

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 21ST

DECEMBER 2000, AT 11AM:

MR. HEALY: Sir, I am sorry, there has been a delay for two reasons. Firstly, because of a problem with monitors here in this room; and secondly, because of a computer glitch in the Tribunal's processing room downstairs.

Now, you will recall, Sir, that in the opening statement I made at the commencement of this session, I mentioned that it would become necessary, as has indeed become evident to date, to recall Revenue witnesses from time to time, so as to ensure that a comprehensive picture was obtained of the handling of Mr. Haughey's tax affairs and Mr. Clayton has already been recalled in relation to one or two matters which arose from the evidence of Mr. Pairceir. It has now become necessary at this juncture to recall Mr. Clayton once again to deal with two further matters, one of which arose in the course of the evidence of Mr. Harrington yesterday. After that, I would propose to make a short opening statement dealing with two other headings of tax to which the Tribunal will then be devoting sometime today and possibly sometime tomorrow.

CHAIRMAN: Very good, Mr. Healy. Mr. Clayton please.

CHRISTOPHER CLAYTON, PREVIOUSLY SWORN, WAS EXAMINED AS

FOLLOWS BY MR. HEALY:

Q. MR. HEALY: Mr. Clayton, you were here yesterday afternoon, were you, apart from the time you were in the witness-box?

A. For part of the afternoon as I recall it. I was coming and going from Dublin Castle several times yesterday. I think I came in the midst of Mr. Fitzpatrick's evidence and I heard all of Mr. Harrington's evidence.

Q. Well then, you may remember in the course of his evidence, I was asking Mr. Harrington a number of questions about the general operation of the Revenue Commissioners both pre and post self-assessment and one of the questions we discussed or one of the issues we discussed was the question of PAYE returns in the post self-assessment era. And you may recall the evidence you gave that while there may be an obligation on a PAYE taxpayer to make a return as his tax is being deducted diae diem, it hardly matters if he doesn't make a return, there isn't going to be any loss to the Revenue and no gain to the Revenue if they were going to devote man-hour after man-hour to collecting

A. That is the position.

Q. You may recall that he then came on to deal with a matter that he was involved in which I think was the end of 1991, and that was the question of Mr. Haughey's

returns and specifically the question as to why he had not made returns of income although he was a PAYE taxpayer. Mr. Haughey was asked to make returns, and I think it took some years before those returns ultimately came in. There was a meeting with Mr. Kenny, his accountant. Mr. Kenny suggested that he would prefer to make returns on a particular basis, in other words, that it was his preference not to put in an omnibus return or a combination of one up-to-date return and an omnibus covering letter, but rather separate individual returns for each year in respect of which returns had not been made.

A. That is correct.

Q. Would that summarise the situation?

A. And a return which would be personally signed by Mr. Haughey in each year.

Q. And while you were on that point, will you clarify for me, does that return oblige a taxpayer to disclose every source of income or every payment he has, whether it's income or gift or capital gain or what?

A. The return covers primarily income and Capital Gains.

The acquisition of an asset by way of a gift would require to be shown on the return as the acquisition of an asset for chargeable for Capital Gains Tax purposes, if it were a chargeable asset. In other words, if a person, say, acquired sterling, a foreign currency, that would be a chargeable asset and

returnable.

Q. If a person in a relevant tax year, for instance, if I received in a tax year a large sum of money by a gift, would I be obliged to return this or indicate that I received it in my ordinary tax return if I was a PAYE

A. If it was in Irish currency it would not require to be shown, but on the other hand Capital Acquisition Tax is on a self-assessment basis and you would be obliged to show that separately.

Q. Well, in any case, Mr. Haughey was asked to make returns and his accountants were involved and it took some years to deal with this matter, but what prompted a request to Mr. Haughey to make returns was the suggestion that in some way the situation, whereby he was not making returns, was an unsatisfactory one. And you may recall that I asked Mr. Harrington what it was that was unsatisfactory about the failure of Mr.

Haughey to make returns when, as a PAYE taxpayer, he was no different to many hundreds of thousands of other taxpayers who were not making returns and

Mr. Harrington then responded to me as follows this is on page 114 of the transcript in response to question 412, Mr. Harrington said: "You are asking me to make a judgement as to why Mr. Clayton, you know, thought that those returns should be received." Then he went on to say: "But you know, if I was to make a

judgement it would be to the effect, I think, 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." And then when I asked him why it was or when I asked him whether he had any experience of other taxpayers, be they prompt or otherwise, being requested to make returns in this way, he indicated that from his own, from the point of view of his own personal involvement, there would have been no one else that he was involved with on the simple issue of sending in returns.

Now, what I want to ask you is, firstly, do you recall what you found unsatisfactory about the situation in which Mr. Haughey was not making returns?

A. In late 1991 certain things came to my attention and entered into the public domain which caused me to institute a review of a compliance in certain matters.

I remember in particular the semi-state sector. I think it was in October of '91 that I instituted an inquiry, an investigation into the matter of taxing compliance generally in the semi-state sector. That inquiry may have been prompted by certain matters which had come into the public domain, there were problems with Telecom Eireann, Greencore, the Beef Tribunal, all those were happening in late 1991. So I would have been conscious of the fact that there was

non-compliance by persons from whom I would have expected compliance.

Now, I was, of course, conscious of the fact from the from my earlier handling of Mr. Haughey's Capital Gains Tax position, that tax problems had arisen in his own personal case. I was also aware that he was, or it also seemed to me that he was a relatively wealthy individual with property.

Furthermore, it seemed quite inappropriate and perhaps even scandalous that a Taoiseach should be so much in arrears as regards tax compliance, as regards return filing. A further factor which might have motivated me and at this stage I should hasten to add I made no contemporary note as to why I instituted this work, that following the commencement of self-assessment in 1988 and the reorganisation of the office, we had, in fact, set up a special compliance unit in '89, a dedicated compliance unit which was whose work was to pursue non-filers for non-submission of returns and, in fact, I looked at the board's support for the year 1990, and in the last fides and I note that in 1990 the compliance officers in various units throughout the state issued 45,000 letters and visited over 12,000 persons in order to secure outstanding returns for '88/89 and '89/90. So at that time there was a very active compliance programme in relation to return

filing had been instituted and was in train.

Q. Was that on PAYE taxpayers?

A. No. It was in relation to traders and business people and it wasn't directed at PAYE people. Mr. Haughey, of course, was, on the face of it, a PAYE person, but having regard to the factors which I indicated earlier, I thought it appropriate that steps should be taken to get Mr. Haughey to file tax returns for the appropriate years.

Q. So while there was quite an intensive tax compliance programme in that year involving some 45,000 actions, if you like, by the relevant compliance unit, would I be right in saying that there was no similar programme instituted in respect of PAYE taxpayers?

A. Not a programme as such. I can't recall that I directed action in relation to anybody else at that time. Subsequently, certainly in recent years, I have had other actions initiated in relation to other individuals and persons who were not traders on the face of it.

Q. Now, it's only that time that I am concerned about. And it's only the actions of the Revenue Commissioners with respect to Mr. Haughey that I am specifically concerned, though obviously it's by comparison with the actions of the Revenue Commissioners towards other taxpayers that the actions towards Mr. Haughey ought to be viewed. In this case, by comparison with other PAYE

taxpayers, perhaps over other non-compliant PAYE taxpayers, if I can use that expression, meaning non-compliant as to filing a return, he was singled out.

A. That is not an unfair comment.

Q. And the factors which prompted you to take that step were against a background of public, presumably, and administrative concern following the Greencore affair, the Telecom affair, the Beef Tribunal evidence or report as the case may be, you felt that there was a potential for scandal that a prominent, in this case, the Taoiseach, a prominent person in this case the Taoiseach, should not be compliant as to his returns?

A. Well, it was driven also by the factor that I perceived him to be a wealthy individual and that he had had tax problems previously.

Q. Now, this is something that I think to some extent both myself and Mr. Coughlan have been driving at in the course of the evidence over the past few days, why it was that questions such as the ones that you must have asked yourself at this time had not arisen.

Now, at this particular juncture, did you have any reason for choosing Mr. Haughey as distinct from any other prominent person, whether political or otherwise?

A. Well, as I said, I was driven by the fact I suppose I was conscious of the fact that he had had problems previously and he was now Taoiseach of the country and

he hadn't filed returns for a number of years. He was also, as I said, he also seemed to be a wealthy individual.

Q. Can you just go through those previous problems then. Are they the problems we have been discussing here?

A. Yes indeed, yes.

Q. Are there any other problems? Is there any pig as opposed to a rope as it were apart from the problems we have been discussing?

A. No, no, not that I am aware of, no.

Q. So the problems are the putting it most neutrally, the fact that there was no response from his from him or his advisers concerning a transaction in 1980, the bona fides of which had been raised with the Revenue Commissioners by a responsible and experienced insolvency practitioner and his advisers, including senior counsel, that's one problem, would that be right?

A. Yes, something of that order, yes.

Q. A further problem which arose, which we haven't touched on yet, was, I think, the fact that the Revenue Commissioners from 1986 were encountering difficulty in getting full information on residential property tax returns, is that right?

A. I don't think I was aware of that situation.

Q. I see. So what other problems were prompting you to take the step you took with respect to Mr. Haughey's

PAYE tax returns in 1981?

A. It was possible as he was, or seemed to be a relatively wealthy individual, that some income might be arising which arising that is outside of the PAYE system, which would require to be addressed, for example, he obviously had property and it's a possibility that there could have been rental income arising from property or perhaps there might even be a Capital Gains Tax situation arising as well.

Q. By that time, by 1990, he had quite substantial holdings of property, he had his own home and over 200 acres, I think 250 acres in Abbeville, he had a house in Inishvickillane, a house in Sligo, a house in Wexford, isn't that right?

A. I am not quite sure of the date that he transferred the land or property in Kinsealy to children.

Q. Yes, you are quite right. His family had a house and farm at Kinsealy, let me put it that way.

A. Yes indeed, and as regards Inishvickillane and so on, some of those properties would have been in the ownership of limited companies.

Q. Larchfield, a family trust company.

A. Something like that, yes.

Q. But still all within the ambit of Mr. Haughey's control, if not his direct legal ownership, would that be right?

A. Whatever about control, he certainly had an interest of

some kind in those properties.

Q. And during the 1980s, and indeed perhaps the latter part of the 1970s, the Revenue Commissioners did interest themselves in Mr. Haughey's affairs to the extent, at least, that they kept a file of newspaper cuttings reflecting media concern regarding Mr. Haughey's wealth and the manner in which it had been accumulated, would that be right?

A. There were press cuttings, yes, I have seen those.

Q. Now, I only had an opportunity of reading these press cuttings in the last day or two, it's not that I haven't seen some of them myself over the years, but they do reflect concerns regarding how Mr. Haughey accumulated his wealth and how he maintained quite a high life-style, is that right?

A. I am not altogether sure about the high life-style. As I recall it, the speculation was about his wealth and how he acquired such wealth.

Q. Well, I don't want to go into every one of these articles and I will give you an opportunity to look at them, but I think you can take it from me, they do reflect media concern about, A, how he acquired his wealth; and B, how he maintained quite a high life-style involving boats, fast cars, horses

A. Fast cars?

Q. Yes. You will find it in the cuttings. I'll show them to you if you like, if we go through them all.

But questions were being asked in public and can I take it that from the fact that press cuttings were being assembled, Revenue officials were also, at least, wondering or considering these questions that were being raised.

A. I am not sure of the dates of those articles that you are talking about.

Q. Would that be of relevance?

A. Undoubtedly, if press cuttings were being maintained, at least one official was taking interest in the matter.

CHAIRMAN: I don't want to nitpick, Mr. Healy, presumably Mr. Haughey had a state car

Q. MR. HEALY: I am not talking about that, Sir.

These speculations may not have been correct. None of these speculations may have been correct.

A. Indeed, yes indeed.

Q. Looking at the file of press cuttings that I have in front of me, they seem to stem from an article by Mr. Frank McDonald in 1979, around the time of Mr. Haughey's election as Taoiseach. Another article by Mr. Dick Walsh from about the same period up to articles in 1983 in what looks like the Phoenix magazine. Articles in 1991 and right up to 1990 and 1992, all I am saying, it spans the sort of period that we are talking about?

A. It does, yes.

Q. Now, during that period, apart from the issue that had arisen in the Revenue Commissioners concerning the Gallagher deal in 1980, could I ask you why it was that having regard to the fact that these questions were being raised and your own perception, whenever that perception crystallized that Mr. Haughey was a wealthy man, why it was no return was sought from Mr. Haughey, for instance, in relation to whether he had acquired any profits from the use of the $\text{€}300,000$ he got from Gallaghers?

A. I would think that there would have been knowledge that he had had substantial borrowings, substantial overdrafts, and it's possible that the cash that he received from the Gallagher deposit would have gone in that direction.

Q. But no inquiries were pursued in relation to it?

A. No.

Q. And in 1988 when he had paid off a $\text{€}102,000$ tax bill, and this was after all coming into the year of self-assessment, no inquiry was raised as to how he might have accumulated the money necessary to pay off that bill, bearing in mind that it was well in excess of his annual salary at the time?

A. The considerations would apply bearing in mind he had received $\text{€}300,000$, paying something in the order of $\text{€}100,000$, cash would have applied, cash cheques would

have applied in both cases and it was also known that he hadn't he had substantial property against which presumably borrowings or lending had been made.

Q. But against which presumably the borrowings had been did you know? All I am trying to find out is would these two factors, the fact that he had either 300,000 or $\frac{1}{2}$ 400,000 with which to pay this money, did that is that the type of thing which would prompt the Revenue Commissioners to say we must get a return from this taxpayer as to whether he has made any profit out of this money?

A. In the ordinary course, if a person receives $\frac{1}{2}$ 300,000 and he is taxed on that, and we collect $\frac{1}{2}$ 100,000, we don't launch an inquiry as to where he got that $\frac{1}{2}$ 100,000.

Q. I am asking you to consider all the factors, Mr. Clayton. You had there were questions raised in 1980, there was a failure to respond to questions for information. Another $\frac{1}{2}$ 100,000 produced by year 1988; in fact, I don't know whether you were aware of it or not. Questions were being raised in 1986 again and during all this time, somebody in the Revenue Commissioners was maintaining a file which reflected media concern about similar issues.

A. That is so. There was obviously officer or officers concerned about Mr. Haughey's situation and keeping cuttings in the event they might prove useful

some fine day.

Q. After you took the matter up with Mr. Kenny in 1991 and in the following years concerning the non-filing of PAYE tax returns, would it have been appropriate for you to have said to Mr. Kenny at this stage, we are concerned as well to know what Mr. Haughey did with the $\text{€}300,000$ he got in 1980 or where he acquired the $\text{€}100,000$ he must have had in 1987 and 1988 to pay off his Capital Gains Tax?

A. No, I wouldn't have regarded that as being appropriate. As I said, he had actually got $\text{€}300,000$ in cash. He had paid his $\text{€}100,000$ possibly out of that. He also had had a very substantial overdraft

Q. I am only asking if you was appropriate to ask the question?

A. I think I would have guessed the answer I would have got. It would have been a relatively short answer. Did you not know that he had $\text{€}300,000$?

Q. The answer to which would have had to have been yes.

A. Yes.

Q. Following which you might have asked him what did he do with the $\text{€}300,000$. Did he generate an income from it? $\text{€}300,000$ in 1980 was a substantial sum of money.

A. As at '79, he had had run up, and we saw that the other day on the farm account balance sheet, a very substantial overdraft.

Q. But you didn't know how he paid that off?

A. No, but he had it and he had property which was very valuable.

Q. But you didn't know whether he had sold any of that to pay off his debts?

A. I didn't, but

Q. You could have found that out, couldn't you?

A. One can't be conducting an in-depth inquiry into any case where the taxpayer pays a tax bill.

Q. You see, what I don't understand, Mr. Clayton, is why you didn't ask questions, which seemed to me as a layman, were likely to follow or should have followed from the factors I have outlined and nevertheless, because of completely independent events, the Greencore affair, the Telecom affair, the Beef Tribunal, you were asking a compliant PAYE taxpayer to file tax returns which wouldn't have generated a single brass farthing for the Revenue Commissioners. Why were you asking that question and not asking the questions that I, perhaps innocently, assumed that you might have asked?

A. Mr. Haughey was being served with tax returns for a number of years. He was being asked to complete those returns fully and accurately. Those returns of income, I think each and every one of them, gave prominent attention to the fact that if a full and accurate return was not made, that he would be liable to severe penalties for such an non-compliance. We were also, as from April 1988, operating a

self-assessment system which obliged a taxpayer to make a return on time, to pay tax on time. As Mr. Harrington explained yesterday, we were operating largely a non-judgmental system which meant that we accept things as we find them, subject to audit later by reference to specific by reference to certain factors and subject also to a random check of certain returns. That is the part of the self-assessment system. It means in practice of course, that certain taxpayers will succeed, at least on a temporary basis, in tax evasion. But it means also that they are liable to be caught and it would seem in this case, that the alternative has happened.

Q. Yes, I understand that. Is the answer to my question then that you did ask the questions I felt should have been asked but that you asked them by simply requesting returns?

A. It forced the issue before Mr. Haughey if one was addressing if there had not been self-assessment brought in, we might have gone through that rigmarole in the old regime perhaps, if people had thought well of it. But in the new regime, no, we preferred to get a return of income in and then see what is on that and if the return is false and is found subsequently to be false, serious consequences follow from that.

Q. I understand. Instead of asking the questions the way I suggested, one way of forcing the issue is to compel

the taxpayer to answer a question which he is obliged to answer as a matter of law, without any fuss at all. Simply file your return and let's see what you say yourself about it?

A. Precisely. That is the same effect.

Q. Mr. Harrington said that having got a self-assessed tax return, the Revenue Commissioners in the current regime will accept the return on its face, but the Revenue Commissioners do not, as I understand his evidence, blindly or blandly accept returns, they do exercise a judgement is this a credible return is a way, I think, of summarising what he said, and before you ever get to the point of an audit, I think that question, is this a credible return, is asked a few times, is that right?

A. Well, no, that's an over-simplification. I think the phrase used by Mr. Harrington is non-judgmental processing.

Q. I asked him to explain that and I understood that to be his explanation.

A. If the return is processable, it is processed. It may be subject to a repair. If there is some figure which isn't clear from the return, the taxpayer may have to be phoned or the agent may have to be phoned and say listen, was this figure an 8 or a 9, something of that nature, that's a repair. Subject to that it is processed and it may be screened later as regards the

question of an audit of that return.

Q. And what prompts the screening of a tax return leading to an audit other than a random audit?

A. It's a routine operation. A certain fraction of returns are screened every year; in fact, for certain categories all

Q. I am not interested in that. We know Mr. Haughey was not randomly audited.

A. Because he wasn't, in fact, in the self-assessment system at that stage. The if he had filed returns accurately and correctly, he might well have been put into the self-assessment system and as such open to screening and audit.

Q. He did file returns of PAYE. Surely they are bound to be evaluated. You weren't just asking to cross the Ts and dot the Is. You were asking a question because you had doubts and concerns in the light of the factors you have mentioned. When that return came in, did somebody evaluate it and say, Mr. Haughey, whom we think may be a wealthy man, who has a lot of assets, whose affairs did give rise to questions before says he has no income other than his Dail salary and no and he has made no other return of any other assets?

A. When those returns came in, Mr. Haughey had retired, I think, from public office at that stage, he was on a pension when those returns came in.

Q. But did they cover the period from which he had salary

from public office?

A. That is right, yes.

Q. And the concerns that you had which prompted you to issue the returns didn't cause you to look at them and to evaluate them in any way, in any negative way?

A. Mr. Haughey had been served with returns of income. His attention had been drawn to the penalty position if he did not make a full and accurate return. He was aware of the consequences of making a false return.

Q. And is that the end of the matter as far as the Revenue is concerned? The previous concerns you had wouldn't have prompted any further step at that stage. You'd wait for events to unfold?

A. And events did unfold.

Q. Perhaps

A. They unfold in the case of people who attempt to evade tax. It is one of the risks that people take and that's why a high price has to be paid when they are detected.

Q. Thanks very much, Mr. Clayton.

MR. CONNOLLY: I have one or two questions.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. CONNOLLY:

Q. MR. CONNOLLY: Mr. Clayton, firstly, when Mr. Haughey ceased being a sole trader and moved into the PAYE category, he would generally have been perceived by the

Revenue as less of a tax risk and open perhaps to less scrutiny for that reason, is that correct?

A. Broadly, yes, but as I said, if he a wealthy individual may have the assets that that person has, may be generating some income or Capital Gains.

Q. I follow. But generally, there is a different regime for dealing with PAYE taxpayers than the sole traders.

A. There is basically different regimes. Self-assessment applies to one and it does not apply to the other.

Q. Now, I don't want to go back in time to any dates prior to the Terms of Reference here, but insofar as a general question has been addressed to you by Mr. Healy concerning life-style, I want you to deal with this as best you can. And I do appreciate that Mr. Donnely, who is another witness, may be more appropriate in a moment, but seeing as a general question has been put to you, can I suggest to you that the accumulated wisdom of the Revenue as of the dates that you are dealing with in the 1980s, was that the assets which were owned and accumulated by Mr. Haughey had they were capable of plausible explanation as to their acquisition in a tax compliant way?

A. Generally, yes. Obviously there were the first, I think the earlier paper on, papers that we have from Mr. Haughey go perhaps as far as back to 1965/66 in relation to some property, some house on the north side.

Q. I don't want to go into times because of the Terms of Reference. If we could just take the starting point as being the dates of the Terms of Reference, take that as page 1. Looking at what information was available then, the properties which he owned were capable of a very plausible explanation as to how they were acquired in a tax compliant way?

A. They were indeed.

Q. When you described Mr. Haughey as being in a different category to the ordinary PAYE worker by virtue of him being a wealthy individual, can I suggest to you what was giving rise to concern on your part or your colleagues was that because he owned property, that there might well be wealth sorry, income generated from that accumulated wealth, namely rental income or perhaps deposit earned on banks, bank deposits?

A. Perhaps

Q. Interest earned on bank deposits?

A. Perhaps. People one is, I suppose, always surprised at what people can produce when they have substantial capital.

Q. And the return of income had specific categories of inquiry that would have directed the taxpayer to address his thoughts to whether income had been obtained from rental of property or interest on bank deposits. They were items of specific inquiry in the returns that would have been sought?

A. Or acquisition of chargeable assets or acquisitions or disposals of chargeable assets for Capital Gains Tax purposes.

Q. And in the latter category, there was no change in the underlying asset that was being considered by the Revenue Commissioners. Thinking that gave rise to CGT consideration on your part, for instance, the Gallagher item or the Rath Stud, were both properties which were known to be in his assets at all stages?

A. They were known to have been there, yes.

Q. What would have given rise to disquiet would have been the acquisition of a new asset or the disposal of an asset which was previously unknown to the Revenue. Those two items would have given rise to disquiet?

A. Absolutely correct, yes, it would, in fact, I think, as was indicated in earlier evidence, that the that if, in fact, we became aware of an asset which had not been disclosed by Mr. Haughey, it would have led to an inquiry, that is a normal source of material for Investigation Branch.

Q. But the point is that there were no signals of that kind?

A. None at all.

Q. Because there were no such transactions in any event?

A. With the possible exception of currency which I mentioned.

Q. And while you mention that the Revenue were aware that

he had a substantial sum of money from the forfeiture of the Gallagher deposit in the sum of $\text{€}300,000$, it's also to be borne in mind that he also had substantial monies from the original sale of the Rath Stud which gave rise to tax liability, so there was also another substantial sum of money that could have subvented his life-style?

A. To the extent that I knew about his life-style.

Q. Was life-style ever an ingredient of the criteria that were considered by the Revenue to justify further inquiry in relation to a taxpayer?

A. I don't believe that it was. There is

Q. Perhaps I should refine that question. While the Revenue clearly had an interest in the acquisition and disposal of assets, what interest would they have had in someone's spending in terms of their day-to-day living?

A. Well, it would, in fact, be virtually impossible to monitor an individual's day-to-day expenditure. There is no obligation in law on any taxpayer to maintain a record of his or her expenditure on personal living and it is not possible to know whether a person spends $\text{€}10$ on a shirt or $\text{€}500$ on a shirt, he could spend $\text{€}2$ I believe or, you could spend, say, $\text{€}5$ on an handkerchief. You can spend $\text{€}1,000$ on a handkerchief. One doesn't know. You can't monitor these things.

Q. Well, let's just take, for example, some of the items,

I think, that Mr. Healy is referring to in a number of newspaper articles over a period of time. For instance, Mr. Haughey's staff, that was an item which was being capable of being explained away as part of the staff on the farm?

A. That would be a factor, yes, there was a reference made to fast cars. I really wasn't aware of any such reference previously. Mr. Haughey I think from I think the time that he entered public life, would have had an official car of some kind available to him.

Q. Well, a certain amount of the trappings of style of his public appearances, if I can put it that way, would be explicable by virtue of his high office as a Taoiseach or as a party leader?

A. There has, I think, been a certain amount of confusion in some people's minds in relation to this matter.

That much of or a large part of Mr. Haughey's life, when he was in office, was of an official nature. And a trip to New York or to Paris might have been confused in some people's minds as being of a personal nature when it would have been dominated by official matters.

Q. And again a matter you touched on in one of your answers to Mr. Healy dealing with the acquisition of property, for instance, the property which is at Kinsealy, that was originally acquired by a company and then generated into personal ownership at a later stage?

A. That is correct, yes.

Q. And island in Inishvickillane, that was bought in the name of a company again?

A. It was bought in the name of a company.

Q. A different company but it bought by a limited liability company.

A. It was in which Mr. Haughey had some sort of an interest, yes.

Q. So taking the matter in the round in the 1980s, we are all very wise at this stage knowing what we do via the endeavours of this Tribunal and the McCracken Tribunal, but looking at the matter in the round, was there anything that was indicating strong danger signals to you and your colleagues in the Revenue arising from Mr. Haughey's wealth or his life-style?

A. I couldn't say strong danger signals. I was concerned, having regard to the apparent wealth that he had and by reference to the problems which had arisen previously, I was concerned that he should be brought up-to-date on tax returns and should be confronted with tax returns and confronted and reminded of the consequences of non-compliance of tax legislation, and that was done.

Q. Well, that was done because the returns were submitted and in respect of what gave rise to concern on your part in respect of those items, possible rental income or disposal of assets or money earned from bank

accounts, nothing turned up on the bank sorry,
nothing turned up on the Revenue returns on any of
those three headings?

A. Or another heading, the acquisition of foreign
currency.

Q. Well, then finally, can I just suggest to you that on
the information that you had then, there was
nothing while it was appropriate that you should
raise the inquiries and it was appropriate that you
should press for a return of income to be submitted by
Mr. Haughey, taking the matter in a much broader sense,
there was nothing that indicated to you and your
colleagues in the Revenue that he was a tax risk which
would have justified further steps being taken, there
was nothing there to trigger an in-depth inquiry. And
I think the first time you would have had power to
request a statement of affairs as such, was in the
legislation in 1992, but even applying those criteria,
I have to suggest to you there was nothing which would
have triggered that mechanism to be applied?

A. There wasn't, and the requests for statements of
affairs were not made indiscriminately and up to last
year, the statement of affairs, in fact, was seriously
deficient in that it didn't actually show liabilities,
the taxpayer wasn't required to show his or her
liabilities on that statement of affairs.

Q. Thank you very much, Mr. Clayton.

MR. HEALY: Just to clarify two matters.

THE WITNESS WAS FURTHER EXAMINED BY MR. HEALY:

Q. MR. HEALY: Mr. Clayton, am I right in saying that while, of course, for instance, Inishvickillane was bought by a company, owned by a company called Larchfield, the money was provided by Mr. Haughey and you were aware of that?

A. I am aware that he had a substantial interest in all that.

Q. Any borrowings Mr. Haughey accumulated were with a view to purchasing the other assets that he purchased, such as his own house, or any of the other properties that he purchased around the country?

A. I can't say I haven't analysed his borrowings.

Q. I want to be clear about one thing in the light of what Mr. Connolly has put to you. I do not think, and correct me if I am wrong, that the Revenue Commissioners are suggesting that because companies may have been involved in the ownership of Mr. Haughey's assets, that in some way the Revenue are suggesting that they needn't have interested themselves in Mr. Haughey's relationships with those companies?

A. Oh, I accept that.

Q. You are not suggesting that?

A. I accept that.

Q. Thank you.

And one last thing. You didn't ever ask Mr. Haughey for a statement of affairs even after you had the power to do so, is that right? And I mean up to the commencement of the work of the McCracken Tribunal?

A. Up to that time, yes, I am not quite sure that it would have been very helpful because, in fact, if Mr. Haughey was, in fact, prepared to make incorrect annual returns of income and Capital Gains, a Statement of Affairs might have been expected to be similarly deficient.

Q. But you didn't think of asking him for one?

A. I didn't think it necessary, no.

Q. And maybe, maybe in retrospect it might have been a good idea after you had asked him for the returns, it might have been a good idea to exercise another power?

A. I would have expected the Statement of Affairs to be fully consistent with the returns of income which had been submitted, in other words, wrong.

Q. But you sure didn't form that view at the time, did you?

A. I didn't think it was necessary. It would seem like gilding the lily. I had arranged returns of income and Chargeable Gains to be submitted.

Q. There are occasions when I may ask you to look at something with the benefit of hindsight. Could I suggest that you are now looking at something with the benefit of hindsight when I haven't asked you to do so.

You are saying there would have been no point to ask Mr. Haughey to file a Statement of Affairs because the result would have been no different to the annual returns, he wouldn't have put in all the information he should have put in?

A. It would have been the first step in a full scale inquiry. That is the normal procedure is a Statement of Affairs. I was also conscious of the fact that it wasn't a very satisfactory Statement of Affairs.

Q. I understand that, but what I want to clarify is simply, did you consider issuing a request to him to file a Statement of Affairs?

A. I wouldn't have, in the context of the returns of income being submitted, no, I wouldn't have considered that. It wouldn't have added value to the operation, not unless a full scale operation was being initiated.

Q. I am not asking whether it would have or it wouldn't have. I am only asking if you did consider it and if you did, why? If you didn't consider it, that's the fact.

A. I didn't, yes.

CHAIRMAN: Mr. Clayton, obviously, as you have seen, Mr. Healy and Mr. Coughlan, along with myself, have had to take up certain matters that are potentially critical of the Revenue, but I think at the same time, I should say to you, as I think the most senior of the current Revenue officials who have attended, that we

would all wish to acknowledge that in Revenue's response to the Tribunal at all stages by way of documents, submissions, attendance of witnesses, you and your colleagues have been courteous, prompt, professional and thorough. It has not been our invariable experience and I would like to acknowledge that and I am sure my team would not demur from that.

MR. HEALY: Certainly.

Thank you, Mr. Clayton.

THE WITNESS THEN WITHDREW.

MR. HEALY: I propose now, Sir, to make a very short opening statement dealing with two further matters which have to be mentioned in connection with the Revenue Commissioners and at these sittings in any case.

And those two matters are the following:

Firstly, the manner in which the Revenue Commissioners dealt with Residential Property Tax in respect of Mr. Haughey's residence at Abbeville, Kinsealy. That's something I have mentioned in passing in the course of questioning Mr. Clayton a moment ago.

Secondly, the manner by which the Revenue Commissioners approached Mr. Haughey's liabilities for tax under

Schedules D and E, in other words, his ordinary Income Tax, whether as a PAYE taxpayer or alternatively his Income Tax under Schedule E; that is to say, the profits from his non-PAYE activities, in his case, farming.

Firstly, with regard to Residential Property Tax. It would appear that with the exception of one year, Mr. Haughey, through his agents, duly made his Residential Property Tax returns for every year during which that tax applied between 1983 and 1996. Now, as we have learned from the various Revenue witnesses, Residential Property Tax was collected on a self-assessment basis. In other words, the initial assessment to tax was based on the taxpayer's own evaluation or self-assessment of the market value of the property in question.

Now, the returns which were duly made, with one exception in Mr. Haughey's case, were, nevertheless, incomplete in that the questions on the return form to support the opinion of the taxpayer as to the assessed or self-assessed market value were left unanswered or incomplete. And the Tribunal will wish to know whether there was anything unusual, by comparison with the returns of other taxpayers in general and the Revenue's response to them, in the Revenue's acceptance of these forms year after year without pursuing or

without pursuing intensively, the question of the failure to provide information upon which to evaluate the credibility of the taxpayer's own valuation of his own property.

The following appeared to be the valuations which were returned for each of the years from 1983 to 1996 on the self-assessment Residential Property Tax return forms relating to Abbeville:

1983, i;½250,000.

1984, i;½250,000.

The same for 1985, 1986, for 1987, for 1988.

A small uplift in 1989 to 262,50.

1990 the same.

Likewise '91; likewise '92, '93, '94.

A small uplift again in 1995 to i;½272,500 and a further uplift in 1996 to i;½295,000.

Now, it seems that the failure of Mr. Haughey to furnish fully completed returns was, in fact, raised with him, as I mentioned I think a moment ago in questioning Mr. Clayton, by letter of the 9th April of 1986 from an official of the Revenue Commissioners, Mr. Nolan. That letter requested information to facilitate the Revenue Commissioners in their consideration of the market value returned.

Now, the questions on that letter (it will be on the

overhead projector in the course of the evidence).

Reflect in the main, the type of inquiries which are incorporated in the Residential Property Tax Return

Form. The letter of the 9th April 1986, in addition, requested information to facilitate the Revenue

Commissioners in their consideration of the question as

to whether Inishvickillane Island ought to be included

in the Residential Property Tax returns. Reminders

were sent on the 19th May 1986 and on the 3rd July

1986. By letter of the 21st July 1986, Messrs.

Haughey Boland indicated that they will reply to

outstanding queries within a further three weeks.

This did not happen and reminders were again sent on

the 26th August 1986 and the 14th November 1986.

There was further correspondence in connection, as far

as I can see, in 1988. As by February of that year the

Revenue Commissioners had received no response to any

of their various queries. And by letter of the 25th

February 1988, Messrs. Haughey Boland were asked again

to clarify the position of the Residential Property Tax

on Inishvickillane.

There appears to be no progress in relation to the

matter and it next seems to have been taken up in or

around June of 1990 and this appears from a memorandum,

an internal memorandum of that date from Mr. Molloy, an

official of the Revenue to Mr. Carroll, another

official, in which Mr. Molloy requested instructions as

to what action should be taken on the matter. This request was in turn referred by Mr. Carroll to a Mr. Walsh, a principal officer; that referral occurred in October of 1990. There is nothing on the file, so far as the Tribunal can ascertain, and it may be that in the light of the evidence, some information will come to light, but there is nothing on the file to indicate what decision, if any, was made in relation either to the ownership of the dwelling house in Inishvickillane or any other Residential Property Tax implications raised with Mr. Haughey until by letter of the 30th January 1992 from Messrs. Haughey Boland to Mr. Christopher Clayton, it was indicated that the matter of a possible benefit in kind would be addressed by Messrs. Haughey Boland.

So far as Abbeville is concerned, and leaving aside any question of the potential liability of Mr. Haughey to either Residential Property Tax or some other liability to Income Tax in respect of Inishvickillane, it would appear that there may have been an inspection of Abbeville by the Valuation Office, but if there was, it did not result in any change of the valuation submitted by Mr. Haughey and apparently accepted by the Revenue Commissioners. The Revenue Commissioners had referred the matter to the Valuation Office and it would appear that the Valuation Office approved of or indicated some

acquiescence in or assent to the valuations being submitted by the taxpayer, at least up to 1989. Post 1989, there appears to have been no independent initiative taken either by the Revenue Commissioners or the Valuation Office to vouch or evaluate the credibility of the valuations.

Now, I think these valuations should be viewed in the context in which it seems ultimately after the McCracken Tribunal, the matter was revised and new valuations were then agreed in respect of the period from 1988 to 1996 and the new valuations were as follows:

In 1988 $\text{€}300,000$, which is higher than any valuation submitted by the taxpayer in his own RPT form in respect of any period from 1983 to 1996.

In 1989, there is an uplift to $\text{€}350,000$.

In 1990, $\text{€}400,000$.

In 1991 $\text{€}400,000$.

'92, a 25% uplift to $\text{€}500,000$.

In 1993 again $\text{€}500,000$.

In 1994 a 20% uplift to $\text{€}600,000$.

Another uplift in 1995 to $\text{€}700,000$.

And ultimately in 1996 a valuation of $\text{€}1.3$ million, which is, of course, at least four times, if not indeed more than four times the valuation submitted by the taxpayer for that year. And I should say both in

fairness to the taxpayer and to the Revenue Commissioners and to the Valuation Office, that what is being valued here is merely the residence and presumably some amenity lands and not the lands of Abbeville, meaning something in excess of 250 acres or thereabouts.

What has attracted the attention of the Tribunal in relation to these Residential Property Tax returns is that during the entire period up to the post McCracken Tribunal intervention, the Revenue Commissioners never sought to compel Mr. Haughey or his tax agents to provide them with the information which they were entitled to expect as part of the self-assessment return form. And as I mentioned in the course of Mr. Clayton's evidence, a question which arises is as to whether this further, if you like, failure or omission to give information on the part of the taxpayer ought to have been taken into account as part of the overall profile of Mr. Haughey's taxation affairs, ought to have been taken into account as one factor in combination with the other factors which I have already mentioned, such as the 1980 deal with the Gallaghers, the circumstances in which that deal was made and the subsequent non-response of the taxpayer to queries concerning the deal and the other matters mentioned in evidence by Mr. Clayton today.

Now, I want to deal with the question of Income Tax.

I have already alluded to the fact that at no time did Mr. Haughey's return of income disclose any of the payments mentioned in the course of the McCracken Tribunal or mentioned in the course of evidence to this Tribunal. It would appear that farming income was returned up to the 1979/80 tax year when the Revenue Commissioners were informed by Mr. Haughey that he had ceased to operate a farming business from the 14th December 1979. The business had, at that stage, according to Mr. Haughey, been transferred to his daughter, Eimear. Farming income, therefore, did not figure in Mr. Haughey's returns until sometime, once again, after he left office. For the bulk, therefore, for the years 1979 to 1996 the sole income returned by Mr. Haughey to the Revenue Commissioners was his State salaries and pensions.

Now, apart from the evidence of the Revenue Commissioners, which we have heard since Monday of this week, the Tribunal will hear evidence, hopefully tomorrow morning, from Mr. Pat Kenny of Messrs. Haughey Boland, the tax agents retained by Mr. Haughey during the 1970s, indeed eighties and part of the nineties. And without summarising all of Mr. Kenny's evidence, I think it will appear from Mr. Kenny's evidence that he did make efforts during the period from 1984 onwards to obtain information from Mr.

Haughey in response to the Revenue's invitations to him to disclose the existence of the 1980 transaction.

His efforts did not, however, meet with a lot of instant success and indeed it was sometime before any information could be obtained by him from Mr. Haughey to enable him to respond to the Revenue's invitation to disclose the 1980 transaction.

It will also appear from his evidence that although from the evidence of Mr. Haughey, the Tribunal has been informed that the 1980 contract was prepared by Mr. Michael McMahon of Messrs. Haughey Boland, no copy of that agreement was to be found in any file in Messrs. Haughey Boland and no evidence of the agreement or any dealings with the agreement was to be found in that firm's offices, although Mr. McMahon, or the late Mr. McMahon, was known to be a most meticulous accountant and a most meticulous tax adviser.

Lastly, there is one further matter which will be mentioned tomorrow and which has already been referred to in opening statements of the Tribunal and that is some additional evidence concerning the arrangement mentioned by Dr. John O'Connell in his evidence whereby Mr. Fustok gave him $\text{€}1/250,000$ to be transmitted to Mr. Charles Haughey and which, according to correspondence from Mr. Fustok, was by way of payment for a horse. Evidence has already been given by

Mr. Haughey about the matter and his daughter,
Mrs. Eimear Mulhearn may be able to throw some further
limited light on the matter in the course of her
evidence tomorrow.

I don't know whether you propose to go into evidence at
this stage, Sir.

CHAIRMAN: Well, it's twenty past. You are not
anxious

MR. HEALY: The next witness will be the second part of
Mr. Harrington's evidence, and I think as it's a
completely new piece of evidence, it doesn't follow on
from Mr. Clayton's, it might be easier to start in the
afternoon and

CHAIRMAN: And I think also as it has occurred to me
that we may be needlessly detaining a number of Revenue
officials on the residential property aspects who have
small individual parts to play and I don't see any
problem about some matters of hearsay or some person
conceding what may have been done by colleagues

MR. COUGHLAN: Mr. Coughlan tells me he is proposing
to have that discussion with the Revenue over lunch.

CHAIRMAN: I think that will shorten matters for the
day so we will take up the matters at a quarter to two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH..

THE TRIBUNAL RESUMED AS FOLLOWS AT 1.45PM:

MS. O'BRIEN: Mr. Harrington please.

MR. HARRINGTON, PREVIOUSLY SWORN, WAS EXAMINED AS
FOLLOWS BY MS. O'BRIEN:

Q. MS. O'BRIEN: Mr. Harrington, you gave evidence yesterday in relation to one of the aspects of the queries raised with you by the Tribunal, but you have also provided the Tribunal with a second witness statement which addresses certain specific queries which were raised by the Tribunal in a letter of the 1st December last. And I think I wonder if you have that before you?

A. I have indeed.

Q. It's at divider 3. I don't think we are going to need to deal with all of the matters referred to in the statement, Mr. Harrington, as they appear to have been dealt with by other witnesses and particularly by Mr. Clayton, in the course of his evidence this morning and yesterday afternoon. And I'll just go through them briefly, those that I am going to raise. I may ask you one or two matters.

A. Okay.

Q. The first matter you were asked to address was the circumstances in which notwithstanding that the tax

returns for the years 1979/80 to 1983/84 were not fully completed, it appears that the Revenue Commissioners agreed that the tax paid by Mr. Haughey on his State emoluments could be set-off against losses incurred by him on his farming activities and a rebate was paid to him of $\text{€}1,997.04$ on the 18th April of 1985. And in response to that you have indicated farm losses were not allowed. The rebate was in line with practice at the time.

Now, just dealing with that, I think we have already heard evidence from Mr. Donnelly in relation to the farm accounts that were filed on behalf of Mr. Haughey in 1981, for the period, I think, from 1975 to the 14th December of 1979. And I think those accounts showed what appear to be substantial losses from that activity?

A. Correct, yes.

Q. I think the losses as shown on the accounts were something in the region, I think, of roughly $\text{€}350,000$, something of that order?

A. That would be my understanding of the position, yes.

Q. And I think we also heard from Mr. Donnelly also in his evidence, at a meeting he had with the late Mr. McMahon in which the issue of whether or not this farm activity was being carried on, on a commercial footing, was addressed, and I think certain queries were raised with Mr. McMahon that in the event they weren't dealt with,

but that ultimately the Revenue Commissioners did not allow those losses against tax which had been paid by Mr. Haughey as a PAYE taxpayer?

A. That's correct.

Q. Could you just explain then how the rebate of $\text{€}1,997.04$ arose which was paid in April of 1985?

A. The PAYE system is a system whereby tax is collected on a week-by-week, month-by-month, quarter-by-quarter basis, whatever, in the course of the year. PAYE can be correctly operated and is correctly operated by the vast majority of employers and in accordance with the allowances, the tax free allowances, that the employee would hold for that particular year. Now, after the year end, the allowances may fall to be varied because some allowances back then, there was the income and allowances, we were still on the preceding on the bases back then, for example so after the end of the tax year, the taxes would be put together and reviewed and that could show up an underpayment or an overpayment, depending on the particular circumstances. Now, I can't help you as regards the precise reason why this payment, excess payment, arose but that would be the process which actually gave rise to it.

Q. And that would have been a rebate that arose from a review of the returns made for his schedule E Income Tax?

A. Essentially yes, but not allowing any losses.

Q. But there was so there was no allowance there, there were farm losses which had been claimed on the farm account?

A. Correct.

Q. That would probably have arisen either because allowances hadn't been calculated or perhaps there were additional expenses as he was, at the time, he would have been at one stage have been entitled, I think, to a ministerial allowance and throughout the period he'd have been entitled to a TD's allowance?

A. Correct.

Q. This is solely a rebate that arose on the PAYE income?

A. Yes.

Q. Just also to establish, this was paid to Mr. Haughey on the 18th April 1958, that would have been at the time that both of the Capital Gains Tax issues on which we have been hearing evidence were outstanding?

A. That would be correct. The actual 18th April is within that time frame.

Q. Would it be usual in those circumstances where there were two issues outstanding on Capital Gains Tax to pay a tax rebate to a taxpayer even in those circumstances where it would have been for schedule E income?

A. There wouldn't be any fixed or firm practice on that. Some officers dealing with cases might suggest that the repayment would not be made pending the settlement of the other items. What happened here, obviously, the

money that was due to him relative to the tax that was outstanding wasn't very material. People would be encouraged not to be tying up, making things too complicated, linking too many things together which lead to complications down the road. So what happened here would be normal. It would not be exceptional what happened here. Now, that being said, and I think it's important to say that you could find another case where in similar circumstances, somebody might have suggested to the taxpayer, look, I am going to hold this money as a payment on account against

Q. Because, of course, at that stage, there was a liability in the region of $\frac{1}{2}$ 102,000?

A. I can't remember whether it had been assessed at that particular time.

Q. I don't think it had been assessed in fairness. I don't think it had been assessed at that stage.

A. If it had been assessed I think maybe a different view might be taken of it.

Q. I see. The second matter that was raised with you were the circumstances in which Mr. Haughey appears to have had no involvement with the Revenue Commissioners apart from the issue of Capital Gains Tax from 1985 to 1992, and in fairness for the record, I think that query should be corrected because, of course, he also had an involvement in relation to Residential Property Tax. And I think your answer there was that this

would not be unusual for a PAYE taxpayer?

A. That's correct.

Q. I think we have heard quite lengthy evidence from Mr. Clayton in relation to this issue. I just wonder is there anything else that you would like to add to the evidence which he has given on this point?

A. Not really no. That the PAYE system worked from year to year. The tax free allowances would be generated automatically by reference to the information that was available. The taxpayer would intervene if he or she wanted some additional allowances and wanted to tell us about some allowances that were overstated, so that's not unusual in the particular circumstances.

Q. In terms of a PAYE taxpayer?

A. Yes.

Q. I think Mr. Clayton has acknowledged here that there were Capital Gains Tax issues outstanding. There was a question also at the time regarding the bona fides of the contract of 1980 and also there were Residential Property Tax returns being made which were incomplete on their face?

A. I would not be familiar with the RPT returns. I was not aware until I attended here at these proceedings, of the precise details of the Gallagher transaction.

Q. You personally weren't?

A. No.

Q. The next matter you were asked to address, and again it

has been taken up at some length with Mr. Clayton, is the circumstances in which no action appears to have been taken or queries raised notwithstanding that a payment of £102,330 was made by Mr. Haughey in respect of Capital Gains Tax in the late 1980s; in fact, I think it was made from between, I think, mid-1986 and the last payment was made on the 1st January of 1988. And your answer to that query was that this raises the question of the level of scepticism which should be applied to a taxpayer's affairs. Revenue cannot operate without a general assumption of compliance on the part of taxpayers. This is expressed in Revenue's 1989 Charter of Rights under the heading "Presumption of honesty". It is not feasible or appropriate to have a general inquiry about a case every time a taxpayer has a transaction with the Revenue. Revenue experiences of that outside the audit programmes started in 1990. Speculative inquiries and inquiries about matters which might have a clear logical explanation are unproductive and these would have been discouraged?

A. Yeah.

Q. Then you went on to say that a payment of Capital Gains Tax which resulted from a disposal of assets for cash would not have warranted any action?

A. Yes.

Q. Can I just raise with you there, you say that a payment

of CGT which resulted from a disposal of assets from cash would not have warranted any action. Now, I think you will be aware of the fact that the Capital Gains Tax which arose on the disposal of Rath Stud which was paid in mid-1986, that that Capital Gain actually accrued on the 1st January of 1977?

A. That I have learned here as well, yes.

Q. That you are aware of. I mean, in those circumstances, would it be reasonable to assume that the proceeds of that capital gain would have been available to pay the tax some nine years later?

A. On the basis that the Gallagher deposit would have been much closer to that event. I mean, we were looking at a situation here where Mr. Haughey had got something in the region of $\text{€}600,000$ from two property transactions. He was clearly a man of some wealth. And you know, to me, paying $\text{€}100,000$ Capital Gains Tax wouldn't have seemed a very significant event in the light of, you know, what we knew about about the disposal of assets for cash.

Q. Well, the I take your point in relation to the forfeited Gallagher deposit that arose in January of 1980. But you would have been aware of it the Revenue would have been aware, maybe not you personally, but the Revenue Commissioners would have been aware on the farm accounts that were returned, that there was something close to 900,000 in borrowings

disclosed in those farm accounts.

A. Yeah.

Q. And that was 900,000, one can easily see, would have easily absorbed the entire of the forfeited deposit and indeed any gain that may have occurred from Rath Stud, is that not so?

A. That is a likely position. But somebody, you know, who was in a position to borrow that kind of money at one stage could clearly, from the level of his assets, be in a position to raise that kind of money again.

Q. Because I suppose it's clear that on the income which was being disclosed, there was no question that the income could have generated this kind of payment?

A. The income, I am not just this minute familiar with the income of the mid-eighties, but obviously it wouldn't be that he wouldn't have $\frac{1}{2}$ 100,000 sort of free cash based on his declared Schedule E income, yes.

Q. Then the I think D we are going to pass over.

Then the final query that we raised with you was whether at any time any issue was raised with Mr. Haughey or his tax agents regarding the failure to provide completed returns and the failure to disclose income from any source other than State emoluments. And your answer there is: "Returns were obtained as already detailed. There was no evidence available"

I take it when you say "to me", you mean to the

Revenue Commissioners "of any possible material income not disclosed until 1997."

A. Well, essentially when I was making that statement, I was speaking for myself. But we have heard from other people as to what their state of knowledge was at that particular time as well.

Q. I see. And again, this was a matter that was addressed in some length by Mr. Clayton in the course of his evidence this morning and do you have anything further that you wish to add to that evidence?

A. Not really, no. No.

Q. Thank you, Mr. Harrington.

MR. CONNOLLY: Just one or two matters.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. CONNOLLY:

Q. MR. CONNOLLY: Mr. Harrington, firstly, in the 1980s, there were criteria before the Investigation Branch brought in to assist in relation to non-compliance on the part of a taxpayer, and I suggest that the criteria that were applicable then were that you had to have prima facie evidence of nondisclosure on the part of the taxpayer before the Investigation Branch could be brought in to assist?

A. That would be correct, yes, but I think it would go much further than that. You would have to have prima facie evidence of material disclosure of a historical nature.

Q. Material non-disclosure?

A. Non-disclosure, sorry, going back over a number of years.

Q. Not just a one off, it would have to be a pattern of withholding information?

A. Not just a one-off of recent vintage.

Q. So that mere suspicion would have been enough to get the Investigation Branch involved?

A. No, they would not take on a case on a hunch or suspicion. There would have to be some evidence that an inquiry was likely to be productive.

Q. Well, secondly, from 1992 there was available under statutory amendment a provision which enabled the Revenue to require a Statement of Affairs to be furnished by the taxpayer. Again, they were set criteria in place which would have warranted such a step being taken and one of them was that there had to have been some identified tax risk present before a Statement of Affairs could be required, is that right?

A. That would be correct, yes.

Q. Well, from the information that was available to you when you were looking at this matter back in the 1980s and the 1990s, was there ever any indication to you of a tax risk that would have warranted more probing of Mr. Haughey's tax affairs above and beyond what was put in place?

A. Absolutely not. When I looked at the returns that

came in in tranches over a period, what I was looking at was returns that were submitted by a reputable firm of accountants. They had been completed by a taxpayer who had been both an accountant and a barrister, I believe. He would have been well aware of his statutory requirements. There was no indication on the returns that there were any omissions and that there was no reason that I had to be suspicious and to take the step of considering that there was tax risk and that a Statement of Affairs might have been appropriate to pull everything together.

Q. Well, looking at the picture in the round during those years 1980s and 1990s, was there anything that suggested that the drawings on the part of Mr. Haughey were substantially out of line with the assets which he had which might have supported those drawings?

A. We didn't have any information regarding the level of his living expenses or life-style or that had been discussed with the witnesses. You know, we were not we had no knowledge that he might have been living way beyond his declared income. We didn't have that kind of knowledge. What was available to Revenue was that the property that formed the basis of his wealth had been acquired some years previously and the funding of that would be explained by information on Revenue files. So there was nothing, when I was looking at the returns, that would have suggested to me

that a Statement of Affairs or any kind of an inquiry would have been appropriate.

Q. You said the level of spending on the part of Mr. Haughey wasn't available to you. Was it ever available in relation to taxpayers generally which would have allowed any further scrutiny of their tax affairs?

A. Well, the taxpayers who were self-employed who sent in full accounts with a balance sheet, would have in those accounts, what would be called a drawings figure, which would be essentially the money that they had taken from the business for their living expenses. But for a PAYE taxpayer, that kind of information is not there.

Q. But that's the extent to which it was ever scrutinised by the Revenue in relation to tax affairs of the population?

A. Exactly.

Q. Thanks very much, Mr. Harrington.

CHAIRMAN: Thanks, Mr. Harrington.

THE WITNESS THEN WITHDREW.

MS. O'BRIEN: Mr. Lyons please.

NOEL LYONS, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

BY MS. O'BRIEN:

MS. O'BRIEN: Thank you, Mr. Lyons. Mr. Lyons, you

are a deputy in the you are a deputy

Collector-General in the Revenue Commissioners.

A. Yes.

Q. And you furnished the Tribunal with a statement which relates to the collection of the Capital Gains Tax payable by Mr. Haughey on the disposal of Rath Stud and on the forfeited Gallagher deposit?

A. Yes.

Q. And it appears that this matter, once the appeals were agreed with Mr. Haughey's tax agents, Haughey Boland, this matter passed to the office of the Collector-General to collect the tax that was outstanding?

A. Correct.

Q. And I wonder do you have a copy of your witness statement with you there?

A. I do.

Q. It's at Divider 12, Sir. I will take you through that. There is just one document I think I need to refer to and there may be one or two short questions.

You state that you were appointed principal officer in the Collector-General's office in July 1988. In July 1989 you were authorised to act as Collector-General in the absence of the office holder. In September 1991 you were appointed to the new position of deputy Collector-General. Your office is in Apollo House, Tara Street, Dublin 2 and your responsibilities include

debt management, payment processing and management of the Revenue insolvency unit.

A. Correct.

Q. You state that you have reviewed the computer record for Mr. Haughey in respect of Capital Gains Tax for the two years in question. That would be the years 1986, 1987 and 1988, isn't that correct?

A. Yes.

Q. You state that on the 28th July 1985, as a result of the assessment of an Inspector of Taxes, a liability of $\text{€}12,480$ for Capital Gains Tax for the year 1976/77 was entered to the computer record.

A. Yes.

Q. You state that this made the amount available for collection actively by the Collector-General's office.

You state that by computer-generated process, a demand for payment was made on the 9th October 1985 and a second demand issued on the 6th November 1985 and the third on the 4th December 1985.

A. Correct.

Q. And I just pause there for a moment, because it appears, therefore, from what you have stated, that once the assessment was raised, that the matter was entered on a computer record, is that correct?

A. Yes, yes.

Q. That was actually before the appeal proceeded?

A. The assessment was made by the Inspector of Taxes. I

think it was after the appeal was sorted out, he makes the assessment. He then sends the necessary information to our computer centre and it appears on the record of the Collector-General's office. As far as we are concerned at that stage, it's available for collection. The issue of appeal is not one that concerns us.

Q. It doesn't concern you?

A. Yeah, and we would assume that all appeals and ^ difficulties are finished at that point.

Q. Had been dealt with. You state that on the 13th February 1986, again as a result of an assessment by an Inspector of Taxes, a liability of £89,850 CGT for the year 1979/80 went onto the computer record for collection by the Collector-General's office. The payment was first demanded on the 13th March 1986 which would have been a computer-generated demand.

A. Correct.

Q. You say that a second demand issued on the 10th April 1986 and a third demand issued on the 8th May of 1986.

A. Yes.

Q. You state that a payment was made by cheque or bank draft of £50,000 on the 15th July of 1986. Because of the nature of the CGT payments, a decision had to be made on how to bring the payment of £50,000 to the account. The decision was made to use £12,480 to satisfy the 1976/77 liability and to use the balance of

to satisfy part of the 1979/80 liability.

This was finalised and entered on computer record on the 12th October of 1986.

A. Correct.

Q. I think, in fact, we heard from Mr. Fitzpatrick yesterday that when that payment was made, it came in and it was not appropriated to any particular outstanding tax?

A. That's correct.

Q. But that it was decided, obviously, to apply it initially to the longest outstanding tax which would have been the CGT dating from 1977, and then the balance being a part payment towards the CGT outstanding on the Gallagher forfeited deposit, is that correct?

A. That's correct. And we took the advice of Mr. Fitzpatrick at that particular point.

Q. Who was in the Publics Department and who was the contact, we heard evidence from him yesterday. Between the Revenue and Mr. Haughey?

A. Correct.

Q. You state that in the meantime the computer reported a report to the Inspector on 25th September 1986 in respect of both payments. This meant that a computer-generated request for advice, a form CC 73, issued the Inspector of Taxes to seek his agreement that enforcement was appropriate and to advise as to an

option for enforcement.

A. Correct.

Q. You state that you understand from the Chief Inspector of Taxes that the form was returned to the Collector-General's office early in November 1986 advising enforcement of the tax by solicitor action.

This would have been one of many such forms arriving in the Collector-General's office at that time. There were delays in processing such forms and it is not possible to be specific as to why there was no evidence of an enforcement action. However, if there was knowledge of ongoing communication about any aspect of the tax, which is possible and also likely that this was decided not to commence what would have been lengthy proceedings. Could I just ask you, what would those proceedings in the ordinary course, what would they involve?

A. They would involve the Revenue Solicitor taking action, seeking recovery of the money through the Court.

Q. And that would be a standard kind of summons procedure?

A. Yes, but I do have some more information since I made that statement and one of the things I arranged to have done was I had a number of cases examined from that time. Capital Gains Tax was enforced about two or three times each year. Because Capital Gains Tax, there wasn't many, in fact, Capital Gains Tax liabilities, we waited until we had sufficient to do

what you might call, a computer run. So we did it two, three times a year. Now, I went back I couldn't get the actual computer parameter forms we call them, at the time, but I was able to examine other cases to see on what dates we did computer runs, enforcement runs and I found we did a run on the 1st November 1986, which would have been too early for this one to have been caught in and our next enforcement was in March 1987. By then, there was this other thing which you are going to come to now. So during that period, no Capital Gains Tax case that had gone to the third demand stage would have gone to solicitor or sheriff enforcement.

Q. I see. Because the last occasion would have been on the 1th November of 1986?

A. Correct.

Q. Which would have been too early for this?

A. Yes.

Q. And the next one was in March of 1987 and we'll come to deal with that now.

A. Okay.

Q. I think you say you note that the computer record shows the notation under "inquiry CG" dated 23rd February 1987. This would have been put on record in the Collector-General's office. To me this notation indicates that some action was ongoing. This action could consist of meetings, telephone conversations

and/or correspondence between the Revenue and the taxpayer or the taxpayer's agent. You state that the effect of a notation called a "Stop" is to suspend the issue of demands or enforcement while the communication is ongoing?

A. Correct.

Q. Could I just ask you there in connection with that. Who would have put the notation "inquiry CG" onto the computer record?

A. The answer is somebody in the Collector-General's office.

Q. So it would have been within the Collector-General's office itself?

A. Absolutely.

Q. In the ordinary course, would there be some record of a communication between maybe the Inspector of Taxes and the Collector-General's office or not?

A. In the ordinary course, there might be there would be. I mean, if it was nowadays, certainly there would be. What I haven't got pre 1988 and also pre-decentralisation of the Collector-General's office, I don't have any pieces of paper which indicate any communications at that time. We do have, of course, evidence already, that there was a phone call between the Chief Inspector and the Collector-General. So perhaps that was the occasion that gave rise to the decision in the Collector-General's office.

Q. To put

A. To put the stop on. Because I think the evidence already has shown that the Chief Inspector was, in fact, going to ring the agents to see if the money was available for payment or whatever.

Q. You state

A. That would be, by the way, quite consistent with the way in which we do things now and as we did things then.

Q. I see. Because as I think as you know, there is no actual note of any such communication on either the Revenue's files or the Collector-General's files insofar as they have been produced to us?

A. Well, our main frame computer record in the old days, this is terrible, but in those days main frame computer record was capable of only carrying very simple standard records. Nowadays, if the Chief Inspector contacted somebody like me myself, a stop would go in, precisely in the same way. However, we have, you'd call, away from the main frame, we have computer records which would be maintained showing why I put the stop in and how long I intended it to be in and when it would be reviewed. But that's sort of that sits off the main frame feeding back and forth information.

Q. I see. At that time when, if you like, there wasn't that facility on the computer, how would a stop be

dealt with in the time that it's on the record? As you said there was a stop here. I am just wondering what circumstances would that be lifted or in what circumstances would enforcement, if it had commenced, commence or further demands be sent out?

A. Essentially there are three circumstances in which it would be lifted. One, of course, the ideal one which would be the payment. The second would be that somebody would get fed up say, look, we are going no further here, take the stop off. And the third one would be somebody examining stops, would say, look the stop's been on a long, long, long time, so those are kind of reasons a stop would be lifted. So they'd be reviewed regularly, a printout comes of all the stops on record and you look at them and say oh, this is a stop that's been on a month, it's been on two months. But if communications were ongoing, if there was a hope, you know, particularly and promises to collect money, promises to pay were involved, you would just leave the stop there and you would continue negotiations.

Q. And in the ordinary course, how often would those stops on the computer record, how often would they be reviewed for the length of time or whether there any further developments on the case?

A. It would be particular to a case. The computer would generate what we call edit lists which would cause you

to think about the stop, but you might say, oh no, I know why that's on, and you wouldn't do you'd say I was talking to him on the phone or something like that. But you'd have the occasion to review it quite often, but like, in fact, what you would do is look at your list and say, I know what's going on here. And you just leave it so.

Q. I see. You state then i;½25,000 was paid on the 27th July 1987 and that the balance of i;½27,330 was paid on the 4th January of 1988.

A. Correct.

Q. Now, given that the stop, I think, was put on in February of 1987, we can see a payment there on the 27th July 1987, some short time afterwards, but no further payments for about five months till the 4th January 1988. Would it have been unusual for the stop to remain on the computer record for that further five-month period, notwithstanding there don't appear to have been any further communications, certainly not on the basis of what the witnesses have been able to tell us or on the basis of what's within the Revenue records that were produced?

A. The answer is, if there were communications, if there were telling phone calls, if there were some letters exchanged, if there were promises. Sometimes, for instance, I myself would put on a stop for four months because somebody says I am selling property, I am

selling shares. And I'd say right, okay, you have now until the 16th of the 4th month hence, and stuff like that. So really at the end of the day, all I can say is five months is not particularly a long time, I mean but at the same time, I would have expected some activity, some promises, some communications to have taken place in the period.

Q. Over that five-month period?

A. Over that five-month period.

Q. And in the absence of any communication or any promises over that period or any scheme being put for the disposal of assets which we know wasn't, would you consider that then to be a long period in which to leave the stop in place?

A. It would be a long time if there was no action.

Q. I see. You then say that interest was not demanded or charged on the payment. This was consistent with the procedures in the generality of cases at that time.

This particular case was treated no differently in this respect. The computer system calculated interest on payments due. However, payment of this was mainly not demanded of the pre-enforcement stage of collection activity. It was also not demanded after payment was received. You say that the main reason for not collecting interest in cases was that the resources were not available to collect interest on late payment. Because of changes to the main frame computer system

and delays in processing payments, the computer record could not be depended upon if bulk pursuit of interest was contemplated. Available resources were permitted to collection and pursuit activities and the processing of payments received.

And can I just ask you in relation to the whole issue of interest. You say that interest would never be charged pre-enforcement?

A. What would happen generally speaking, that was true.

There'd be some individual cases, maybe very, very large cases, and by large cases I am talking about sort of corporate bodies of a very major substantial ones. But we had a computer, it generated the interest charged in the background. At any point when you were setting parameters for the issue of demands or enforcement activity, you could ask the computer essentially to calculate the interest and put it on the demands or the enforcement. In practice, because we built up so many, so much sort of uncollected interest, we built up so many records on the computer that, in fact, we couldn't respond to or deal with, we did not, as a matter of practice then, ask the computer to calculate and include interest up to third demand stage. If we went to sheriff or solicitor enforcement, we, generally speaking then, asked the computer, I am using a sort of lay term, ask the

computer to generate an interest charge so that when it would go to the solicitor for court action or when it would go to the sheriff for execution of warrants, we would then, at that stage, be asking for payment of tax plus interest.

Q. So am I right in thinking, therefore, just to clarify it, at the first, second and third demand stage, you wouldn't ask the computer to calculate interest and you wouldn't be looking for the interest?

A. We wouldn't ask the computer to put the interest on the demand form.

Q. On the demand form?

A. Correct.

Q. But when it went for solicitor action it stage, you would include interest on the demand form?

A. Not always. But mostly.

Q. But mostly?

A. Yes.

Q. So then if proceedings were issued, a summons in the court to recover the arrears of tax, that would invariably in most cases also include a claim for interest?

A. Correct.

Q. So in this case am I right in thinking that the first, second and third demands had been sent in this instance?

A. Yes.

Q. And the tax arrears or the outstanding tax had not been paid on foot of those three demands?

A. Correct.

Q. That the CC 73 had been issued which would have authorised solicitor action and which did authorise solicitor action?

A. When it was returned certified by the Inspector of Taxes, it would have prompted solicitor action. It was normally be sheriff or solicitor. In this case the inspector had chosen a solicitor.

Q. If that had proceeded, which of course we know it didn't, because of the stop that was placed on the computer record in February of 1987, but if that had proceeded through solicitor action, there would have been a claim for interest?

A. There would have been

Q. In all probability?

A. Yes.

Q. And would I be right then in thinking from the evidence that you are in a position to give, that apart from cases where the outstanding tax was collected through solicitor enforcement, that interest was never charged on arrears at that time?

A. I invariably I'd be loathe to say never, but I would say almost always never.

Q. Almost always never?

A. Almost always never.

Q. At that time?

A. At that particular time.

Q. Other than in the case of solicitor recovery?

A. Other than in the solicitor or sheriff. It's the enforcement, once we move to the enforcement stage, we, generally speaking, added in the interest. Also, if we were moving to liquidation or insolvency and we were making a claim, we also do the same thing.

Q. I suppose the thinking on that is that you had given the taxpayer every reasonable opportunity to pay the outstanding tax at that stage?

A. We have given them every reasonable opportunity but also we have not sort of generated all the queries and all the difficulties for ourselves that might arise.

The difficulties that could arise I mean, we had finite resources. So if we put interest on every demand going out we get a lot of queries and also because at that particular time, there might have been delays in payments being processed. We couldn't stand over bulk issue of interest charges because some of them would invariably be wrong. It is a main frame computer system. It's like every main frame computer system, banks, telecommunications, readers digest, it regurgitates stuff all the time that gives rise to queries, so we had to control the queries we will get.

Q. Because that main frame computer had a limited capacity and you

A. It wasn't the computer that had a limited capacity.

Q. You would be bogged down in dealing with queries regarding interest at the first, second and third demand, but once the recovery by the solicitor action or through the sheriff arose, then interest was included?

A. Correct.

Q. As I said in this instance, but for the stop order, which was imposed in February of 1987, it would have proceeded in that way?

A. Yes.

Q. Thank you very much.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. CONNOLLY:

Q. MR. CONNOLLY: Mr. Lyons, would I be correct in suggesting that there was something of a sea change in Revenue procedures for enforcement in the collection of tax liabilities after 1988 when the self-assessment came into the picture?

A. Yes. There was quite a dramatic change.

Q. So that when we look at what was happening around 1984 to 1988, one has to look at it in a different situation compared to what happened from '87/88 onwards, when we had the '87 amnesty and self-assessment and matters like that that would allow different procedures to be followed from then onwards?

A. Absolutely.

Q. Well, the apparent indulgence of Mr. Haughey's situation in relation to interest on the CGT liability at that time, pre 1988, I have to suggest was out of step in any way with the treatment of other taxpayers who were in default in payment of CGT, sometimes for some considerable periods of time?

A. I am very satisfied that that's the position. To enable me sort of answer this type of question and to sort of be able to satisfy the Tribunal, I have instigated a look at a number of cases from that particular period and already we have had a look at sort of, maybe I think it's about twelve, thirteen, fourteen cases, and no interest was generated in any case even though there were, even though there was late payments of the order of what we have seen in this particular case. So it is absolutely on the same footing as every other case from that time that I have seen.

Q. I just want to are you satisfied, though, ten or twelve cases were an appropriate sample? They were not special cases of any sort?

A. They were typical of what was happening at that time. Because of the way we found them, I am absolutely certain they are random. People had to examine the computer record in a manual way, going income by income by income, ask themselves certain questions and hopefully we might find more, but nevertheless, I am

satisfied that they are absolutely random, there is no preselection process, so they just came up as we looked through the computer record.

Q. In any event, I think you told Ms. O'Brien that the stop procedure which you have called it, which was put in place, was an appropriate step once there was something of a prospect of negotiations or a matter was under further inquiry with the Capital Gains department?

A. Yes. We would put stops and still do very regularly, sometimes, in fact, there might be a doubt over the tax. Now, that would happen more often in our current regime than in the past because there was an inspector's assessment there, but we would use the stop knowing that there was some activity going on, some communication and we would generally see this communication as enhancing our ability to collect.

Q. I just want to turn to the Gallagher contract. I think during your career in the Revenue you were also involved as assistant principal with responsibility for the administration of stamp duties?

A. Correct.

Q. And during that period of time you would have seen hundreds if not thousands of contracts of varying types coming before you for stamping?

A. I saw many, yes, such contracts.

Q. Well, just looking back at what we have called the

Gallagher contract. While it has been held up to considerable scrutiny by this Tribunal, can I suggest that it did have a number of the salient ingredients of a contract that would pass scrutiny in your department as having all the hallmarks of a contract in nature and form?

A. The answer is yes. The first one, and I am not being facetious when I say this, this was typewritten, which is always a help. I have seen many contracts. I have seen contracts which are quite obviously drawn up when people were standing out in fields and they wrote on pieces of paper and I have seen pieces of paper that were deemed to be contracts because somebody didn't write "subject to contract" on them. And I have seen so just my immediate look at the thing, I'd say okay, this wasn't drawn up by solicitors. I don't see any evidence of legal involvement, but it would look like, on the face of it, it would look like a contract.

Q. Looking back as an experienced tax official and certainly somebody who had considerable experience with looking at contracts which came from stamping, you would also, if you put yourself into the shoes of someone in Mr. Pairceir's position when he was asked whether there was any point to the Revenue pursuing the question of the validity of this contract, you would also have taken into account the strong legal advice which was available to Mr. Pairceir from a reputable

firm of solicitors, Arthur Cox & Co., echoing strong advices from a reputable senior counsel, Mr. Raymond O'Neill. All of that, I suggest, would have added up to a strong indication that there was little point in pursuing any litigation to seek to validate that document?

A. I certainly I certainly would agree with that. I mean, the reputable firm and reputable senior counsel and also the actual procedures that would have been involved in this. I mean, it's not like a simple I mean, I managed the Revenue insolvency area at the moment. And this would not be as simple as me saying, okay, we will petition for liquidation, we will appoint a liquidator and he will then go out and get recover this money. He would have to go through a process. And he would have to satisfy courts that there was sufficient evidence, sufficient justification for an examination of the directors, or director who would have to then sue for recovery. I can I might mention to you that we have a limited budget, I think Mr. Pairceir may have mentioned the budget issue, but certainly in 1984 we would have spent somewhere in the region we would have had available to us somewhere in the region of £35,000, certainly not much higher than that, possibly even lower, to spend on all liquidations in all liquidations, bankruptcies, receiverships in 1984, so I would have had to be very,

very careful with how I would have spent that money.

I have a budget somewhat bigger nowadays and I still have to be extraordinarily careful in sort of funding liquidations or supporting actions in the High Court or supporting examination of the directors because very often if people are prepared to say something at a particular point, they are certainly going to say the say thing, you know, under examination. That's but that's the way it would be. There was another factor which I might mention

Q. Just before I go onto the other factors. I think we are dealing with the procedures. First of all, I take it that liquidations were much more prevalent in the mid-1980s than they are now?

A. They were a little more prevalent, probably a little bit more sensitive even. There were probably quite a number of liquidations because probably there are more companies proportionately and they were probably more mind concentrating, let's put it that way.

Q. The steps that would have to be gone through by court procedure, you would have had to petition to wind up the company?

A. Correct.

Q. The second step would be to get leave to cross-examine the director on oath?

A. Correct.

Q. And then the third stage was if you got anything useful

from that, you then had to go to the High Court to seek leave which would have involved persuading a High Court Judge that there was a viability in the Court procedure, that there wasn't a creditor's money in the liquidation?

A. Correct.

Q. Usually the situation was that the High Court Judge would receive a Senior Counsel's opinion that the action was something of a viable claim before it went any further, so that the whole procedure, if I can suggest was this, if it was to go to that stage, it had to be premised, if you forgive the colloquialism, it had to be premised on the U turn on the part of Mr. Patrick Gallagher under oath compared to the position he was taking in interview with Arthur Cox up to that time?

A. Absolutely, yes.

Q. And there was no reason for you to presume that he would do that?

A. Even reviewing the paper there was no reason for me to presume that. Obviously, I have read the papers about his subsequent evidence but I couldn't possibly make that presumption at the time even if I had a reservation, and I also would have to look at the other parties in the agreement as well.

Q. Looking at the situation, there might well be an appearance that if the Revenue had taken this route

that there would have been something in the order of
€300,000 automatically available under another tax
heading via the Gallagher Company tax liabilities
compared to the actual sum of €90,000-odd that was
raised through CGT liability of Mr. Haughey. What do
you say in relation to that apparent situation?

A. Well, first of all, in my role in the insolvency side,
I would not have had regard to the CGT issue in the
first instance. I would have looked at it purely from
the point of view of is it, like the first thing I
would have said is: Is this a valid contract? Would
this survive? Is there a possibility of having it set
aside? If it could be set aside, would this mean that
€300,000 coming to the company would fall into the
preferential debt and would then be recovered for the
Revenue Commissioners if we went down the liquidation
route? I'd have to say to myself, what were the costs
involved in going down that way? And what was the
likelihood of success? I would also one of the
things one of the things that happens in a company,
and the Gallaghers were probably in this situation, I
haven't really looked over their affairs over a long
time, but one of the things that happens is quite
standard. When a company if you look at the
company at a particular point in time, there is a
certain amount of preferential debt and there is a
certain amount of unsecurity for taking Revenue as a

creditor. If the company is not succeeding, if the company is failing in its business, what you find is the preferential debt is starting to get smaller because things like VAT liabilities, the number of employees is getting smaller, because the preferential debt, which as I say one year you have one year from the date of the point of liquidation, the preferential debt is slowly moving into the unsecured and the new preferential debt is not necessarily being generated at the same rate, same speed. So it's not being replaced. So preferential debt tends to be diminishing.

Q. To summarise that, from the date of liquidation the greater period of time that lapses from the date of liquidation up to the date of establishing the Revenue entitlement, the greater the period of time that elapses, the less preferential element there is for the Revenue in debt?

A. Unless the company is trading very, very successfully in the meantime.

Q. If the company is not trading at all?

A. Well, then it's getting smaller.

Q. Well, we know that this company was, in fact, wound up and a petition to the High Court under order of Ms. Justice Carroll on the 18th March 1986 and Mr. Patrick Tuffy was appointed as liquidator but the position is that the Section 245 application to

cross-examine the director wasn't pursued nor any application to validate the contract?

A. Correct.

Q. I think nothing further came on that liquidation, it was finalised a couple of years ago?

A. It was finalised, I believe, in 1996. The Revenue Solicitor informed me. No, nothing else, and Mr. Tuffey recovered nothing for any creditor, obviously recovered nothing for any creditor.

Q. It would appear at stage when Mr. Tuffey was employed the only significant asset available for pursuit was this contract being validated as a potential item to put money into the funds of the company?

A. Yeah. By then I would have imagined that it was the only asset because I think the Receiver would have dealt with the fixed assets already in his position protecting the bank as interests.

Q. The Receiver, Mr. Crowley, found the shortfall in any event in relation to his security debt, is that the position?

A. I think so. I think that's the position. I just don't remember quite

Q. But in any event, I think I stopped you, I think you said you were looking at the purpose of pursuing the matter further to validate the contract. There was another matter you were going to mention

CHAIRMAN: If there is anything fresh, Mr. Lyons. We

were through it pretty thoroughly with Mr. Pairceir yesterday.

A. One other point, and, in fact, wasn't mentioned and I am surprised it wasn't mentioned, solicitors for the Gallagher Group, in correspondence in February and March 1984, Mr. Crowley mentioned to both Mr. Maher in the Collector-General's office and to the Inspector of Taxes in Landsdowne House that Gore & Grimes solicitors had a lien on any cash or a certain amount of cash in the in the Gallagher Group Limited and that this lien, if for instance, the Revenue appointed a liquidator, petitioned to have a liquidator appointed, successfully pursued this money, the possibility of recovering it for somebody else strongly arose and that was an issue that I would have considered as well as some of the factors that were mentioned yesterday.

Q. MR. CONNOLLY: I think the solicitor lien may be something in the order of i;½400,000.

A. Yes.

THE WITNESS WAS FURTHER EXAMINED BY MS. O'BRIEN:

Q. MS. O'BRIEN: Just one are two short things arising out of that. Just the first thing I want to ask you is this, did Mr. Pairceir ever involve you in any way in his dealings with Mr. Crowley?

A. No. I wasn't in the Collector-General's office in

1984.

Q. And did he inform you about the matter at all?

A. No. We never discussed it until after he gave evidence.

Q. You had no role whatsoever in connection with the decision that was made by Mr. Pairceir as to what course to take in relation to this contract back in 1984?

A. None whatsoever. I only speak as the person who has now responsible and might look at this type of situation nowadays.

Q. But you had no involvement whatsoever with the matter in 1984?

A. Absolutely none.

Q. Just one final matter, as you indicated yourself, you had no role in it at the time, because you have discussed it with Mr. Pairceir and you have seen the documents. I take it that you would accept that at the time Mr. Crowley and Mr. Raymond O'Neill, Mr. Crowley, who was a highly experienced insolvency accountant, and Mr. O' Neill was a senior counsel, you hardly, I take it, suggest that they were coming to the Revenue Commissioners to tell Mr. Pairceir that they had no concerns whatsoever in connection with this contract?

A. Oh no.

Q. That was certainly not the purpose of their meeting

with Mr. Pairceir, isn't that correct?

A. Well, as I read it, and I mean, I didn't discuss this particular point with Mr. Pairceir, but as I read the letter, the advice of Mr. O'Dwyer, what he said was that essentially there are reasons for not doing certain things, but if you were to consider any option, this is an option. By the way, that option was also open to Mr. Tuffy and would also have been open to the solicitors who had a lien on the $\frac{1}{2}$ 400,000. So

Q. And this was the option that was considered by Mr. Crowley and by Mr. O' Neill?

A. Yes.

Q. And the advice given by Arthur Cox solicitors was to Mr. Crowley as Receiver of the Gallagher Group, not as liquidator?

A. No. Absolutely. That's correct.

Q. Thank you.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. Fergus Carroll.

MR. FERGUS CARROLL, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

CHAIRMAN: Dublin being a small town as it is, as has previously arisen in the Tribunal, it had better be noted, Mr. Carroll and I have known each for many moons in the sporting context, but I don't think it's going

to affect any part of this evidence.

Q. MR. COUGHLAN: Mr. Carroll, I think you are an assistant principal officer in the taxes division of the Revenue Commissioners?

A. That's correct.

Q. And I think that you are in a position to give evidence to the Tribunal, having formed an overall view of the Residential Property Tax aspects of Mr. Haughey's dealings with the Revenue Commissioners?

A. Yes.

Q. Now, I think you have furnished a statement for the Tribunal, and I think you say in that statement that you are the assistant principal officer in the capital taxes division of the Revenue Commissioners?

A. Correct.

Q. From 1983 to March 1998 you were manager of the Residential Property Tax section within the Capital Taxes Division, is that correct?

A. That's right, yes.

Q. And I think you informed the Tribunal that at the request of the Tribunal you were making this overall or overview statement of the handling of the Residential Property Tax affairs of Mr. Charles Haughey up to 1996 following examination by you of the relevant papers and documents on his Residential Property Tax file?

A. That's right.

Q. Now, I think that review enables you to say that the

file shows that returns and payments of self-assessed Residential Property Tax were submitted by Mr. Haughey's agents, Haughey Boland & Company, later Haughey Boland Deloitte & Touche, in respect of the property at Abbeville, Kinsealy, County Dublin for each of the valuation dates 5th April 1983 to 1996 inclusive, is that correct?

A. That's right.

Q. The returns were, however, incomplete in that questions on the return form to support the opinion of the self-assessed market were left unanswered, is that correct?

A. That's right.

Q. These questions related to matters such as the date the property was acquired, the consideration paid, particulars including costs relating to any building works carried out since acquisition, type of property and special features and other such matters of that nature. Is that right?

A. Correct.

Q. Now, I think the practice within the Residential Property Tax section within the early 1980s was to refer matters of valuation to the valuation section within Capital Taxes Division?

A. Correct.

Q. The file indicates that this was done in this particular case as on the 9th April 1986, Mr. John

Nolan, Executive Officer valuation section wrote to Haughey Boland & Company requesting the outstanding information to enable the earlier valuations to be considered, is that correct?

A. That's correct.

Q. I think that's document number 1. That's a letter from Mr. Nolan to the agents and he refers to their "Clients 1983, '84 and '85 tax returns in which the value of $\text{€}1\frac{1}{2}250,000$ was submitted in respect of his residential property in Kinsealy, County Dublin. It is noted that the returns have not been fully completed.

To facilitate this office in its consideration of the value returned, please forward the following information." Then it sets out the various queries which seem to reflect what was on the form itself.

Then it continues: "It is noted that the residential property on Inishvickillane Island has not been included on the returns. Kindly clarify the position concerning the ownership of this property. Is it the position that a member of the family occupies the residence rent free and may be regarded as an owner under the provisions Of Section 95.2(b) of the 1983 Finance Act?

"I look forward to hearing from you.

"Yours faithfully, John Nolan, Executive Officer."

I think the file then continues to show that Mr. Nolan

issued reminders to Haughey Boland & Company on the 19th May and the 3rd June 1986 3rd July, I beg your pardon, 1986?

A. That's correct.

Q. And they are standard form reminders, isn't that correct?

A. Yes.

Q. I think by letter the agents responded on the 21st July 1986 seeking a further three weeks to furnish replies to all outstanding queries as the individual dealing with the matter was on annual holiday. Is that correct?

A. Correct.

Q. That no reply was received within the promised three weeks, the result of which that Mr. Nolan issued a further reminder to the agents on the 26th August 186, is that correct?

A. That's right, yes.

Q. And in the absence of any further contact from the agents, the file shows that on the 20th October 1986, the case was referred by the valuation section to the Commissioners of valuation, Ely place, requesting him to consider the adequacy of the self-assessed value submitted for the 1983 to '85 period.

A. Yes.

Q. Copies of the Residential Property Tax returns for the valuation dates, 5th April 1983 to 1985 were forwarded

to the Commissioner for valuation with the request, is that right?

A. That's correct.

Q. That would be standard when you were referring the matter to the Commissioner for valuation?

A. That's right, yes.

Q. I think you have informed the Tribunal that the Residential Property Tax (Regulation) Finance Act 1983, part 6, Section 983 and 4 provide that: "If the Revenue Commissioners are not satisfied with the market value of a property as submitted, they may estimate the market value and that estimate may be ascertained by authorising a person suitably qualified for that purpose to inspect the property and to report to them on the value."

A. Yes.

Q. I think that's the legislation. The Valuation Office is the State Valuation Agency and as far as you were aware, was always or has always been used by the Revenue for tax related valuation of property. Is that correct?

A. Correct, yes.

Q. As professional valuers, their valuations are accepted by the Revenue?

A. Yes.

Q. The Valuation Office is not dependent on Revenue to provide supporting information or particulars of a

property to be valued as they invariably carry out an inspection of the property themselves, is that correct?

A. That's correct, yes.

Q. I think you have informed the Tribunal that following the request from capital tax division, an inspection of Abbeville was carried out by the Valuation Office by a Mr. J McAndrew on the 6th November 1986. Is that correct?

A. Yes.

Q. The reply from the Commissioners of valuation was received on the 10th November 1986 and indicated that the self-assessed values submitted in respect of Abbeville were adequate. Is that correct?

A. That's correct, yes.

Q. I think you have informed the Tribunal that a further reminder letter was issued by Mr. Ciaran Pringle, Executive Officer, residential property section, on the 17th November 1986 to Haughey Boland & Company in relation to the outstanding queries, isn't that correct?

A. Yes.

Q. I think it's on the monitor. It's a fairly standard seeking an immediate reply?

A. Yes.

Q. On the 25th February 1988, Mr. John Callinan, higher Executive Officer, residential property section, wrote to Haughey Boland & Company seeking clarification as to

the ownership of the residential property on Inishvickillane. I think the letter is on the monitor and reads: "I am directed by the Revenue Commissioners to refer to previous correspondence in connection with various Residential Property Tax forms lodged on behalf of your client.

"In particular you were asked to clarify the position regarding the residential property on Inishvickillane, which has not been included on any of the returns. If your client is owner of this property, it must be included on the returns. Ownership is defined, for the purpose of Residential Property Tax by Section 95(2)(b) of the Finance Act 1983.

"Your earliest attention to this matter would be appreciated." And it's signed by Mr. Callinan.

I think your review of the file reveals that there is no indication on the file that there was a response received to this particular request either, is that correct?

A. Correct, yes.

Q. Now, I think on the 4th April 1990, the case was again referred to the Commissioner of Valuations to consider the adequacy of the values submitted for the 1987 to 1989 period, is that correct?

A. That's right, yes.

Q. I think copies of the Residential Property Tax returns

for the valuation dates in question together with a copy of the previous reports on the valuation at Abbeville were also forwarded to the valuation Commissioners, is that right?

A. Yes.

Q. I think you understand from the Valuation Office that it was not considered necessary to inspect Abbeville again, given that the property had been recently inspected for the earlier valuation, is that right?

A. Yes.

Q. The response from the Commissioners of Valuation was received on 18th May 1990 and indicated this self-assessed value submitted should be accepted. And I think from the initials on the form RP32, the valuer again appears to have been Mr. J McAndrew, is that correct?

A. Yes.

Q. Just in relation to that, could you it's from the initials, JMA, is it that you draw

A. The conclusion

Q. that Mr. McAndrew was the person who carried out that valuation?

A. Yes.

Q. Now, I think just in relation to that, you say that from your overall, or overview of the file, that you understand from the Valuation Office that it was not considered necessary to inspect Abbeville again. Is

that information you ascertained recently for the purpose of preparing this statement?

A. Yes, indeed, yeah.

Q. You would not have been aware from the file whether or not well, the file would have indicated that anyone had gone to Abbeville?

A. The file wouldn't have indicated whether an inspection would have taken place the second time or not, but I made an inquiry myself just to satisfy the Tribunal.

Q. To complete the picture?

A. Yes.

Q. Now, I think the file shows that on the 8th June 1990, Mr. John Medley, higher Executive Officer of the Residential Property Tax section, submitted a memorandum to you relating to this case, is that correct?

A. Yes.

Q. In the memorandum he referred to the fact that the residents on Inishvickillane had been omitted from the RPT turns for all years and indicated that letters had been written to the agents in that regard but that no replies had been received and he sought your advice as to what action he should take?

A. Yes.

Q. I don't think, unless anything particularly turns on it, there is a necessity to read out the full memorandum. It's there for public view.

Now, I think the file includes two documents immediately following Mr. Medley's memorandum. The first, an extract from a gift tax file, and you give the reference number, relating to gifts by Mr. Haughey and his wife to their children and second, a companies registration office printout relating to Larchfield Securities Limited, is that correct?

A. Yes.

Q. Your recollection is that following receipt of the memorandum from Mr. Medley, you gave some consideration as to how best to investigate the ownership of the Inishvickillane property given the agent's failure to respond to the correspondence which had been sent?

A. Yes, that's correct.

Q. I think you have informed the Tribunal that you must have made inquiries as to the existence of a Capital Acquisition Tax file in relation to Mr. Haughey as you recall obtaining its extract from the gift tax file and putting it on the RPT file?

A. That's correct, yes.

Q. The extract includes a letter from Haughey Boland & Company to the Inspector of Taxes, Dublin No. 5 District, dated 4th February 1985 which indicated that the island of Inishvickillane and the residents thereon was owned by Larchfield Securities Limited. Is that correct?

A. That's correct, yes.

Q. The gift tax file extract also indicated that the island and residence was funded by the company by way of an interest free loan to Mr. Haughey, is that correct?

A. Yes.

Q. And while you don't recall doing so, you must have discussed the matter with Larchfield Securities with Mr. Medley as at a later date and inquired of him if it was possible to obtain a CRO printout on the company as he recalls getting the printout on Larchfield Securities Limited?

A. Yes.

Q. So that's how the two documents came to be on the RPT file?

A. Yes.

Q. The printout indicated that the island of Inishvickillane was owned by Larchfield Securities Limited which appeared to confirm the contents of the agent's letter, extracted from the gift tax file?

A. Yes.

Q. The printout also showed that the company owned property in Wexford?

A. Yes.

Q. Now, I think you have informed the Tribunal that you were aware at that time that your principal officer, Mr. Liam Walsh, held Mr. Haughey's Wealth Tax file, is

that correct?

A. Correct, yes.

Q. The Residential Property Tax papers show that you forwarded a memo to Mr. Walsh with the RPT file on the 11th October 1990 and asked if the ownership of the island residence was established on the Wealth Tax file, is that correct?

A. Yes.

Q. I think you informed the Tribunal that your rationale for this was to try and get further confirmation that the residence was not owned by Mr. Haughey, is that correct?

A. Yes.

Q. You have no recollection of any subsequent discussion with Mr. Walsh on the matter, however, the issue of Inishvickillane was not pursued with Mr. Haughey's agents thereafter, is that correct?

A. Yes.

Q. You understand from certain payments on the gift tax file relating to Mr. Haughey, that it appears that in early 1992, probably around the end of January, the RPT file was requested by the Capital Acquisition Tax section of Capital Tax Division and that it subsequently went to the Chief Inspector's office, is that correct?

A. Yes.

Q. The gift tax file records the RPT file along with the

gift tax file itself being returned to the Capital

Acquisition Tax section on the 10th March 1992, is that right?

A. Yes.

Q. Now, I think you informed the Tribunal that following the non-delivery of a return for valuation on the 5th April 1990 by the due date the 1st October 1990, Mr. John Medley, higher Executive Officer, RPT section, issued a reminder letter on the 28th November 1990 to Haughey Boland & Company, there's, I think, penalty proceedings if the return was not delivered within seven days, is that correct?

A. Yes.

Q. The return, together with the payment of tax and accrued interest was received in the Collector-General's office on the 4th December 1990, is that correct?

A. Yes.

Q. The return was subsequently passed onto the RPT section and received on the 12th December

A. Yes.

Q. of that year? And I think the file shows that all subsequent RPT returns were received on time and there was no further correspondence with the agents from November 1990 until October 1997 following the publication of the report of the McCracken Tribunal.

A. Correct.

Q. The matter of valuation of Abbeville was not referred further to the Commissioners of Valuation up to September of 1997. Is that right?

A. Yes.

Q. Now, if we could just put up the table which the Tribunal has made of the values which were returned for the various years. Now, they show, first of all, the values which were returned by the agents, isn't that correct, on behalf of the taxpayer from 1983 to 1996 inclusive?

A. Well, they would have been signed by the taxpayer, so whatever whether it was the agents put in the values

Q. I am not suggesting that. I am saying they were returns submitted by the agent on behalf of the taxpayer?

A. Yes.

Q. For the years 1983 to 1996 inclusive, isn't that correct?

A. Yes.

Q. Now, the first three years are returned at $i\frac{1}{2}$ 250,000 and, of course, they were subjected to independent valuation by the commissioner for valuation, isn't that correct?

A. Correct.

Q. And his office, through Mr. McAndrew, agreed those as being reasonable values for the purpose of the tax.

A. Yes.

Q. And then again 1986 and 1987 and '88, these were the values which were returned, isn't that correct?

A. Yes.

Q. And the forms signed by the taxpayer of course.

A. Correct.

Q. And I think they were also accepted by the Valuation Office as being reasonable in the circumstances?

A. Yeah.

Q. Now, from '89 to '96 none of the returns or the values appearing on the returns were submitted to the Valuation Office, isn't that correct?

A. No. In fact, if the second time that the values were submitted to the Valuation Office were years up to 189.

Q. Up to 1989?

A. Yes, not '88. Up to 1989. So it was from there onwards.

Q. From there on they were not submitted, isn't that correct?

A. Yes.

Q. Do you know why that was the case?

A. Well, I can only give my opinion.

Q. Yes, of course.

A. The fact that the values had been submitted on two separate occasions to the Valuation Office, it was, I am not aware of on any occasion in which a case or

values were submitted to the Valuation Office on a third time, particularly in relation to the same property. It might happen if an individual had changed residences and that particular case might go, but from my experience, I have never known a case to go three times to the Valuation Office, particularly where they have accepted values on the first two occasions.

Q. But I think that the Residential Property Tax section would have been conscious of values increasing, wouldn't they?

A. Yes, yes.

Q. And apart altogether from the fact that this particular property had been subjected to independent valuation on two previous occasions, one would still have to look at the returns that were coming in to see if they bore a relationship to reality in some way, isn't that correct?

A. Yes, yes.

Q. And looking at the returns which were submitted, now, leaving aside altogether what happened post McCracken and the values which were arrived at

A. Yes.

Q. would you agree that they appear to be somewhat on the light side?

A. I would, I would.

Q. Particularly, I suppose, from the '93/ '94 period, thereon?

A. Yes, from memory, in the early nineties, property prices actually fell ever so slightly. I am talking about overall now. And this, of course, I am just giving my own opinion

Q. Yes, of course.

A. This particular property probably wouldn't have had, you know, willing buyers that other properties had, say a detached house in any part of Dublin or a semidetached, you know, at that time in the early nineties, I don't think there would have been as many willing buyers as there would be maybe today and I think that factor probably was taken into account.

Q. Now, I don't know if we can put both sets of values up on the screen at the same time. Following the McCracken Tribunal, anyway, there was a fresh look at the Residential Property Tax returns, isn't that correct?

A. Yes.

Q. And a different set of figures were agreed for the years 1988 to 1996 inclusive, isn't that correct?

A. That's correct, yes.

Q. Do you know how those figures were arrived at or how agreement was reached in relation to them?

A. Oh, I don't, that went to the Valuation Office as you are aware.

Q. It went to the Valuation Office?

A. Yes. I imagine now, I am subject to correction now, I

imagine that the valuer

Q. I think it was an agreement valuer to valuer

A. Yes, I imagine the property was inspected again.

Q. Yes. And the values well, let's take 1988. You

already had submitted that particular valuation at

½250,000. ½300,000 was agreed between the valuers

here. There may or may not have been much in that

particular valuation. What was the rate at the time?

1.5 percent was it?

A. You are talking about a tax of 1.5 percent on the

excess of a particular

Q. I understand that. I am not sure what was involved

there, but, it would have been approximately an extra

½750 in that year there or thereabouts, would you

agree?

A. Yeah.

Q. Then 1989 again, a value which was submitted was

½262,500 and what was agreed here between the valuers

was ½350,000, probably about an extra ½1,500 or

thereabouts in tax?

A. Yes.

Q. Then 1990 the value which was submitted was ½262,500

and what was agreed post McCracken for 1990 was

½400,000 as being a reasonable value for the that's

about ½2,000 extra, would you agree?

A. Approximately.

Q. 1991, again what was submitted was ½262,500 and what

was agreed between the valuers on this occasion was, say, £400,000. Again probably another £2,000 or thereabouts. 1992, £262,500 was submitted as the value and what was agreed on this occasion was £500,000, it's about an extra 3-odd-thousand pounds or thereabouts, would you agree?

A. Yes.

Q. 1993, £260,500 was submitted again, the value agreed on this occasion was £500,000. Another £3,000?

A. £3,600.

Q. Thereabouts. 1994, £262,500 was submitted and what was agreed post McCracken was £600,000. That was about 5,000-odd extra in tax, would that be right?

1995, £272,500 was submitted, and £700,000 was agreed on this occasion. About another £6,000-odd in tax.

And in 1996, £295,000, and what was agreed on this occasion was 1.3 million. About £15-odd-thousand, would you agree with that?

A. Yeah.

Q. Now, again you have informed the Tribunal that it was unusual to submit a property for valuation on a third occasion or thereafter. But in light of the returns which were being made, particularly in the latter part of the mid-1990s, are you surprised that it wasn't referred on that occasion?

A. Well, in hindsight, I'd say yes, I am, yes.

Q. And we know that the your overview of the file in

this case commences with an official seeking the information which should have been on the printed form.

Now, I can understand that whilst that could happen that somebody would give the information in the earlier years, it might be sufficient for subsequent years and might not necessarily always have to be included on the form for the purpose of the section being able to make an assessment of the value of the property?

A. No, it was quite common, quite frequent that after the first year, after the first return was completed, individuals might put down as before, no change, see that, that was acceptable.

Q. And perfectly understandable as well. But I think in this particular case, the basic information was never provided?

A. No.

Q. And that was unusual, would you agree?

A. Yes, it was. But I would just add this comment, if I may, that the fact that going back to what? the mid-eighties, when the copies of the returns were first referred to the valuation section sorry, to the Valuation Office, the questions relating to the purchase price of the property, the consideration paid, any additions to it, number of rooms, etc., they were there from day one to assist Revenue; hopefully, assist Revenue to form an opinion or to come to some sort of opinion as to the adequacy of the value

Q. Without having to go to the Valuation Office?

A. The fact that the information wasn't supplied, didn't hinder the valuation sorry, the Valuation Office, to form their opinion because as I said earlier, they inspected the property which was the most important thing.

Q. And of course, Revenue was then able to make a judgement based on the Valuation Office's valuation of the property to monitor and keep a view on the varying prices that may be obtained for the property in the market, isn't that correct?

A. Yes, yes.

Q. Now, there was the statutory obligation, of course, wasn't there, because it was a self-assessment?

A. It was a self-assessment tax, yeah.

Q. So at least on some occasion, you would expect the taxpayer to comply with that statutory obligation?

A. Absolutely, yes, yeah.

Q. As you say, one needn't put it in every year, once the information had been made available to the Revenue in some form?

A. Yeah. But once, as I said, once the Valuation Office had given the value, that would be we were happy with that.

Q. I understand. Did your overview of the file enable you to form any opinion as to whether there was cooperation from the taxpayer in relation to this

particular tax other than the filing of the returns?

A. Well, as you say yourself, the returns, all except for one valuation date, were delivered on time and the self-assessed tax was paid on time. There was one particular valuation date when, as you mentioned earlier, we did have to send out a reminder for delivery of the return and it came in within a week or ten days.

Q. Again, in fairness to the taxpayer here, that might have been not an unusual thing. You might have had to do that in many cases?

A. Yes. The interest as calculated was paid as well because it was delivered late.

Q. Now, in relation to the queries which are raised, and I understand your evidence that the Valuation Office's inspection of the property was of assistance to the Revenue in dealing with the matter

A. Yes, yes, they reported their opinion, yes.

Q. But nonetheless, queries raised by the Revenue were not dealt with, isn't that correct?

A. We didn't receive any

Q. In the first instance in relation to Abbeville and there were there was no response on the queries raised by Inishvickillane?

A. No.

Q. You had to go and work that one out yourself?

A. In relation to Inishvickillane?

Q. Yes. By gathering together other files.

A. Yes, when Mr. Medley submitted a memorandum to me in relation to what had happened, in relation to the case up to that stage, I decided just to do, for want of a better term, a little bit of investigation, and I obtained information from the gift tax file as I have said in the statement, which I felt was very relevant to Inishvickillane for the purposes of RPT. I then spoke to Mr. Medley and asked him to get the printout from the companies registration office which, I won't say copperfastened, but it certainly helped the opinion I was forming at that time. I was coming to the conclusion then that Inishvickillane was not a property to which Mr. Haughey would be liable to Residential Property Tax. But in order to be certain, I was aware that there was a Wealth Tax file in the division and I was aware that, of course Abbeville wouldn't have been on that property, but I also wanted to confirm or not, whether the property on Inishvickillane was included on the Wealth Tax returns that were delivered. Certainly if they were, it would have been contrary to what I was thinking and that was the reason that I wanted that information.

Q. I suppose two matters arise there. First of all, you didn't sit still once the query was raised by another official with you. You set about an investigation yourself?

A. Well, I set about an investigation. I suppose it's not right for me to comment on whether I sat still or not to be fair.

Q. Secondly, it was another indication in a different section of the Revenue of somebody not responding to correspondence or dealing with queries which were, on the face of them, fairly routine and reasonable queries?

A. Yes, I'd agree, yes.

Q. Thank you very much indeed.

MR. CONNOLLY: I have no questions, Sir.

CHAIRMAN: Obviously, Mr. Carroll, if somebody, as happened in the Inishvickillane scenario, if somebody forms a company for ownership, other tax considerations arise. It's not just a question that everybody who didn't set up a limited company in their own name who owned a residential house in the eighties and nineties was, in fact, foolish. There were obviously other considerations

A. Oh, there were.

CHAIRMAN: that came into the equation.

A. That's the thought I had, yeah.

CHAIRMAN: Thanks for your assistance.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Those are the available witnesses

today, Sir. Tomorrow morning at 10.30 I think.

CHAIRMAN: 10.30? 10.30 tomorrow for the last day.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

FRIDAY, 22ND DECEMBER 2000 AT 10.30AM.