consult you before any enforcement action is sanctioned. I attach a copy of my letter of today's date to agent." That's

the letter presumably in which they confirmed you confirmed to them that the appeal was settled object the basis of the assessment?

A. Correct.

Q. Can you just say that here you noted to forward a ledger sheet to Mr. Clayton on the 1st December of 1986 and you have also noted in your file to consult Mr. Clayton before any enforcement action is sanctioned. You say that in the ordinary course, in any event, you wouldn't take any enforcement procedure or any enforcement process without consulting with a senior officer, is that correct? I am just not quite clear by what you mean by that statement.

A. Mr. Clayton asked me to let him have a ledger sheet in December, a ledger sheet was basically a record of what payments have been made.

Q. What payments have been made?

A. Yeah.

Q. So he would have anticipated that by virtue of the settlement of both appeals where the payments would have been made and that in the following December, in December of 1986, you had given the ledger sheet which would show

A. Confirm that.

Q. Show the amount outstanding and details of any payments received?

A. I considered there was nothing unusual in that. I had

been requested to do similar things before.

Q. And you'd usually be requested to do so by a senior officer?

A. I had been requested to do it by senior officers before.

Q. I think the next document here is am I correct in thinking this is just an internal technical document which dealt with the fact that the first payment of $\$50,000$ wasn't correctly appropriated to Capital Gains Tax?

A. Correct.

Q. So that it was appropriated presumably as it would in the ordinary course to income tax, but there was no income tax due, so it was then applied as between the two amounts due in Capital Gains?

A. Correct.

Q. I don't think we need concern ourselves. Am I correct in thinking that's the same as regards the next two typewritten, they look like computer-generated documents?

A. They are ledger sheets actually.

Q. I think the next handwritten document is again a memo of your own of the 9th September of 1986 which confirms and records a telephone conversation with Mr. Clayton?

A. That's right.

Q. You say: "Mr. Clayton phoned. I advised him that two payments were received for $\$12,450$ and $\$37,520$ which

were set against IT" is that income tax?

A. Income tax.

Q. "I advised him the Capital Gains the Collector-Generals were informed on the 29th August 1986 that payments should be set against Capital Gains Tax. He asked me to phone Collector-Generals to confirm that my memo was received and would be dealt with." And that's just signed by you and the date of the 9th September 19786.

I think then there is a further note below that. "I phoned CGs, memo received and will input today. It takes approximately two weeks to effect a change on computer record." Then that's the 10th September '86.

And then finally: "Phoned Mr. Clayton and advised him of above."

A. Of the two-week delay

Q. Of the two-week delay?

A. Yeah.

Q. The two-week delay arising from the fact that the 50,000 that came in was not correctly appropriated to the various CGT liabilities?

A. Correct.

Q. So certain changes had to be made on the computer records and there would be a delay of two weeks?

A. Correct.

Q. Could you just tell me this, by this time the matter

had gone to the Collector-General's department, had it, for collection?

A. That's right, yeah.

Q. Could you explain to me why was it at this stage when the tax had been agreed, part it had been paid and it was there within the collection system that either you or, for that matter, Mr. Clayton, should have been involved in any aspect of this?

A. Well, as a matter of routine, I would have received the document in relation to the unappropriated payment to sort that out.

Q. I see.

A. And I would have had to fix up the charges by advising the Collector-Generals that the amount paid should be set against incomes tax sorry, against Capital Gains Tax.

Q. And again, why would you be referring this to Mr. Clayton?

A. Well, he had asked me to keep him advised and to give him a ledger sheet of the 1/12/96. So I would have advised him when I got this memo from the Collector-General's office that $\text{£}50,000$ had come in.

Q. What happened was although this passed the Collector-General's office, because a payment of $\text{£}50,000$ had come in and it wasn't appropriated to any tax, you, as the person who was directly the point of contact between the Revenue Commissioners and

Mr. Haughey were consulted by the Collector-General,
was it, to sort out how it should be appropriated?

A. To appropriate the payment.

Q. And it was because Mr. Clayton had asked you to send
him a ledger sheet in December of 1986 that you advised
him of what had occurred and it would there would be
a further two-week delay?

A. I imagine that is why I phoned him on the 9th
September.

Q. Could you just tell me was Mr. Clayton still working in
the capital section at that stage?

A. I think he was. I couldn't be a hundred percent sure,
but I am nearly sure

Q. Would there be any reason if he was no longer working
within the capital tax section, would there be any
reason for you contacting him at that time, apart from
his request that you give him a ledger sheet?

A. Other than that, you know, for me to deal with him you
mean other than for that particular issue?

Q. Yes.

A. I wouldn't be dealing with him at all other than that
particular issue.

Q. The next document I think is a form CC 73, is it, if
you just could indicate what that form is?

A. A CC 73.

Q. Is that the form

A. It's a computer produced form which is a request on the

Inspector of Taxes to certify the tax is free for collection.

Q. And is that a form that you were authorised to issue that was part of your responsibility to issue as the assessing officer, if you like?

A. I would have been authorised to sign it at the bottom.

Q. I see. Yes, your signature is on it.

And then I think the final document that I want to refer you to again is a handwritten memo from you to Mr. Clayton, I think it's the 10th October 1986, "Further to our telephone conversation yesterday, I attach my CGT sub file together with form CC 73 for certification." So you had prepared the CC 73 you were sending it forward to him?

A. No, the CC 73 would come to our district to be certified, bundles of them would come down, you know, as a matter of routine. And this particular one came to me because I was dealing with Mr. Haughey's tax affairs and because Mr. Clayton had asked me to advise him before any enforcement action was to be contemplated, I would have sent the file up to him.

Q. I see. And then there is a note back from Mr. Clayton to you: "Stamped 31st October 1986, form CC 73 for 1979/80 of £52,330 should be certified for recovery through action by Revenue Solicitor." That's signed by Mr. Clayton?

A. Yes.

Q. That came back to you?

A. Yes.

Q. And was that the end then of your dealings in connection with this?

A. Yeah. I would have it is, yeah, I would have signed the CC 73, passed it onto the Collector-General's office and that was my end of the matter.

Q. You just passed the CC 73 as signed by you onto the Collector-General's office and you'd have no further role in it?

A. No.

Q. And you'd have had no further role whatsoever in the collection of the balance of the tax?

A. No.

Q. Thanks very much.

CHAIRMAN: I suppose it's a fair summary, Mr. Fitzpatrick, to say that in these two cases, although you were an inspector, your role was essentially reactive rather than originating. In each of these two cases you were given the proposed assessments from Mr. Clayton, you duly served those, you received the notices of appeal, you provided the listing of the appeals, you effectively approved the abandonment of the appeals as settlements and then you had some limited connection with the collection

process, but didn't ultimately

A. My office basically carried out the clerical functions that would be involved in relation to this matter.

CHAIRMAN: Yes. In your ordinary course of dealings, you would obviously be acting more regularly on your own initiative, but in this case it was something

A. It's not unusual, I would also carry out such clerical functions in relation to other similar matters, you know.

CHAIRMAN: I understand. Thank you.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. Harrington please.

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

Q. MR. HEALY: You provided the Tribunal with two witness statements in connection with some inquiries addressed to you by the solicitor for the Tribunal and also dealing with some matters of a more general nature, is that right?

A. That's correct, yes.

Q. And do you have copies of them in front of you?

A. I have.

Q. And with those statements, I think you have a number of associated documents, as well?

A. That's correct, yeah.

Q. I will deal with your first statement first, that's in folder number 2, Sir. You say you have worked with the Revenue Commissioners since the 30th May 1967.

A. That's correct, yeah.

Q. So you have 33 years experience?

A. Well, prior to joining the Revenue I was training in an accountants office to be an accountant. So I have two further years experience in taxation.

Q. You say that you were appointed Inspector of Taxes for Dublin General and Public Departments on the 17th May 1979 and you held this position until the 15th November 1982 when you were appointed inspector in charge of the computer division in the office of the Chief Inspector of Taxes. Since the 21st March 1988, you served in the Head Office of the office of the Chief Inspector of Taxes as a Senior Inspector of Taxes up to the 10th February 1990 and thereafter as assistant secretary.

Now, could I take it, therefore, that you have a fairly wide range of experience of the administration of and the operation of the activities of the Revenue Commissioners?

A. Yes, I'd accept that.

Q. You then go on to say that, firstly, you intend to outline some general practices which applied in your experience from the 1970s onwards and may be relevant

in considering the handling of tax affairs of Mr.

Charles Haughey. You say that prior to 1988,

self-assessment did not apply for income tax.

Self-assessment for Capital Gains Tax was introduced

with effect from 1990/1991. All returns received

after 1988, whether relating to pre or post

self-assessment, were dealt with on self-assessment

principles and you describe these principles as

involving what you say is non-judgmental processing?

A. Correct, yeah.

Q. Maybe you'd just explain to me what

non-judgmental what do you mean by non-judgmental

processing because it may not be the same as the

meaning that I take from it?

A. Essentially what that means is that the taxpayer's

return is accepted at face value and the material on

the return is accepted as the basis for, say, an

assessment of income tax or Capital Gains Tax. The

return would subsequently then be subject to some

examination with a view to whether further inquiries

under the order programme might be carried out. But

essentially, it is the acceptance of what the taxpayer

has stated on the return.

Q. And what judgement would you apply in determining

whether you should proceed to an audit?

A. The returns are would be examined after processing

and depending on the nature of the income or trade or

whatever carried on by the taxpayer, there'd be a judgement made as to whether this seems to be a credible return by reference to norms for that particular trade industry, etc., etc., etc., and the return then may be short-listed for a more in-depth examination, do the Revenue know anything else about this particular tax payer? Have we any indications that would disprove or suggest that what's on this return isn't correct? And it would keep getting refined down until it would eventually get assigned to an auditor to conduct an audit on the particular case.

Q. Unless, in fact, you did find it was credible in which case can wouldn't go to an auditor?

A. Exactly, yes.

Q. How do you distinguish between that type of processing and what used to happen prior to 1988?

A. Prior to 1988 was the essentially the taxpayer first of all, maybe if I went back a lot further than maybe 1988.

Q. Do please.

A. Say, when I first became involved with taxation, Revenue and accountants practices kept themselves mutually very busy: Revenue asking queries, the accountants offices dealing with those queries and the queries essentially related to the taxpayer's return.

Quite a few of the returns received in Revenue would be subject to correspondence seeking clarifications,

checking on figures that were in the taxpayer's accounts for example. Much of this correspondence ended up being totally futile in that apart from clarifying certain matters that mightn't be too clear in the first place, they rarely, if ever, resulted in any material uplift in the tax, for the very simple reason, is that they were not attacking the fundamentals of the return. They were simply dealing with some of the symptoms that might be present on the return. Now, as the process developed and more taxpayers came within the tax net and as Mr. Pairceir mentioned earlier on, the entire assessing process became an estimated assessment system for the very simple reason that the assessments to meet the due dates had to be made at such a stage when the very bulk of the taxpayers had not submitted their returns of income. So the entire system was bogged down with appeals; virtually all the estimated assessments were appealed. Quite often the appeals had to be listed for hearing by the Appeal Commissioner before the return was received. The return then would be subject to the type of scrutiny that I was talking about there. Eventually the matter would be agreed with the agent and it would move on from there, You know.

Now, that particular system was being recognised as not being the best use of resources and there were various developments that simply to move away from the

appropriate type of inquiry that was actually raised on the taxpayer's submissions until in the 1980s, where a system something akin to what is there now under self-assessment was about to be introduced or was being introduced at the stage that self-assessment was getting off the ground at the stage that self-assessment was introduced.

That system would have essentially involved a quick look at all the returns that came in. Essentially, agreeing and accepting most of the returns that came in but a number of cases based on criteria, you know, that the full business results may not be returned, that the case would be set aside for more detailed examination.

Now, that would fall short of the audits that we do today, but would have been a more intense examination of a small number of returns.

Q. I'll come to I might want to focus on some of this in a minute. Do I understand from what you are saying that prior to 1988, the relationship between the taxpayer and the Revenue was sort of an adversarial one?

A. Essentially, yes.

Q. And since then it has been as we know and indeed as the Revenue themselves, it's a much more consumer-friendly customer-orientated approach and it has paid huge dividends and I don't think you need me

to say it's working far better now and the Revenue have a much better relationship with the taxpayer, a most productive one, or with most taxpayers in any case?

A. Yes.

Q. Before 1988 do I understand you to say that, as distinct from since 1988, the first the obligation the tax payer had was to make a return. If he didn't make a return, the adversarial contest was kicked off by the Revenue making an assessment, is that right?

Am I wrong about that order of events?

A. Not quite, no. The taxpayer was obliged to make a return once Revenue issued a notice that they are required to a return from the taxpayer. If the taxpayer didn't respond to that, the normal Revenue response, if we had reasonable evidence that there was a trade or some other income, to enter an estimated assessment to the best of the judgement of the inspector by reference to the evidence that was available, yes.

Q. And when you got information from the taxpayer, you used that information to form a view as to what the assessment to tax or what income that person ought to be assessed as having, is that right?

A. Yeah, yes.

Q. Since then the taxpayer has an obligation to tell you independently of any initiative you take, what he is earning, what his profits are and you take that at face

value, unless it seems to you to be very wide of the mark?

A. Essentially, correct.

Q. And then you query the taxpayer and if his explanations are satisfactory you accept them and if not you refine that process until you decide there is something wrong here?

A. You may not query the taxpayer. There would be a judgement exercised as to whether the thing should actually be taken further.

Q. I understand. You say that self-assessment for Capital Gains was introduced with effect from 1991. Maybe you'd just explain that to me. Do I understand that prior to that date, from 1974 onwards, the taxpayer had the obligation to make a return in relation to Capital Gains, is that right?

A. It would have followed the income tax scheme of things in that it was only when the thing became self-assessment, that the taxpayer had the obligation to come to us. Prior to that, the notice arrangement would have applied to Capital Gains Tax as well.

Q. Up to that date the taxpayer who sent in his return for every year had to include on it a capital gain if one had actually occurred?

A. That's correct, yes, it was on the same form, yes.

Q. In the next paragraph of your statement you go over some of this ground again saying: "Prior to

self-assessment the inspector was obliged to serve a notice on any taxpayer from whom a return was required. Compliance with the requirement to file a return was normally enforced through the making of estimated assessments. In PAYE cases, evidence of a non-PAYE source of income would have to present before an estimated assessment could be considered."

You go on to say that: "Taxpayers whose only known income was the PAYE source were regarded as low risk. Whether or not a return was served was decided by the presence or absence of various criteria determined by computer programme with reference to the position on a particular date. And this approach was regarded as a customer service matter in as much customer service as much as a compliance act. If a completed return was not submitted, the matter was followed up only where there was evidence of a source other than the PAYE income."

Obviously, this view was taken on the basis that somebody mightn't be filing a return but the Revenue weren't losing any money if he was paying his PAYE tax anyway?

A. Correct.

Q. "In practice, at the discretion of the inspector the tax affairs of a PAYE taxpayer for a year could be reviewed without a return for that year. The material

the inspector might contract adequate for review purposes could include a single omnibus return covering a number of years, a combination of a return for the latest year and correspondence covering earlier years or simply correspondence outlining some claim.

"It was not unusual for PAYE taxpayers to omit the actual amount of income on a return on the basis that revenue would be expected to have such information available from employers return.

"Where a taxpayer signified that he she had a claim under a particular heading, but did not quantify or vouch this proper, a review could be completed ignoring this item. Unless there was evidence of an undercharge or a claim for a repayment, the affairs of most PAYE taxpayers were not normally looked at. Reviews were normally initiated by the taxpayers or by reference to an indication from computer based reviews that the proper tax was not collected through the PAYE system. Small undercharges were not pursued."

You then talk about a charge to tax based on rateable valuation of property, which was abolished in 1969.

You say: "The question regarding the rateable valuation on later returns related to the graduated extension of taxation to farm profits commencing in 1974/75, initially farm profits were chargeable to tax

where rateable valuation exceeded $\frac{1}{2}100$. This was reduced in subsequent years and allowances were available against other allowances available against other income were reduced where rateable valuation exceeded $\frac{1}{2}20$. There was also an option to determine assessable profits using a multiplier of the rateable valuation. For 1983/84 and all following years, all farm profits were charged to tax under Schedule D and the multiplier system was discontinued. The non-inclusion of the rateable valuation in a case where farm accounts were submitted or the Revenue was aware that no farming was being carried on would not have been regarded as significant."

You go on to say that you had no direct involvement in the taxation affairs of Mr. Charles Haughey prior to 1991. While you were Inspector of Taxes for Public Departments you were, however, generally aware that the farm accounts for Mr. Haughey were dealt with in Dublin Farming District, but you had no involvement with the examination of these accounts nor had you any other information concerning them.

You say in December of 1991 you were made aware by the Chief Inspector that the tax return position of Mr. Haughey was unsatisfactory, that this needed to be rectified. Mr. Clayton said that he would take the initial steps with a view to getting returns together

with the Chief Inspector, Christopher A Clayton. You met Mr. Pat Kenny in January of 19 on the 7th January of 1992. At that meeting the manner in which the return position would be rectified was considered and included the option of a return for the latest year with a letter detail the particulars for earlier years.

Mr. Kenny's preferred option was to furnish a return for each year. There was a considerable delay in forwarding the returns and a number of reminders had to be issued. Returns for the years '85/86 to '95/96 inclusive were ultimately received. The '85/86 to 1990/1991 with the letter dated the 30th November 1993, '91/92 and '92/93 with letter dated 3rd May 1995 and '93/94 and '94/95 with a letter dated 13 January 1996 and '95/96 with a letter dated 31st January 1997.

And then you come to the important point, "That these returns disclosed state emoluments. Rental income for some years. I presume from farm land maybe, I can't remember now. And deer farming for some years, there was no reference to foreign bank accounts or any other income."

Can you just tell me in relation to the points you make concerning Mr. Haughey's returns of income, what you mean by the use of the word "unsatisfactory" when you say that you were made aware by the Chief Inspector that the tax return position of Mr. Haughey was

unsatisfactory and that it needed to be rectified?

A. That the returns for a number of years were outstanding and that we needed to secure those returns.

Q. Would that be something that would have happened quite frequently, that the Chief Inspector would have said to you in relation to a PAYE taxpayer, would you check his returns, he hasn't made them.

A. It would be unusual, yes.

Q. After all, why would you bother? Wouldn't it be a waste of time almost unless you had something very specific that you wished to focus on?

A. You are asking me to make a judgement as to why Mr. Clayton, you know, thought that those returns should be received. But you know, if I was to make a judgement, it would be to the effect I think that, you know, here was somebody very important in society, an apparently working man and it would not be appropriate that such a person should not be reasonably up to date with their returns.

Q. I can well understand that. Let me just look at the general position first before we come back to the precise case of Mr. Haughey.

Again, I am right, am I not, in thinking that by 1991 you were dealing with self-assessment in respect of self-employed people and you were dealing with, as you had been for many years, a huge volume of PAYE taxpayers who were presumably none of them putting in

returns, would that be right?

A. In 1991 I would have been the assistant secretary

Q. Sorry, I didn't mean you, Mr. Harrington. I meant the Revenue.

A. Yeah, yeah.

Q. So you had thousands, hundreds and hundreds of thousands of PAYE taxpayers. I don't know how many.

Did many put in returns?

A. Some I don't know off the top of my head, some hundred thousand plus per year at a minimum would put in a formal return; others would have regular contact with the tax office keeping their affairs up to date, you know, informing the tax office about new allowances they were entitled to, allowances that they had been given by Revenue based on past knowledge that were no longer appropriate, income that they

Q. That would have involved a disclosure effectively or income in the same form as a return, isn't that right?

A. It wouldn't be a formal return, but they would be keeping their affairs reasonably up to date.

Q. Wouldn't I be right in thinking that if the obligation to make a return on the part of a PAYE taxpayer was really going to be taken seriously by the Revenue Commissioners, the country would be awash with prosecutions, wouldn't it, or if not prosecutions, you'd be up to your necks writing letters to people and wasting your time getting people to make returns whose

income was not going to go up by one ha'penny and from whom you were not going to get one more ha'penny in tax apart from wasting money if you were to seek the returns, wouldn't that be right, as a general proposition?

A. As a general proposition, yeah, yes.

Q. What I am trying to get at is, can you remember how many people you might have targeted in the PAYE sector to insist on their producing returns or filing returns?

A. Me personally?

Q. Or let's take you personally to begin with?

A. Me personally at that particular time, it would have been no one else on a simple issue of sending in returns.

Q. And in seeking returns from Mr. Haughey you had no inkling that there was anyone at all that it might be worth looking for other than what you felt might have prompted Mr. Clayton, i.e., the desire that a person formerly a legislator and so on, should have his tax position in order?

A. Yeah.

Q. Can I just go back to your knowledge of this is some of the general questions I want to pursue with you because there are other specific matters I may not get to them until tomorrow, and I may need to say something about them in the way of an opening statement in any case.

I want to talk about some general matters that you may be aware of as a result of your experience over the years in the Revenue Commissioners. The Revenue Commissioners have informed the Tribunal by way of a written submission, and indeed this has been mentioned by Mr. Pairceir, by Mr. Clayton and also by the Revenue's counsel in various questions put here today and yesterday and indeed the day before, to the effect that while the Revenue now have a plethora of powers to enable them to get access to information, prior to 1988 well, indeed, prior to 1998, but certainly from prior to 1988 when at least the taxpayer had some obligations, you had very little powers to initiate information gathering exercises yourself, is that right?

A. I would say virtually none.

Q. If a taxpayer failed to disclose assets or sources of income to you, then unless you got information in the course of your work or directly have some third party source, you had very little by way of ammunition or very little by way of instruments or tools to get at it yourself, wouldn't that be right?

A. That would be correct, yes.

Q. One of the witnesses, I think Mr. Clayton, has already mentioned the system of delivering particulars of property transactions. Isn't that right?

A. He may have.

Q. He mentioned it?

A. He may have.

Q. I may have mentioned it to him. That was one information gathering tool which was at the disposal of the Revenue Commissioners, isn't that right?

A. It would have been, yes.

Q. And am I right in thinking that if somebody this is my impression of it. You'll have to correct me if I am wrong if somebody acquired a property or bought a piece of land, the transaction and the particulars of the transaction would have to be notified to the Revenue Commissioners in the form of a form called a PD form or a Particulars Delivered form, which would bring to the attention of the Revenue Commissioners that one individual or entity had disposed of land and that another individual or entity had acquired land and the consideration, am I right in thinking, would be known to the Revenue Commissioners?

A. I am not sure whether a Particulars Delivered Form would be required for every transaction but insofar as

Q. Property?

A. In property, yes.

Q. The vast majority of them in any case?

A. In respect of land sales, I think that Particulars Delivered Form would be required.

Q. I think if you are right, that if there was simply a gift, a gift and a transfer of property by way of gift might not necessarily have generated a PD Form, but in the ordinary way, a purchase of a house by somebody or a purchase of land would have generated a Particulars Delivered Form, is that right?

A. Yes, yeah.

Q. And so the Revenue Commissioners would become aware that an individual, a taxpayer had acquired a particular piece of property for which he had paid a certain sum of money?

A. Yes.

Q. So that was one way of ascertaining the ascertaining whether a taxpayer had acquired an asset without the taxpayer himself telling you he had done so, is that right?

A. Correct.

Q. And am I right in thinking that where you had no information about that taxpayer or only limited information, then the delivery of a Particulars Delivered Form would prompt a query from the Revenue Commissioners addressed to the taxpayer asking him questions about his sources of income or his capacity to pay for the property he had acquired, is that right?

A. If the taxpayer wasn't on our records, it would have a query along the lines that you have initiated would happen, yes.

Q. And was the taxpayer obliged to respond to that query by law or was it just that most taxpayers were terrified not to respond?

A. You are asking me something that I can't, in terms of were they obliged by law, I can't say for definite they were, I don't think they were. Because quite often you would have to follow that up if you thought it was material by getting maybe other information about the taxpayer and see should that taxpayer be moved onto the estimated assessment process insofar as they continued not to reply to correspondence or send in returns of income.

Q. So it certainly assisted you in forming an impression as to how you might approach or deal with that taxpayer's affairs on another front altogether?

A. In the scenario we are talking about there, it would have identified a potential new taxpayer and that taxpayer would need to be put on the record and brought within the assessing system and within the system whereby they'd be asked to make returns and that we would follow-up on them.

Q. And if the taxpayer was, in fact, on the books, as it were, would any list of queries issue?

A. Sometimes perhaps, but not all the time. There could be sufficient information available to say this is normal for this type of case, etc., etc., or the taxpayer may already have told us about by the time the

information would actually reach the file, we may be aware of it. For example, once Capital Gains Tax came in, there was a clearance procedure whereby somebody disposing of land or shares derived from the value of land

Q. Unless they had a Capital Gains Tax clearance certificate -

A. Had to be withholding money.

Q. You either have the certificate or the withholding of the money?

A. Exactly. In that instance, we would be aware of the transaction of the property long before the Particulars Delivered Form would actually become linked with the taxpayer's payments.

Q. In a general way then, in relation to Mr. Haughey's affairs, for instance, would the Revenue Commissioners be aware or should they be aware at any time, we'll take the time that we were focusing on this morning, 1980, between 1980 and 1984, would the Revenue Commissioners be aware, had they looked in their files, of the extent of Mr. Haughey's property acquisitions over the previous, whatever, ten or fifteen years?

A. I am no expert now on Mr. Haughey's affairs going back over that time, but my understanding would be that Revenue were aware of Mr. Haughey's property transactions, yes.

Q. Now, I just want to pass on to another matter. We

have had evidence this morning from Mr. Pairceir and from Mr. Clayton about the circumstances in which the Revenue Commissioners might decide to place a particular case in the hands of the Investigation Branch or seek the intervention of the Investigation Branch to, I think as Mr. Pairceir put it, scrutinize something much more deeply. Apart from involving the Investigation Branch or perhaps mounting what I think somebody described as a very deep investigation, were there other circumstances where a detailed examination of a taxpayer's affairs might be carried out falling short of involving the intervention of the Investigation Branch?

A. Inspectors of Taxes would carry out investigations of taxpayers' affairs, yes. Investigation Branch was not the only part of Revenue where a taxpayer's affairs would be looked at. But for example, when the critical examination regime was introduced, the tax districts up and down the country would have looked in detail

Q. When was that? Remind me of that date again. It was pre self-assessment in any case?

A. This predated self-assessment.

Q. It would have been during the 1980s.

A. They would have looked in detail at the affairs of a taxpayer. Now, the difference with the with what where investigation matters might get involved,

there'd normally be a historic element to it, there would normally be some evidence of nondisclosure of income or under-disclosure of income over a considerable period of time. You know, that if, for example, a tax district came across something and there was, you know, nondisclosure or under-disclosure of income for four or five years, that would never be considered for the Investigation Branch. That is something that would be dealt with by the Inspector locally.

Q. And he would endeavour to, am I right in thinking that he would decide I need to look at this more critically?

It may not be a case for the Investigation Branch but I need to form a better picture or a more comprehensive picture of this particular taxpayer's affairs, would that be the appropriate way you'd take

A. What they'd set out to do is to establish what tax had been underpaid for, you know, the 3, 4, 5 years, whatever the time would be. Get that quantified if at all possible, get it agreed and get it into charge so that it would end up being paid.

Q. You know that what the Tribunal is seeking to do here is to try to see whether, in relation to Mr. Haughey's affairs, he received any special treatment or alternatively whether a blind eye was turned to things concerning him perhaps because of his position and whether, if that hadn't been done, more information

might have been obtained. And in order to carry out that examination, the Tribunal is trying to see his treatment compared with the treatment of other people. Now, you have made the point, and other witnesses have made the point that really, the post '88 and pre '88 Revenue scenarios seemed to me to be totally different worlds as far as I can see, and the pre '88 world seems to be quite haphazard, is that right, and that things don't seem to have been picked up or pushed together?

A. I think haphazard wouldn't be it wouldn't be a fair description of the thing.

Q. I am not criticising individuals, it may have been haphazard because of a lack of resources and a vast amount of work to be done, but if I could just take the example of interest. There seems to have been no question or charging interest on Capital Gains on a systematic basis?

A. Whether interest was charge is out of my sphere.

Q. I think you know and other witnesses have made statements, I am sure you are familiar with it. It simply was not charged. There was no system for following up on it, no system for tracking it, it just wasn't charged?

A. It's probably fair to say that interest, not alone on Capital Gains Tax, but on Income Tax would not be charged on any taxpayers on a large scale.

Q. I'm sorry, I didn't catch the last bit.

A. Interest wouldn't have been charged on taxpayers on a large scale.

Q. On capital taxes outstanding or income taxes?

A. On Capital Gains Tax or Income Tax, yeah.

Q. And that obviously encouraged an atmosphere presumably on the part of tax advisers and why wouldn't it?

whereby they'd carry it a long way, they'd stretch things out. If they are not going to be charged tax, why would it matter?

A. I wouldn't disagree with that statement. If there is no pain in paying late, why should you pay early?

Q. Why should you? Yeah. I would like to pass on to another matter now, Sir, which I think could not be taken up with Mr. Harrington without some form of an opening statement, because it concerns the other part of his evidence and I think it's difficult enough to follow this material without having had an with an opening statement, but it certainly would be extremely tedious to deal with it at this point. I could pass on to I think it might be preferable, unless you have a very strong preference, Sir, to rise at this point.

CHAIRMAN: Well, there is other work that has to be done for the remainder of this week apart from sittings, Mr. Healy, so it's not, in effect, giving carte blanche to anybody in the Tribunal to truncate a little bit early at this time now.

Just on that limited point, Mr. Harrington, that Mr. Healy was pursuing with you about PAYE taxpayers in their generality not being compelled to furnish annual returns, I think one statistic that the Tribunal heard, not to date in formal evidence that may arise again, was a suggestion that perhaps 80 percent of PAYE taxpayers were not, in fact, making returns and that this, in effect, may have been tacitly encouraged by Revenue because they would have been snowed under had that not remained the effective position.

A. I am not familiar with the figure that you mentioned but I couldn't disagree with it either.

CHAIRMAN: Thank you for your assistance thus far. Can I inconvenience you to come back tomorrow with an opening statement, Mr. Healy. I am just anxious that we don't keep people waiting. Is it safer if we say eleven o'clock?

MR. HEALY: Yes.

CHAIRMAN: Eleven o'clock tomorrow morning.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
THURSDAY, 21ST DECEMBER 2000 AT 11AM.