

THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 9TH FEBRUARY

2001, AT 11AM:

MR. HEALY: As in the last sittings, Sir, the Tribunal will once again be dealing with evidence connected with the Revenue Commissioners. At these sittings, evidence will be given, as at the last sittings, by a number of current and I think maybe some former officials of the Revenue. The relevant Term of Reference or the main Term of Reference to which reference will be made and under which the Tribunal is required to inquire is as follows:

It's Term of Reference (j):

"Whether the Revenue Commissioners availed fully, properly and in a timely manner in exercising the powers available to them in collecting or seeking to collect the taxation due by Mr. Michael Lowry and Mr. Charles Haughey of the funds paid to Mr. Michael Lowry and/or Garuda Limited trading as Streamline Enterprises identified in Chapter 5 of the Dunnes Payments Tribunal Report, and any other relevant payments or gifts identified at paragraph (e) [of this Tribunal's Terms of Reference] and the gifts received by Mr. Charles Haughey identified in Chapter 7 of the Dunnes Payments Tribunal Report and any other relevant payments or gifts identified at paragraph (a) [of this Tribunal's Terms of Reference]".

As I mentioned on the 18th December, that is at the last sittings, the evidence to be given by Revenue Officials will throw some light on other aspects of the Terms of Reference and in particular, Term of Reference (a), which deals with payments to Mr. Charles Haughey. (I should say that there will be a separate opening statement at a later point dealing with Mr. Michael Lowry and his relationship with the Revenue Commissioners in connection in the first instance, with the payments found to have been made and mentioned in the report of the McCracken Tribunal.) You will recall that it was pointed out on the 18th December that the manner in which a taxpayer treats his assets or resources in the context of his obligations to the Revenue Commissioners may provide some useful evidence upon which to base the characterisation of the circumstances in which those resources were accumulated; and it is those circumstances which, in addition to the fact of payments, which the Tribunal must scrutinize under Term of Reference (a).

To date, the Tribunal has focused on Mr. Haughey's relationship with the Revenue Commissioners in a broad way but under a number of different tax headings. This was done with a view to examining the different points of contact between Mr. Haughey and the Revenue Commissioners. That exercise has nearly been

completed, though in the light of evidence which will be given over the next few days, it may be necessary, as I have already mentioned in December, to revisit some of these areas and indeed at these sittings, it may be necessary to revisit some of the evidence given in December.

In the evidence which will be given at these sittings, the Tribunal will be examining aspects of the Revenue Commissioners treatment of the disposition by Mr. and Mrs. Haughey of the lands at Abbeville Kinsealy to their children by way of gift in 1989. The issue to which the Tribunal has directed its attention is the valuation of those lands for the purposes of assessing the liabilities of the donees of that gift, that is to say the liability of Mr. Haughey's children (who are connected persons within the meaning of the Tribunal's Terms of Reference) to Capital Acquisitions Tax.

"Capital Acquisitions Tax," therefore, is the heading or point of contact to which the Tribunal will be devoting its attention at these sittings initially in any case. This assessment to Capital Acquisitions Tax involved the valuation of the lands in question in 1989. This valuation issue is one to which previous dealings between Mr. Haughey and the Revenue Commissioners in the first part of the 1980s are relevant. Evidence has been given at this Tribunal in

relation to an assessment made by the Revenue Commissioners to Capital Gains Tax arising on the forfeiture by Mr. and Mrs. Haughey of a purported deposit by the Gallagher Group of $\text{€}300,000$ in respect of a purported purchase of part of the lands of Abbeville.

From information made available by the Revenue Commissioners, it appears that on the 15th March of 1989, 227 acres of the lands of Abbeville Kinsealy were transferred by Mr. and Mrs. Haughey to their four children. Ms. Iris O'Donovan, Assistant Principal Officer in the Revenue Commissioners, who was working in the Capital Taxes Division between October 1986 and January of 1993, has informed the Tribunal that she became aware of the transfer of the lands from Mr. and Mrs. Haughey to their children when the relevant papers were referred to her on the 14th November of 1989 by the stamp duty branch for the purpose of pursuing the matter of possible gift tax claims. When the documents relating to the transfer of land were submitted to the stamp duty branch for stamping, that branch had referred the value of the land submitted by the Haughey family's tax agents to the Commissioner of Valuation for an opinion of value, both for stamp duty and gift tax purposes. The valuation offered by the agents in 1989, at least for stamp duty purposes, was $\text{€}750,000$ for 227 acres of the lands. Now, in fact, there were

four donees and therefore, strictly speaking, four separate assessments to Capital Acquisitions Tax and this was the aggregate of the valuations submitted by the various donees, i.e. the Haughey children, on their self-assessment gift tax returns. What I should say at this point is that, in fact, the $\text{€}750,000$ valuation was offered in respect of a valuation for stamp duty purposes. That valuation was referred to the Valuation Office and was increased to 1.2 million. The valuation submitted by the Haughey children for Capital Acquisitions Tax was the $\text{€}1.2$ million valuation. Now, that valuation was, of course, submitted to the Revenue Commissioners by the tax agents, Messrs. Haughey Boland, and they were the same tax agents who were dealing with Mr. Haughey's tax affairs and indeed with some of the land transactions connected with the purported forfeiture of the Gallagher deposit and the later Revenue assessment to Capital Gains Tax in respect of that deposit in the early to middle 1980s.

The Revenue Commissioners, in any case, proceeded to deal with the gifts on the basis of the valuation placed on the land by the Valuation Office, that is $\text{€}1.2$ million. It will be obvious, in the light of evidence given to the Tribunal by the Revenue Commissioners and by others at its sittings in December

and indeed at much, much earlier sittings, that a question which arises at this point is as to how it could have been determined in 1989 that these lands ought to have been valued in the first place by the Haughey family at $\text{€}750,000$ and in the second place, by the Haughey family and by the Valuation Office at $\text{€}1.2$ million, when, as we know, Mr. and Mrs. Haughey and their advisers were involved in a purported disposal of part of the lands in January of 1980 at a valuation of $\text{€}35,000$ per acre. If that 1980s valuation had been applied to the lands in 1989, a value in or about $\text{€}8$ million would have been the result.

Ms. O'Donovan has alluded to this matter in the information she has provided to the Tribunal and has stated that it is her understanding that the 1980 contract between the Haughey's and the Gallagher Group involved a possible Capital Gains Tax liability and that this was handled by the office of the Chief Inspector of Taxes. Ms. O'Donovan has informed the Tribunal that the matter was not referred to the Capital Taxes Division and that that division, therefore, was unaware of the 1980 contract at the time of the valuation in 1989 for the purposes of stamp duty and gift tax.

Mr. Christopher Clayton, who has already given evidence, and who was the official in the office of the

Chief Inspector of Taxes dealing with the Capital Gains Tax matter in the middle 1980s, has informed the Tribunal that he had an involvement in this matter. By that I mean that he had an involvement in the gift tax issue. It would appear that in 1985, and presumably arising out of his dealings with the Capital Gains Tax issue in relation to the Gallagher deposit and also in relation to Rath Stud, he became aware of the fact that Ms. Eimear Haughey had had the free use of lands at Abbeville for her business and that she had also obtained interest free loans from her father. He communicated with the Capital Taxes Branch indicating that these matters could give rise to liability for Capital Acquisitions Tax and indeed, ultimately and presumably on foot of Mr. Clayton's communication, Ms. Eimear Haughey was assessed to Capital Acquisitions Tax in respect of what was, in effect, a gift by her parents to her of the commercial use of the Abbeville lands and a Capital Acquisitions Tax liability on the interest free and quite substantial loans made to her by her father. These liabilities to Capital Acquisitions Tax were also relevant in determining the extent to which Ms. Eimear Haughey would become liable to Capital Acquisitions Tax on the disposal by her parents to her, together with her other siblings, of part of the lands at Abbeville in 1989. This is because the thresholds below which no liability could

arise, would have to be calculated by taking account of the aggregate of the value to Ms. Eimear Haughey of the portion of the lands transferred to her in 1989 and also the value of the earlier benefits she had obtained by way of a gift from her father and mother in connection with the commercial use of the land and the interest free loans I have just mentioned.

Obviously, had Mr. Christopher Clayton's communication to the Capital Taxes Branch in 1985 included information concerning the Capital Gains Tax liability on the so-called Gallagher forfeited deposit, this would have, or at least it would appear that this would have had a radical impact on the valuation of the lands for stamp duty and Capital Gains Tax purposes in 1989. It may well be asked why this information was not apparently available in the Capital Taxes Division, but Mr. Clayton has informed the Tribunal that as the tax liability on the Gallagher deposit arose under the Capital Gains Tax Code, there was, in his view, no need to advise Capital Taxes Branch of the possible liability to Capital Gains Tax, meaning that there was no need to alert the section dealing with Capital Acquisitions Tax to the fact that there had been a contract for the sale of part of these lands with a value in 1980 of $\frac{1}{2}$ 35,000 an acre.

Apart from the potential value of this information in

evaluating the circumstances in which payments were made to Mr. Haughey, the further examination of the manner in which these Capital Gains Tax and Capital Acquisitions Tax matters were dealt with is relevant, not only in the context of Term of Reference (j), but also in a more general way in the context of Term of Reference (m), which requires the Tribunal to make whatever broad recommendations it considers necessary or expedient for maintaining the independence of the Revenue Commissioners in the performance of their functions, while at the same time, ensuring the greatest degree of openness and accountability in that regard that is consistent with the right to privacy of compliant taxpayers.

The question which arises is whether any recommendations are appropriate in the light of the information to date that it would appear that information which was highly relevant to the determination of a liability to Capital Acquisitions Tax on the disposal of Abbeville in 1989 was in the possession of the Revenue Commissioners but not available to the actual officials of the Revenue Commissioners charged with the specific responsibility of making that assessment to tax.

At some point in these sittings, it may also be necessary to further examine the facts and

circumstances surrounding this assessment to Capital Acquisitions Tax in 1989 in the context of the Tribunal's obligation to make whatever broad recommendations it considers necessary or expedient under Term of Reference (o) for the effective regulation of the conduct of their members by such professional accountancy and other bodies as are relevant to these Terms of Reference for the purpose of achieving the highest degree of public confidence.

In addition, in these sittings, the Tribunal will also deal, initially, by way of an overview only, with the collection by the Revenue Commissioners of the taxation due on the payments found by the McCracken Tribunal to have been made to Mr. Haughey and, at a later point, found to have been made to Mr. Lowry. A significant amount of documentation, in Mr. Haughey's case, firstly, has been made available to the Tribunal by the Revenue Commissioners recording the dealings between the Revenue Commissioners and Mr. Haughey in connection with the collection of this tax. The Tribunal has decided that it should take some further time to examine this information in the context mainly of the light which the Tribunal believes it may throw on the sources of information concerning payments to Mr. Haughey and other aspects of Mr. Haughey's financial affairs and on the circumstances in which payments were made to Mr. Haughey. This is an examination which is

pertinent to Term of Reference (a) and, of course, to the findings which the Tribunal is charged with making under that Term of Reference.

Now, as you will be aware, Sir, the Tribunal invites any individual or entity to whom notice is given of the Tribunal's business to make any suggestions or comments which any such individual or entity would wish to make or to have made by the Tribunal or incorporated by the Tribunal in its opening statement. Mr. Haughey's solicitors have written to the Tribunal with reference to the book of material which was sent to them in connection with the evidence to be led at these sittings. Mr. Haughey's solicitors have written as follows:

"Further to the Book of Evidence No. 070201-26 which you forwarded on 7 February last, indicating your intention to lead such evidence in public today" that is this day "our view and our client's view is that the settlement of our client's tax affairs which took place in 2000 and events leading up to that settlement are outside the Terms of Reference of the Tribunal. As the Terms of Reference only refer to the period up to 1996, any inquiry by you into any matter after that date is outside the Terms of Reference both in terms of our client and the Revenue Commissioners. The Tribunal has not been asked to

inquire into the performance of the Revenue Commissioner since 1996 and we object to the Tribunal leading any evidence into matters arising after that date."

Now, I hasten to add that that submission or objection, if you will, is one which comes solely from Mr. Haughey's solicitors, Messrs. Ivor Fitzpatrick & Company and not from the Revenue Commissioners. The Tribunal has written to Mr. Haughey's solicitors indicating that it notes their position, but that it does not accept that the settlement between Mr. Haughey and the Revenue Commissioners of Mr. Haughey's Capital Acquisitions Tax liability on the gifts received by him as identified in Chapter 7 of the McCracken Report falls outside its Terms of Reference and the Tribunal takes the view that on the contrary, this matter falls directly within the ambit of paragraph (j) of its Terms of Reference, and indeed as I have already mentioned, may throw light on some of the circumstances which ought to be scrutinised in the context of the Tribunal's obligation to report under Term of Reference (a) of the Terms of Reference.

CHAIRMAN: Thanks, Mr. Healy.

MR. COUGHLAN: Ms. Iris O'Donovan.

IRISH O'DONOVAN, HAVING BEEN SWORN, WAS EXAMINED AS

FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: I think you furnished a statement or a memorandum of proposed evidence for the assistance of the Tribunal, is that correct?

A. I did.

Q. And you have that in front of you now?

A. I do.

Q. And there is some backing documentation also with that, isn't that correct?

A. There is, that's right.

Q. Now, what I intend doing is to take you through this and perhaps raise some questions as we go along or afterwards to clarify matters in the statement, is that all right?

A. That's fine.

Q. Now, I think the statement is in relation to Capital Acquisitions Tax on the transfer of the lands at Abbeville by Mr. Charles and Maureen Haughey to their children, isn't that correct?

A. That's correct.

Q. I think you have informed the Tribunal that you are an assistant principal officer currently working in the Direct Taxes Policy Legislation and Statistics Division of the Revenue Commissioners, is that correct?

A. That's correct.

Q. From October 1986 to January '93, you were an assistant principal officer in Capital Taxes Division, is that

correct?

A. That's correct.

Q. And I think at the request of the Tribunal, you are making this statement in relation to the handling of the Capital Acquisitions Tax affairs of the children of Mr. Charles Haughey and Mrs. Maureen Haughey as regards the transfer of lands at Abbeville to them from their parents and as regards certain earlier gifts to them by way of interest-free loans and in the case of Eimear Haughey, free use of property. Is that correct?

A. That's correct.

Q. And that in making this statement, you have examined the relevant papers and documents on the appropriate Capital Acquisitions Tax file and you give the reference for that, is that correct?

A. That's correct.

Q. Now, I think you have informed the Tribunal that the file shows that on the 29th July 1985, Mr. Christopher Clayton of the office of the Chief Inspector of Taxes wrote to Capital Taxes Division for the attention of Mr. John Quinlan enclosing extracts from the Income Tax files of Mr. Charles Haughey. Is that correct?

A. That is correct.

Q. Ms. Eimear Haughey and Larchfield Securities Limited, he also enclosed information about that?

A. That's correct.

Q. This was for the purpose of noting possible gift tax

claims in relation to transactions involving

Ms. Haughey, that is interest-free loans and use of lands which would constitute annual gifts, isn't that correct?

A. That's correct.

Q. Now, I think, if we just put up what was received in the Capital Tax Branch for a moment, I think your examination of the file discloses that what was what was received into the Capital Taxes Branch, is that correct?

A. That's correct, yes.

Q. And it's addressed to Mr. J Quinlan, Capital Taxes Branch, re Ms. Eimear Haughey, and there is a number given and it reads:

"1: The Income Tax affairs of the above-named are dealt in Dublin farming, No. 2 district.

"2. The following extracts are attached:

1. From her own file, copy of her stud farm accounts from the 14th December 1979 to the 31st December 1982. The only accounts submitted and a subsequent letter of 14/9/1984 from agents.
2. From her father's file, copy of his farming balance sheet at 14/12/79 with covering notes.
3. Also from her father's file, copy of agent's letter of the 20/7/1982 re father's loan to Larchfield Securities Limited and there is a reference to

paragraph 8A and 8B.

4. From file of Larchfield Securities Limited, copy of agent's letters of the 4/12/1983 and the 6/7/1983 re assets, liabilities and shareholdings of Larchfield Securities Limited.

"No further information was supplied by the agents and no accounts for the company have ever been received by a Dublin No. 5 district.

"You may wish to note Ms. Haughey's case, re gift tax aspects, interest-free loans, free use of lands if you have not already done so.

"Please acknowledge."

And it comes from Mr. C A Clayton, Senior Inspector, and that's from the office of the Superintending Inspector of Taxes, first floor, Setanta Centre, Nassau Street, Dublin 2.

A. That's correct.

Q. I think the Superintending Inspector of Taxes subsequently became the Chief Inspector of Taxes in terms of title, isn't that correct?

A. That's correct.

Q. May I just pause at this stage, Ms. O'Donovan, and ask you what is the Capital Taxes Branch of the Revenue?

A. When I was there it comprised of it was stamp duty, capital acquisitions tax and Residential Property Tax.

Q. That's all?

A. That's all, yes.

Q. And could I ask you if you can assist the Tribunal, is Capital Gains Tax a capital tax?

A. It is.

Q. And how was that dealt with?

A. Well

Q. In your time in the Capital Taxes Branch anyway?

A. It was dealt with by the Chief Inspector's office.

Q. Always dealt with by the Chief Inspector's office?

A. Yes, yeah.

Q. And did anyone from the Chief Inspector's office have any particular role in relation to the Capital Taxes Branch, any supervisory role?

A. No, no, they didn't.

Q. They did not. Now, I think you continue with your statement that on foot of this information which was furnished by Mr. Clayton, Mr. Seamus Scott wrote to the agents acting in the case, Messrs. Haughey Boland & Company, on the 28th August, 1985 seeking further details and the delivery of a gift tax return for Ms. Eimear Haughey, is that correct?

A. That's correct.

Q. And I just put that up now, if I may, and I think this is your copy of the letter sent to the agents, isn't that correct?

A. That's correct.

Q. And it's dated 28th August 1985, the Disponer is Charles J Haughey. The letter reads:

"It is understood Ms. Eimear Haughey took over the running of Abbeville Stud Farm on December 14, 1979 and that she was given interest-free loans from her father amounting to i_c½190,600.

It is also understood that Ms. Eimear Haughey had the free use of the aforesaid Stud Farm since December 14, 1979 and that she had a 25% interest in Larchfield Securities Limited which received an interest-free loan from her father amounting to i_c½45,000.

Please state the exact date of each loan and the estimated annual letting value of the farm for each year since December 14, 1979. Please also forward a gift tax form (in duplicate) together with your computation of the total value of the gifts."

That was from Mr. Scott, the Assistant Principal Officer, is that correct?

A. That's correct.

Q. Now, I think two reminder letters issued in June and October 1986 but no reply was received, is that correct?

A. That is correct.

Q. And I think in November 1988, a further reminder perhaps, first of all, if I just briefly go

through the two reminders which were sent. The first one was on the 6th June 1986 and it reads:

"A Chara,

I am directed by the Revenue Commissioners to refer to the communication which was sent to you from this Office on the 28th August, 1985 and to request an early reply."

That's from a clerical officer in the section.

A. That's correct.

Q. And again on the 16th October 1986:

"A Chairde,

I am directed by the Revenue Commissioners to refer to the communication which was sent to you on August 28th, 1985 and to say that despite reminder of June 6th, 1986 it is regretted to note that no reply has yet been received.

You are requested to give this matter your immediate attention."

And that's issued from a clerical officer in the section, is that correct?

A. That is correct.

Q. Now, I think in November 1988 a further reminder was issued by Mr. Michael Walsh giving 21 days for reply and threatening to correspond directly with the taxpayer in the event of failure to comply, is that correct?

A. That's correct.

Q. If we just look at that. It's a letter dated 15th November 1988 and it reads:

"A Chairde,

I am directed by the Revenue Commissioners to refer to the query sheet which issued to you on the 28th August 1985 (copy attached), and which was followed by reminders to you on the 6th June 1986 and the 16th October 1986 and to state that the Commissioners are concerned that despite the lapse of time herein, their request for information and a gift tax return (form GT1) has not so far been complied with.

You are hereby given 21 days to reply to the query sheet. The position up to and including the present year should be covered by your reply.

As it is essential that this long outstanding matter be brought to an early conclusion, it is intended to refer it to the primary accountable person, the donee of the gifts, without further notice to you, should you fail to comply within the specified time."

That was issued by Mr. Walsh, an assistant principal, is that correct?

A. That is correct.

Q. Was that the usual practice if response was not being received by agents to indicate that the potential

taxpayer would be written to?

A. Yes, it would have been the position, yes.

Q. I think you then say that on the 6th December, the agents wrote requesting a further ten days to reply.

Isn't that correct?

A. That is correct.

Q. And we have that letter and it reads:

"Dear Sir,

We wish to refer to your letter of the 15th November enclosing a copy of a previous letter on the matter which appears to have been mislaid.

We would earnestly request you allow a further ten days to reply to the queries and we will submit gift tax returns and computations in respect of the period from the initial advance of the loan to date."

And it's from Haughey Boland, the agents, is that correct?

A. That is correct.

Q. Now, I think the agents submitted calculations on the 22nd December 1988 indicating that the cumulative value of the gifts to the 31st December 1988 was $\frac{1}{2}$ 102,000, which was below the then-statutory threshold requiring a return to be delivered, is that correct?

A. That's correct.

Q. And that you issued further queries in relation to the valuation of these gifts on the 31st January 1989 but

received no replies?

A. That is correct.

Q. Now, I think what was submitted by the agents by way of letter on the 22nd December 1988, was a letter addressed to your branch and it reads:

"Dear Sir,

We wish to refer to previous correspondence in the matter of interest-free loans and rent free use of lands at Abbeville by Ms. Eimear Haughey.

First, may we again express our regret at the delay in replying.

In view of the amendment effective from the 2nd June 1982, we conclude that no exposure to gift tax would arise in respect of that period from the commencement of the gifts to the date of the amendment.

From the 2nd June, there are three areas to be considered:-

1. 25% share of an interest-free loan for $\text{i}\frac{1}{2}$ 45,000 to Larchfield Securities Limited.
2. Interest-free loan personally from Mr. Haughey to his daughter.
3. Free use of lands at Abbeville, Kinsealy.

Larchfield Securities Limited.

The Larchfield Securities loan has had no movement on

it since the 2nd June 1982.

Personal loans.

The movement on the loan has been as follows:

Opening balance 14th December 1979,	€190,600.
Balance, 31st December 1982,	€190,600.
Balance, 31st December 1984,	€184,352.
Balance, 31st December 1985,	€177,684.
Balance, 31st December 1987,	€164,000(aprox)
Balance, 31st December 1988,	€140,000(aprox)

Free use of land.

The land has been totally well maintained by Ms. Haughey and in no way left to fall fallow or into disuse. This would differ greatly from an eleven month letting to an unconnected party. Ms. Haughey has maintained the land in all respects in terms of quality and aspect. There is also the fact that of the total of 186 acres, approximately 40 acres are woodlands and amenity land and are not available for farming.

In the period under review, Ms. Haughey has expended amounts on farm building repair, fencing and fencing repairs and fertilizers which would not be a normality in an unconnected letting context.

Returning therefore to the quantification of annual gift, our computation is as follows:

Loan.

Period 3/6/82 to 31/12/84

$i_{\frac{1}{2}}$ 184,352 x 2.5 years @ 6% $i_{\frac{1}{2}}$ 27,653

$i_{\frac{1}{2}}$ 11,250 x 2.5 years @ 6% 1,688

Period 31/12/1985

$i_{\frac{1}{2}}$ 177,684 @ 6% $i_{\frac{1}{2}}$ 10,661

$i_{\frac{1}{2}}$ 11,250 @ 6% 675

Period 31/12/1986

$i_{\frac{1}{2}}$ 164,000 @ 6% $i_{\frac{1}{2}}$ 9,840

$i_{\frac{1}{2}}$ 11,250 @ 6% 675

Period 31/12/1987

$i_{\frac{1}{2}}$ 164,000 @ 5% $i_{\frac{1}{2}}$ 8,200

$i_{\frac{1}{2}}$ 11,250 @ 5% 576

Period 31/12/1988 (Approximation)

$i_{\frac{1}{2}}$ 140,000 @ 4% $i_{\frac{1}{2}}$ 5,600

$i_{\frac{1}{2}}$ 11,250 @ 4% 450

Free use of land.

146 acres.

Period, 3/6/82 to the 31/12/88 equals 78 months @ $i_{\frac{1}{2}}$ 40

per acre, equals $i_{\frac{1}{2}}$ 37,960.

Total gift: $i_{\frac{1}{2}}$ 102,290.

We have used a diminished conacre letting valuation in

view of the fact that it was a connected letting and

the land was maintained in a much better order and

cared for as a member of the family rather than an

unconnected person.

We have used deposit interest rates as the rate of return on the interest-free loans for the period in question.

Therefore, in conclusion, at an accumulated gift since the 3rd June 1982 of $i\frac{1}{2}$ 102,290, the total gifts to date do not extend to 75% of the threshold for the necessity to make a gift tax return.

We await your agreement on the above matter.

Yours faithfully,
Haughey Boland."

I think those were the computations that you received, is that correct?

A. That's correct.

Q. Now, I think you, as you say, issued further queries in relation to the valuation of these gifts on the 31st January 1989 but you received no reply, is that correct?

A. That's correct.

Q. And I think we have a copy of your letter and it reads:

"To enable the extent of the gift to be determined in accordance with Section 31(3), Capital Acquisitions Tax Act 1976 please state:

"1. The best price obtainable on the open market for

the letting of lands during the relevant periods.

2. The consideration given by Ms. Haughey (sums expended to repair fencing and fertilizers)."

And that issued from you, is that correct?

A. That's correct.

Q. And you received no reply to that.

A. That is correct.

Q. Now, I think just one small point, if I may, on the calculations which were submitted by the agents in their letter of the 22nd December 1988. You raised a query about the open market letting value of the land as agricultural land.

A. That's right, yes.

Q. And you also wanted to know what monies had been spent on fertilizers and repairing of fences and matters of that nature to enable you to carry out whatever adjustment you considered appropriate in the circumstances. The figures submitted on the loan and the interest rates which were applied were stated by the agents as being deposit interest rates as the rate of return on the interest-free loans for the period in question.

"First of all, I take it that those were the appropriate deposit rates, were they, to the best of your knowledge?

A. Well, to the best of my knowledge, we would have

information in the office at that stage of interest

rates available for a particular period.

Q. What I want to ask you is, what were the appropriate rates applicable as borrowing rates at the time, do you know?

A. Well, at the stage that I was querying it, it was looking at the possible claim to gift tax, we were just investigating exposure to gift tax, so gift tax had not arisen as such. I was pursuing it to see was there going to be a claim leading itself to a claim for gift tax.

Q. What I really want to know, or can you assist the Tribunal, is what I'd like to know, that this was an interest-free loan?

A. That's right, yes.

Q. And stated to be so and that was the basis of the discussion and communication between the agents and the Revenue, isn't that correct?

A. That's right, yes.

Q. What would the usual approach of the Revenue have been in the case of an interest-free loan for the purpose of calculating and assessing a gift tax?

A. It would be the interest rates available that were applied at the period, at the valuation date in question.

Q. Well, I mean, interest rates, is it deposit interest rates or borrowing interest rates?

A. Borrowing.

Q. Borrowing interest rates.

A. That's from my recollection, but at this stage, the gift tax was way below the taxable threshold so we wouldn't have been pursuing that at that stage.

Q. Well, I take it that if you had moved on in relation to that matter, deposit interest rate would not have been an acceptable basis of calculation for the Revenue?

A. We would have been looking from my recollection, we would have looked into it, if it was taxable, we'd be looking into the interest rates.

Q. Was there any document which showed the ultimate calculation and the basis for it?

A. I don't understand your question.

Q. That has a basis submitted by the agents.

A. That's correct.

Q. For a calculation.

A. That's right.

Q. Is there any Revenue document whereby any different calculation was carried out?

A. No, no, there isn't.

Q. Now, that goes up to 1988, I think, and then matters move on into 1989, isn't that correct?

A. That's correct.

Q. Now, I think you say that on the 15th March 1989, 227 acres of land at Abbeville was transferred by Mr. Charles Haughey and Mrs. Maureen Haughey to their

four children, isn't that correct?

A. That is correct.

Q. Part of these lands had been the lands of which Ms. Eimear Haughey had been given the free use and which were the subject of the queries raised by you, isn't that correct?

A. That is correct.

Q. You became aware of the transfer of the lands when the relevant papers were referred to you on the 14th November 1989 by the stamp duty branch for the purpose of pursuing the matter of possible gift tax claims, is that correct?

A. That's correct.

Q. When the documents relating to the transfer of the lands were submitted to the stamp duty branch for stamping, they had referred the value of the lands submitted by the agents to the Commissioner of Valuations for an opinion of value for both stamp duty and gift tax purposes, isn't that correct?

A. That is correct.

Q. The valuation of $\text{€}750,000$ offered by the agents was increased by the Commissioners of Valuation to $\text{€}1.2$ million, isn't that correct?

A. That is correct.

Q. And you say that on the 16th November 1989, you issued claims for gift tax to each of the four children of Mr. and Mrs. Haughey, is that correct?

A. That is correct.

Q. On the same day you reactivated your earlier queries to the agents in relation to the free use of the Abbeville lands by Eimear Haughey as the value of those prior gifts would have a significant bearing on the amount of gift tax which might arise as a result of the gifting of part of the land to her. Is that correct?

A. That's correct.

Q. In other words, they could have brought her over the threshold?

A. That's correct.

Q. I think self-assessed gift tax returns were delivered for each of the four children in respect of the gifts on the 2nd January 1990, is that correct?

A. That is correct.

Q. And in line with the increased values placed on the lands by the Valuation Office, the self-assessment forms accepted the value of the Valuation Office, isn't that correct?

A. That is correct.

Q. They showed a value of $\frac{1}{2}$ 300,000 in respect of the of a quarter share for each of the four beneficiaries, is that correct?

A. That is correct.

Q. I'll deal with the documents in a moment now, Ms. O'Donovan. I think you have informed the Tribunal that each of the four beneficiaries qualified for

agricultural relief and as a result, Sean, Conor and Ciaran Haughey had no liability to gift tax, isn't that correct?

A. That is correct.

Q. Eimear Haughey's returns showed the figure for prior benefit of $\text{€}150,000$ which was an increase of almost 50% on the previous value submitted by the agents for those benefits, isn't that correct?

A. That's correct.

Q. This result in her having a gift tax liability on the full value of the gift of the quarter share of the lands at Abbeville and in light of that, the value of $\text{€}150,000$ was accepted by Capital Taxes Branch for the value of the interest-free loan and for the free use of the property which Eimear Haughey had enjoyed, is that correct?

A. That is correct.

Q. And gift tax amounting to $\text{€}37,125$ plus interest amounting to $\text{€}4,640.63$ making a total of $\text{€}41,765.63$ was paid in respect of Eimear Haughey on the 2nd January 1990, isn't that correct?

A. That is correct.

Q. And certificates of discharge from tax in respect of the gifts were sought by the agents on behalf of the four beneficiaries on the 20th March and were issued on the 4th April 1990, isn't that correct?

A. That's correct.

Q. Now, if I might go back over some of the documents now, and I think you have furnished the Tribunal with a document which was the question posed by the Revenue Commissioners to the Commissioner of Valuation, isn't that correct?

A. That is correct.

Q. And annexed to this document was the valuation submitted for stamp duty purposes and it's addressed to the Commissioner of Valuations in Ely Place and the question raised is: "Please state if you consider the annexed valuation appropriate for the consideration of stamp duty. The rate is 3%." Then there is CAT category. What does that mean? Capital Acquisitions Tax category, is it?

A. That's right, yes.

Q. Then there are additional instructions, what's there?

A. "Please show value for gift tax purposes."

Q. I see. And then there is a reply sorry, at the top is "NB, for the attention of Mr. Dillon", isn't that correct?

A. That is correct.

Q. And then there is the reply, and this would be the Valuation Office's value, I presume, this is how it would come back?

A. That's correct.

Q. It has 1.2 million and then what's that written under that?

A. "Estimated market value at 15th March 1989."

Q. And then down at the bottom is 1.2 million for gift tax purposes also, is that correct?

A. That's correct.

Q. I think then arising from that, you issued the notices, the four notices to Mr. Ciaran Haughey, Mr. Sean Haughey, Mr. Conor Haughey, and Ms.

Eimear Mrs. Eimear Mulhearn in this form, "A Chara, I am directed by the Revenue Commissioners to inform you that a return should be delivered in respect of the claim for gift tax on the following dates taken by you from the Disponer on the 15th March 1989, namely, one eight share of Folio 4173F and part of Folio 1773S County Dublin."

Then you say: "The forms of return number" is it IT38? "can be obtained at this Office.

When the tax has been assessed, instructions will be given as to the mode of payment.

As donee you are primarily accountable for the tax."

And that issues from you and you served those notices on all four children.

A. That is correct.

Q. You then, on the same date, issued a letter to the agents, Messrs. Haughey Boland saying:

"Dear sirs, I am requested by the Revenue Commissioners to refer to the query sheet which was issued to you on the 31st January 1989 and to inquire when the reply may be expected please.

Yours faithfully."

A. That is correct.

Q. And that issued from you. And what happened then was that you were furnished with gift inheritance tax self-assessment returns in respect of the four children, isn't that correct?

A. The returns were lodged in the office, yes.

Q. And the agent was Haughey Boland and they submitted the returns, isn't that correct?

A. That is correct.

Q. Now, just to be clear, this is a self-assessment return, isn't that correct?

A. It is. Self-assessment came in for Capital Acquisitions Tax from the 1st September 1989.

Q. From 1989. And just so that the public can be quite clear, it is a different form to the self-assessment that all taxpayers know and understand, that is the one which relates to Income Tax, isn't that correct?

A. Yes, it's a different

Q. It's a completely different form?

A. It's a different tax, yes.

Q. I know it's a different tax. It's also a different form, isn't that correct?

A. The IT38, is it?

Q. Yes.

A. Yes, it is, yes.

Q. And I just want to be clear about this. On the formal self-assessment tax form which a taxpayer submits, there is no box on that form for gift or inheritance taxes to be declared or disclosed, isn't that correct?

A. No, they are separate forms.

Q. Just listen to the question very carefully now. The annual returns which a taxpayer is obliged to make of Income Tax does not have any box on it to allow a taxpayer return gift or inheritance tax, isn't that correct?

A. Not that I am aware of, no.

Q. But it is the form on which a taxpayer is obliged to make a return of Capital Gains Tax, isn't that correct the Capital Gains?

A. I am not aware

Q. You are not aware?

A. of the forms to be honest.

Q. And may I ask you this: Are there penalties applicable are there penalties applicable to failure to make a gift inheritance tax return?

A. There would be, yes.

Q. Are you familiar with them off the top of your head?

If you are not

A. I am not. I am not working on it for a good few years

now, so I am not familiar with the current situation.

Q. What I'd also like to ask you is do you know if there are different penalties, more substantial penalties applicable if somebody returns an IT38 form and discloses wrong information on it?

A. I wouldn't be familiar with the position, the penalty position on inheritance tax at the moment.

Q. Well, at the time that you were there, was there were there two different penalties, if you understand what I am asking you?

A. Would you repeat the question please?

Q. Yes, I will.

If somebody fails to make a return when they should make a return, there may be some statutory penalty applicable, isn't that correct?

A. That's correct, yes.

Q. If somebody makes a return and makes a wrong return to the Revenue, is there a different penalty applicable?

A. I am not familiar

Q. You are not?

A. No, I am not.

Q. Very good. It's a matter we can take up with somebody and we can review the legislation ourselves.

Now, I think in relation to three of the children in any event, Conor Haughey, Sean Haughey and Ciaran Haughey, it did not give rise to any tax, isn't that

correct?

A. That is correct.

Q. In relation to the case of Mrs. Eimear Mulhearn as she had then become, it did give rise to a tax, isn't that right?

A. That is correct.

Q. Because what you had to take into account in terms of a gift here was one quarter of the value of the lands which had been gifted by her father and mother, together with the gift of the free use of the land for a period of time and of interest-free loans which had been given over a period of time also, isn't that correct?

A. That's correct, yes.

Q. And combining all of those and giving due allowances for matters, that brought her over the threshold, isn't that correct?

A. That's correct, yes.

Q. And that gave rise to a tax which was paid?

A. That's correct.

Q. Now, when this self-assessment form was submitted on behalf of Mrs. Eimear Mulhearn, and of course the other three children, the value of the land which you accepted, based on the information supplied by the Commissioner of Valuations, was it 1.2 million, isn't that correct?

A. The value, yes. Just to put it clear, I didn't

accept I wasn't the person dealing with the returns when they were lodged. They were accepted by the office. But I wasn't

Q. Perhaps you could who did make the assessment so?

A. Well, they were self-assessed, but Mr. Maurice O'Donoghue was dealing with them when the returns came into the office.

Q. Who was the actual decision maker?

A. The returns?

Q. Mm-hmm.

A. It was Mr. O'Donoghue was dealing with the returns when they were lodged.

Q. Now, you had raised queries with the agents back the previous year and you also, just prior to these assessments being received by the office, had written to the agents asking for a reply to the queries you had raised about the free use of the land and the loans, isn't that correct?

A. That's correct, yes.

Q. And the self-assessment return of Mrs. Mulhearn's dealt, in effect, with those queries as well, isn't that correct?

A. It did, in effect, yes.

Q. But what it did was, it gave new figures, isn't that correct?

A. That is correct.

Q. And, in fact, in respect of the free use of the land

and the interest-free loans, it was about $\text{€}150,000$ in excess of the figures which had been submitted by the agents on a previous occasion, isn't that correct?

A. That is correct, yes.

Q. Do you know why that was?

A. No, I have no idea.

Q. I think, in fairness, there was a higher value, a slightly higher value put on the land and it was twelve months later as well.

A. The lands were valued at 1.2 million

Q. No, I mean the agriculture, the calculation in relation to agricultural use.

A. That's right, yes.

Q. There was a higher value put on that. Well, the queries were raised by you, the self-assessment form came in, a higher value, letting value of agricultural land was returned in the self-assessment form, but the queries which were raised by you were not dealt with, isn't that correct?

A. They didn't reply to the queries, they just put in a figure for the prior benefits, valuing them in total at $\text{€}150,000$.

Q. Well, do you know then how the decision taker in this case dealt with the matter?

A. Well, I understand, as I said, it was a self-assessment regime that was in at that stage and the term was screened and looked at from that point of view and it

made the current benefit totally taxable and it was considered reasonable and accepted on a self-assessment basis on that basis.

Q. So the test was one of reasonableness, and the fact that queries had not been replied to would not have affected, in your opinion, the decision taker here?

A. Well, my experience, if the value had been increased which looked reasonable, it would be a reasonable decision to make to accept it, particularly when it made the current benefit totally taxable.

Q. When you say it was reasonable, would there have been general information available to your section of what agricultural letting rates might have been for the time in the county?

A. From experience dealing with cases, you would have an idea what would be the going rate, yes, you would.

Q. Well, if the queries which you had raised the previous year, you wanted to know what was the letting value of the land on the open market?

A. That's right, yes.

Q. Had new information become available to the Revenue in general terms of what the letting value of the land was on the open market a year later?

A. No, it hadn't. But at the stage when I was inquiring, initially we hadn't got an idea of the gift that was involved so we were pursuing the possible gift tax claim. When the returns were lodged, as I say, it was

a self-assessment regime that had come in which was a different person dealing with the returns and it was looked at on a risk-assessment basis and it seemed reasonable figures. That would be the approach we would have taken.

Q. I don't want to pursue this unduly with you because you didn't take the decision here, isn't that correct?

A. That's correct, yes.

Q. Now, in relation to the there were a number of areas you were inquiring into or at least had an interest in to see if there was a potential gift. Was the interest-free loan at all times viewed as being a gift?

A. Yes, it would have been. Yes, in the same category as the free use of the lands, yes.

Q. But in order to be sure of that, you had to be sure that a payment was made, isn't that correct?

A. An interest-free loan?

Q. The original interest-free loan.

A. Yes, yes.

Q. How did you verify that?

A. We accepted the agent's letter on the issue, that they had given these loans. You know, the information was on the file in relation to money to Larchfield Securities, so it verified it crossed with one another.

Q. The agent submitted that figure, you accepted it?

A. Yes.

Q. And in normal circumstances, would you have taken

matters any further? Would you have looked for any bank documentation to show that monies had moved?

A. It depends on the state of the case, what's involved in a case at the time. That would be my recollection of it at this stage, but when this was being looked at it was only a potential claim to gift tax.

Q. But the loan, or the interest-free loan was being viewed as a gift, isn't that correct?

A. Yes.

Q. And the loan itself would have been a gift?

A. The loan

Q. The loan was never repaid, was it?

A. At that stage, the loan when I was dealing with it, it was stated, it was an interest-free loan and it was a reducing balance over the years.

Q. How do you know that, only the figures that were submitted by the agents?

A. That's right. That at that stage

Q. I just want to be get the facts established here.

You never saw any bank documents which showed the loan reducing?

A. No, no.

Q. You never saw any bank documents which showed the loan being made in the first instance?

A. No, I didn't, no.

Q. Now, on that basis, and as evidence has been given by Revenue Officials before you that the Revenue, to carry

out the vast bulk of its work, has to operate on the basis that the information that they are being supplied by agents has been verified by the agents and is accurate when it comes to the Revenue, isn't that correct?

A. That's correct, yes.

Q. The Revenue can't take every single case and go off looking for every single document that would be available. You'd need armies of people to do that.

A. It's a particular assessment on a particular case, basically.

Q. And also, in fairness again, from the point of view of your section, the Capital Taxes Branch, information had been furnished to that branch from the office of the superintending Inspector of Taxes, isn't that correct?

A. That's correct.

Q. They having reviewed a number of files, isn't that correct?

A. That's correct.

Q. And that office having brought to your attention the existence of this particular interest-free loan in the first instance?

A. That's right, yes, that's where we found out about it.

Q. So from the point of view of Capital Taxes Branch, you just proceeded to deal with it on the basis of that information and the information furnished by the agents?

A. That's correct.

Q. So, in fact, the question of the $\frac{1}{2}$ 190,000 as to whether it was ever paid over or how it was paid over was a matter that was of little concern to you the way the information had come to you anyway?

A. That is correct.

Q. Now, I think you have informed the Tribunal that in relation to the contract between Mr. and Mrs. Haughey and the Gallagher Group in January of 1980, you understand that this involved a possible Capital Gains Tax liability, isn't that correct?

A. That is correct.

Q. Now, I just want to be clear here. This is information which you have become aware of only of recent times, isn't that correct?

A. Only in the past week or two, yes.

Q. And to your knowledge, this was handled by the office of the Chief Inspector of Taxes, is that correct?

A. That is correct.

Q. And just to be clear once again, if I might reiterate, the Office of the Chief Inspector of Taxes is the same as the office of the Superintending Inspector of Taxes, isn't that correct?

A. That is correct, yes.

Q. You say that the matter, that is the matter of the contract, and the possible Capital Gains Tax liability was not referred to the Capital Taxes Division. Isn't

that correct?

A. That is correct.

Q. Capital Taxes Division were, therefore, unaware of the contract when the valuation of the lands was referred to the Valuation Office on the 13th November 1989 for the purpose of stamp duty and gift tax, is that correct?

A. That is correct.

Q. If your section had been informed that there had been a deposit of $\frac{1}{2}$ 300,000 forfeited in respect of a purported contract for the sale of a number of acres of land at Abbeville back in the early 1980s, is that a matter which you would have taken into account in attempting to arrive at a value for the land in 1989 on the capital on the assessment of Capital Acquisitions Tax?

A. Well, we normally use the Valuation Office to value the lands for us, so...

Q. Well, would you have informed the Valuation Office as this might be a relevant matter for them to take into account?

A. Possibly, it's hard to say at this stage, but there was a gap of nine years between, if it's 1980 and 1989, it possibly would have had if it had been, probably might have been sent.

Q. Could I put it to you this way: If you had been told or you had been discussing the matter inside in your

section with other colleagues, and this matter came for consideration as to whether there was Capital Acquisition Tax applicable in the case of the four Haughey children and you were informed that on the basis of a purported contract back in the early 1980s, that the value on the lands at Abbeville in 1980 could well have been in the region of $\text{€}1/28$ million or even more, what would you have done in 1989?

A. Well, the normal practice would be to send relevant information to the Valuation Office in relation to the property. I mean, that would be the normal practice.

Q. Do you know if Mr. O'Donoghue is still working in the section?

A. Mr. O'Donoghue is working in Capital Taxes still, yes.

Q. Now, could I just confirm, and I am not going to ask you to deal with this matter, that the Revenue Commissioners, or officials of the Revenue, on occasions take newspaper cuttings of matters which might be of interest in respect of particular taxpayers, isn't that correct?

A. That's correct, yeah.

Q. If you just confirm that from your file or from the file in the Capital Taxes Branch dealing with this matter, there is a cutting from a copy of the Irish Independent, dated Thursday, January 23rd, 1992, it's sometime after the matter was dealt with, but the heading is "Taoiseach hands over $\text{€}1/28$ million estate to

his Children". Is that correct?

A. That's correct, yes.

Q. And that comes from your file?

A. That's right.

Q. Now, you are not in the section any more, are you?

A. No, I am in Direct Taxes Policy.

Q. So you are not involved you are not involved in the taking of this type of decision now?

A. In capital taxes, no, I am not, no.

Q. Thank you.

CHAIRMAN: Perhaps in ease of Ms. O'Donovan, if Mr. Allen and Mr. Connolly felt they were going to be quite brief, we might seek to conclude her evidence now. Mr. Allen, anything you'd like to raise?

MR. ALLEN: No Chairman, at the moment, I would ask for some latitude in case anything arises from Mr. Connolly's questioning, but at the moment I have no questions at all.

CHAIRMAN: That's fine Mr. Allen.

MR. ALLEN: Thank you chairman.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. CONNOLLY.

MR. CONNOLLY: The one thing I want to deal with Ms. O'Donovan, was it the normal practice in the Revenue rely on valuations put in place by the valuations

office.

A. It would be, yes, more or less, yes.

Q. It was the practice then and it's the practice now?

A. I am not aware of what the current practice is.

Q. Were you ever aware of the situation where the Revenue second guessed the value that was put in place by the Valuation Office?

A. No, they were acting as agents, basically.

Q. Thank you.

CHAIRMAN: Thanks very much for your assistance, Ms. O'Donovan. It's just after half twelve, so we will resume at ten to two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 1:50PM:

MR. HEALY: Mr. Christopher Clayton please.

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

MR. HEALY: Thank you, Mr. Clayton.

Q. Mr. Clayton, you have made a further witness statement or Memorandum of Evidence in response to queries from the Tribunal connected with some of the contents, I think, of the last witness's evidence, is that right?

A. That is correct, yes.

Q. In fact, not of the last witness' evidence but information provided at an earlier point by the last

witness?

A. That's right.

Q. And I'll just take you through the statement in which you say: "I have already made a statement to the Tribunal concerning my own personal position in Revenue and have referred to the arrangements I made for the assessment of $\text{€}89,850$ Capital Gains Tax in respect of the forfeited Gallagher deposit. In the course of my work on that assessment, I gave consideration to what action related to the case might need to be taken elsewhere in Revenue. As the tax liability on the Gallagher deposit arose under the Capital Gains Tax code, there was no need to advise Capital Taxes Branch of possible liability to Capital Acquisitions Tax. Moreover, I was aware that the contract had not arisen in the open market and the sale had not been completed."

You go on to say: "However, arising out of my review of Mr. Haughey's CGT position generally, it seemed to me that a number of matters which had come to my attention regarding Ms. Eimear Haughey required action by Capital Taxes Branch. I wrote accordingly to that branch on the 29th July of 1985" and you enclose a copy of the memo and we'll come to that memo in a moment "along with a copy of my reminder of the 23rd May of 1986 and an acknowledgment of the 4th June of

1986 received by me."

You go on to say: "My office has regular direct contact with the Valuation Office as regards property values for CGT purposes. Those contacts arise where we would have doubts about the open market value of property at a particular date, mostly 6th April 1974, which is a base date for many CGT computations. The information given would be confined to relevant details of the property in cases where the transaction had been completed."

Now, just to go through briefly the documents that you provided to the Tribunal. The first document you provided may have already been referred to in evidence this morning. It's your communication to Capital Taxes Branch re Ms. Eimear Haughey and it refers, if I can summarise it, to a potential liability to gift tax in respect of interest-free loans and free use of land.

Would that be fair?

A. That is so, yes. Paragraph 3 would be, I suppose, a fair summary of what was in that, but it gave details and it referred to the position by way of a side reference.

Q. What you did was you enclosed certain information, some of it from Ms. Eimear Haughey's own file, a copy of her stud farm accounts. You enclosed copies of Mr. Charles Haughey's farming balance sheet as at

14/12/1979 and you enclosed copies of other information concerning loans by her father, is that right?

A. That is so, yes.

Q. Then the next document is, in fact, what, on the face of it, is the same document being sent by you once again but on this occasion, as a reminder, is that right?

A. That is so. As time as I think nearly a year had gone by, and I was concerned that the matter hadn't been or the memo had been received and hadn't been lost sight of, I thought it appropriate to send a reminder to confirm that it had been received and was being had been taken on board, shall we say.

Q. Can you just clarify one aspect of this for me, and you have already done so, but just to clear my own mind up on it at this precise moment.

At the time that you sent this, you were a senior inspector working in the Chief Inspector's office, is that right?

A. Yes, dealing exclusively with Capital Gains Tax at that time.

Q. Dealing exclusively with Capital Gains Tax?

A. At that time, yes.

Q. But nevertheless you sent this document over to Capital Taxes to deal with what you perceived to be a potential liability to gift tax or Capital Acquisitions Tax and you obviously tracked it to see where anything had

happened to your notification, if you like, isn't that right?

A. Well, my primary concern was to make sure that it had been received. It wasn't up to me to establish tax liability if any arose in relation to those items but I felt the people concerned would be that it would be useful information for the people concerned in the Capital Taxation Branch.

Q. Almost a year had elapsed and you hadn't received any acknowledgment, we know from if we can put that document up a little on the overhead projector we know from the date stamp on that of the 23rd May 1986, that it was around that time that you sent it as a reminder, is that right?

A. I sent a reminder, that is correct, it may have been triggered by my concern with the Income Tax position. I think some event may have happened around that time as far as of the Capital Gains Tax, sorry, of Mr. Haughey, that it may have come to mind at that stage.

Q. I follow. And on the right-hand side at the bottom, we have a further, a handwritten manuscript note from you, I think it says: "John, could you arrange for the"

A. "For the formal acknowledgment of above."

Q. And then you got a response on the 4th June from, I think, not Mr. Quinlan, but obviously somebody in the Capital Taxes Branch, Mr. Walsh?

A. A Mr. Walsh, yes.

Q. Saying that: "Arising out of your communication, this branch issued a number of queries to the accountants on the 28th August 1985. A copy of the query sheet is enclosed for your attention. So far there has been no reply from the accountants. Please accept this as an acknowledgment of your communication." And with that letter, I take it that what was received was the query sheet which we had on the overhead projector this morning

A. Yes, I believe so, yes.

Q. Seeking further information concerning the market value, concerning the market rent

A. Or the valuation of the items referred to, of certain items referred to.

Q. Just to put this in context. You sent your original notification on the 29th July. You sent your reminder in May of '86 and the response you got indicated that, in fact, your earlier your first communication had been acted on, isn't that right?

A. That is correct, yes.

Q. And that referred to the document of the 28th August 1985, which we, I think, had on the overhead projector this morning.

A. Yes, it was acted upon without delay in the Capital Taxes Branch.

Q. And what that shows is that it's understood that Ms. Eimear Haughey took over the running of Abbeville

Stud on the 14th December 1979 and that she was given interest-free loans from her father amounting to $\text{€}190,600$ and it goes on to refer to the fact that Ms. Eimear Haughey may also have been the beneficiary, as a person interested in Larchfield, of another loan of $\text{€}45,000$ from her father. Would that be right?

A. Yes. That's what I am reading on the screen. I didn't have anything to do with that query.

Q. I understand that. But you would have got that query at that time?

A. Yes. It was attached to the acknowledgment which I got.

Q. I just want to for one moment before we go back on your statement, I just want to put this in the context of all of the information that the Revenue would have had concerning Mr. Haughey because what this suggests is that in addition to some of the monies that we have mentioned already, including the $\text{€}300,000$ from the Gallaghers, there is a further potential or a suggestion here that there is a further 200 and would it be $\text{€}35,000$, is that right?

A. That's what the two figures add up to. I have to say I didn't pay a huge amount of attention to that. My primary concern was to ensure the capital tax

Q. I understand. But in terms of information that you had at that moment, you were dealing with Mr. Haughey's you were dealing with in 1986 with the

collection, or at least you had an interest in, let's

put it that way, an overview of the collection of

Mr. Haughey's Capital Gains Tax, isn't that right?

A. Well, I was, of course, concerned that he should pay the Capital Gains Tax. It wasn't my responsibility to have it paid.

Q. We have been over that. I appreciate that.

A. I didn't want a situation arising where after a certain amount of work, the Capital Gains Tax was not going to be collected.

Q. I am not making that point and you were dealing you had, of course, assessed Mr. Haughey to Capital Gains Tax, it was for the Collector-General to collect it and you had, if I can put it this way, an incidental role in the collection of it. No more than that. And you spoke to Mr. Kenny about it in 1987, isn't that right?

A. Yes.

Q. And I think that you were reporting to Mr. Pairceir as well in relation to what had happened?

A. And to the Collector-General at the time, yes.

Q. But I am simply suggesting, and I may come back to it at a later point, that this was information concerning a potential access on the part of Mr. Haughey to a further $\frac{1}{2}$ 230,000, it would have been enormous sums in those days?

A. Well, Mr. Haughey had been dealing with six-figure sums. I think we were adverted to that before

Christmas.

Q. I appreciate that. When I was talking to you at Christmas I hadn't actually alerted myself to this further sum of $\frac{1}{2}$ €230,000 and I am simply flagging it because we may need to come back to it.

A. I am not saying that was my level of consciousness either before Christmas.

Q. Now, could you just clarify one or two other things for me in sort of a general way, just queries that occurred to me as evidence was being given, I think, this morning. And it may be of relevance in the context of other evidence that will be heard either this afternoon or next week. I am sure you were here this morning when evidence was given that Ms. Eimear Haughey was assessed to Capital Acquisitions Tax on the interest on the rent-free use of land from her father and on interest-free loans from her father?

A. Yes, I heard evidence on that account, yes.

Q. And do you remember that Mr. Coughlan was taking up with Ms. O'Donovan the question of how, if at all, the Revenue Commissioners verified what was contained in the letter from the agents concerning these loans and this interest-free use of land?

A. I don't have a clear recollection of what happened on that.

Q. I know, Mr. Coughlan was taking it up with Ms. Donovan, you remember that?

A. Yes, I recall him asking her about those points, yes.

Q. And there may be an aspect of this which would have to be examined in the context of the extent to which the Revenue Commissioners could rely on what they were being told by responsible tax agents?

A. Oh, there may be, yes.

Q. But just clarify one thing for me, or two things for me. Am I right in thinking, as I think Mr. Coughlan was suggesting as well, that if that $\frac{1}{2}$ 190,000 was not, in fact, in relation an interest-free loan but a loan that was never going to be repaid at all, would that mean that the question as to whether it ought to be treated as a gift, a straight gift, would have to be considered?

A. Well, I am not an expert on gift tax or Capital Acquisitions Tax. I am generally aware of the provisions, but certainly that would be the case if somebody made, it is my view, that if somebody makes a loan to a person without any question of there being a repayment of that loan at any stage in the future, I think the proper construction of that is that it would be a gift.

Q. Can I ask one other related question again. If somebody has a use of land and that use of land, as in this case, is continuing or appears to be likely to continue beyond a certain point, would the Revenue not interest themselves, for instance, in this case in

1990, in whether there was not a continuing Capital

Acquisitions Tax liability?

A. On the free use of the land?

Q. Yeah.

A. Again, I am not an expert in that area, but I would

certainly think that the question of taxation to CAT

would arise in respect of the annual value of the

usage, not of the capital value.

Q. I understand that, yes.

A. Unlike, say, the matter of the loan, the interest-free

loan which might never be repaid.

Q. So I am just asking, and I accept that your answers are

qualified, to canvass two situations; one in which the

interest-free loan might in effect be a gift. We will

put that aside until you have dealt with that.

A. Yes.

Q. The other in which a use of land, continuing on into

the future, is something that ought to be monitored,

and I think you have dealt with that.

Could I just deal with a third situation. If the

interest-free loan had not, in fact, been fully paid

off, would there not be a continuing Capital

Acquisitions Tax liability until such time as it had

been paid off?

A. That is my understanding of the law, yes.

Q. So there are three things that the Tribunal may have to

look at.

Now, can I now come back to the valuation issue. What the Tribunal wishes to address in connection with the disposal by Mr. and Mrs. Haughey to their children of 227 acres of Abbeville in 1989.

You were not directly involved in the assessment of this disposition to Capital Acquisitions Tax?

A. Not at all, no.

Q. And the Tribunal's interest in what light you may be able to throw on what happened stems from your having been involved in assessing another transaction or purported transaction on the land or in the land, if you like, to Capital Gains Tax in 1980.

A. The event in 1980, the assessment in '86.

Q. Yes. Now, that tax issue which I think came to your attention, am I right, in 198

A. '84, if I remember.

Q. '84, had, prior to your involvement, been dealt with by another official of the Revenue Commissioners, isn't that right?

A. The forfeited deposit?

Q. Yes. Somebody else had been dealing with it.

A. Yes, in connection with the receivership of the Gallagher Group, yes.

Q. No, but isn't it true that it was also what I want to clarify is this: There were two issues you were

dealing with; one was Rath Stud and one was the
Gallagher deposit, just so there is no
misunderstanding. The Rath Stud matter was, in fact,
being dealt with by another official, I think it was
Mr. Fitzpatrick, was it?

A. No. The position

Q. Mr. O'Donnell, sorry, Mr. O'Donnell.

A. Mr. Donnely, I think, is the person that you are
referring to.

Q. I beg your pardon. Mr. Donnely.

A. The position there about the Rath Stud is that I came
across that when I obtained papers from various parts
of the office and I discovered that the gain on the
Rath Stud had not been assessed despite having
materialised in 1977, so I decided to take it over and
assess it.

Q. Let's just get all the beans in a row then. You were
dealing with Rath Stud. I think Mr. Donnely was at
some point also dealing with Rath Stud, isn't that
right?

A. His primary focus was on the claim for six-figure farm
losses, Rath Stud was rather incidental, it was also
perhaps within the compass of the district known as
Public Departments at the time.

Q. I think he had had a meeting with Mr. Ray McMahon about
it?

A. Mr. Michael

Q. Mr. Michael McMahon, sorry.

A. As regards the primary losses, but the Rath Stud was referred to in communications, yes.

Q. So Mr. Michael McMahon had at least raised some queries concerning Rath Stud. You came onto the scene dealing with Rath Stud after Mr. McMahon after Mr. O'Donnell

A. I wasn't dealing with Rath Stud before I got the papers, but I decided to go and sweep it up into my overall handling of the case and to arrange for its assessment.

Q. I see. So, therefore, was it the Gallagher deposit which brought you into this Capital Gains arena in the first instance?

A. Yes, it was.

Q. And when you came on the scene in the context of the Gallagher deposit, you also took up the cudgels, as it were, in relation to Rath Stud?

A. That is the correct sequence of events, yes.

Q. Now, the tax issue in relation to the Gallagher deposit arose in the context of a contract for the sale of part of the lands of Abbeville, isn't that right?

A. That's right, 35 acres.

Q. And your involvement in it stemmed from an approach to you from Mr. Pairceir, is that right?

A. That was the initial step in the process, yes.

Q. And Mr. Pairceir's interest in it arose from his involvement with the Gallagher receivership, the

Merchant Banking factor?

A. That's my understanding of it, yes.

Q. Mr. Pairceir had also, as part of his involvement with that receivership, had a meeting with Mr. Crowley, who was the Receiver of the Gallagher Group, or of one part of it, is that right?

A. Yes.

Q. In the Revenue Commissioners, using that term compendiously, it was decided to process this matter as giving rise to a potential Capital Gains Tax liability.

A. Yes, when the matter was drawn to my attention I reviewed it, and I gave evidence on this before Christmas. I reviewed it and it seemed clear to me that there was a Capital Gains Tax liability thereon, and I proposed that the matter be dealt with on that basis by way of assessment.

Q. Now, what was being processed and was actually charged to tax was the forfeiture of the deposit?

A. That's correct.

Q. But the underlying transaction was a contract for the sale of land, isn't that right?

A. That is correct, yes.

Q. Now, you say that when you sent you say that: "As the tax liability on the Gallagher deposit arose under the Capital Gains Tax Code, there was no need to advise Capital Taxes Branch of possible liability to Capital Acquisitions Tax."

A. That's what I said, yes.

Q. Now, I am slightly unsure as to precisely what that those remarks are directed to. Maybe you could just expand a little for me, Mr. Clayton.

A. I am not quite clear as to what way you are unclear, Mr. Healy, sorry.

Q. Let me put it this way: You had information concerning a potential concerning, in fact, by that stage, an actual liability to Capital Gains Tax based on an underlying transaction involving a sale of part of the lands of Abbeville?

A. I think I see where you are coming from, yes. There was clearly a cash changed hands in January of 1980 and from a Revenue point of view the question of taxation thereon had to be considered. It seemed to me that the liability arose under Capital Gains Tax and that no other part of the Revenue needed to be told of that. There was no question of stamp duty, there seemed to be no question of property acquisitions tax. All of the deposit was being taxed to Capital Gains Tax

Q. Is there no system in the Revenue Commissioners whereby an official of one branch in the Revenue Commissioners dealing with a taxpayer's affairs or the affairs of a related taxpayer in relation to the same asset would have access to all of the information within the custody or control of the Revenue Commissioners?

A. You have raised some very interesting questions, or

some interesting issues there. First of all, any officer in the Revenue who thinks that another part of the Revenue might have some papers or information relating to the case this officer is handling, would have a right to get that information and get those papers from that other area, from that other section. And, in fact, this is what happened when I handled the Capital Gains Tax. I sought the papers, information, files from the Capital Taxes Branch and, in fact, from say Dublin farm interest, and Public Departments and so on. I looked at the entirety of the information that I thought would be available in the Revenue and I processed the case accordingly.

Now, you have raised the interesting point about the organisational structure, I think, in the Revenue, because this came up on the examination of Ms. O'Donovan this morning and the origins of Capital Tax Branch and it seems to me you have Capital Acquisition Tax dealt here and Capital Gains Tax there and they are both capital taxings of a kind. The origin of that, as Ms. O'Donovan explained, goes back into history, goes back into the days of State duty and, in fact, you might say that Capital Taxes Branch is its natural successor to the Estate Duty Office which existed up to the mid-70s when the system of Capital Taxation was brought into legislation.

Now, at the time the Estate Duty was replaced by Wealth Tax, by Capital Acquisitions Tax. It always had a stamp duty within its portfolio. Capital Gains Tax was brought in around the same time, but the decision was clearly made that the proper home for Capital Gains Tax was in the office of the Chief Inspector of Taxes because in many such, or in that area, many events are on the borderline of either Capital Gains Tax or Income Tax. They tend to blur into one another. So that I think would have been the rationale, the main rationale for assigning the Capital Gains Tax to the Inspector of Taxes area. The two would have been clearly coverable together. But the fact that the two taxes were being dealt with separately or in separate branches didn't necessarily mean there was a necessary loss to the Revenue on that account.

However, I would have to say that in practice, and we have given a very considerable amount of time to researching this matter in recent years, the structure is not the best. Starting in 1997, conscious of possible defects in the structure, we initiated what we call the route and branch review of the office of the Revenue Commissioners and we are now starting to put that in train. I brought with me this leaflet which was issued to all staff, which has been the subject of public announcements and in the context of the question

that you have raised, Mr. Healy, I might possibly refer to an extract from this, which summarises the outcome of the review. I think it's not irrelevant to thoughts which are in your head.

The review commenced, or I should say, the preface to this document is: "Our statement of strategy for the years '97 to '99 identify the need to carry out a route and branch review of the organisational structure."

Q. Can I just stop you for one moment. You have may have furnished a copy of that to the Tribunal. I am sure that if you haven't, you will, it might make

A. In fact, absolutely, I'd be happy. In fact, I have a copy down there. This the only copy of with me. So I will get you a copy of that. But two short quotations which I think are apposite to the point.

"The main conclusion which emerged from the review is that we must move or organisational structure from a traditional function and taxing approach, for example, dividing the organisation by reference to taxes, such as corporation tax, excise duties, capital taxes, etc., to one which deals with customers in a more modern and holistic way." And the final section of that part is:

"A key feature of the proposed new structure will be that one individual at senior or management level will be responsible for all the Revenue affairs of individual taxpayers in a particular area or category."

Consequential on that, and if you will bear with me, just one more excerpt from this. "There will be regional divisions in the new structure and they will replace the traditional structures. The head of each region who will be at assistant secretary level will be responsible for all the taxes and duties for all customers, except customers in their particular area."

So, we have been conscious of deficiencies in the existing structure and we have set about making the necessary changes. It would mean, in effect, in the future, that Capital Acquisition Tax and Capital Gains Tax for a particular taxpayer would be the responsibility at senior level of just one officer instead of hitherto, there could be a number of officers dealing with the various taxes.

Q. So that there would be a cross-fertilization between one file and another file depending on the issue in hand at any particular time?

A. If there were to be separate files under two taxes, they would be in the same room perhaps.

Q. I understand that, but there would be a feeding of information from one to the other or a system that would enable that to be done?

A. Or the same officer could be handling all the taxes, depending on the particular circumstances.

CHAIRMAN: Just one point, would not the terms of the legislation setting up the last amnesty, Mr. Clayton, which you will recall much better than I do, which in effect put an embargo upon tax officers dealing with a taxpayer who took the amnesty communicating details with colleagues, would these not indicate that the legislature contemplated it as being the previous norm that one tax official could ring up another in a different section about a collateral query in relation to a particular account?

A. Certainly I think it was always envisaged that people would be able to contact each other and get useful information about a particular tax payer. In the case of the amnesty there was a special office set up to satisfy the legislative requirement of total confidentiality in relation to certain amnesty declarations. That was a very, very special case and it would, I suppose, be an exception to the general rule that one Revenue officer must communicate anything relevant to another Revenue officer.

MR. HEALY: I want to, for a moment, focus on the precise issue that the Tribunal has raised in this case and then I may come back again to this new system and the extent to which it might supply what seems to me, and I think almost anyone reading it, to be a defect, if there was one.

Q. Would you agree with me that anyone approaching the

valuation of 227 acres of Abbeville in 1989 would have an interest in a purported disposal of 30-odd acres of the same land in 1980 and the value put on it on foot of that transaction?

A. I wouldn't necessarily agree with that at all.

Q. I see.

A. The events were separated in time by nine years. I think the more pertinent consideration for valuation in '89 would be events of 19, say, '88/'89. When dealing with Capital Gains Tax, I dealt with, I suppose, dozens of Capital Gains Tax appeals which concerned the market value of property; and where there was a market value of property, one consulted the Valuation Office, and in going to an appeal hearing, one was well armed with comparable sales of properties which one would quote to the Appeal Commissioners or to the Circuit Court Judge in aid of one's case. But one would not be going back nine years to a contract which had not been completed, a contract which had been drawn up privately, which had not arisen in the open market. I don't think an Appeal Commissioner or a Circuit Court Judge would listen for more than five seconds to a suggestion that this was comparable. Would one look at the events of the time, the contemporaneous, or as close as possible thereto, to arrive at an estimate of the market value of property.

Q. Well, could I just take that piece by piece,

Mr. Clayton. In 1989, the Revenue Commissioners were dealing with a disposal by Mr. and Mrs. Haughey of their land to their children by way of gift.

A. Yes.

Q. And what the Revenue were seeking to do was to put a valuation on that disposal, to value the land?

A. They did so by consulting, as they always do, the Valuation Office.

Q. Let's just deal with what the task in hand was. To value the land?

A. Mm-hmm.

Q. Now, the same disponers, Mr. and Mrs. Haughey, had entered into a contract, according to the Revenue Commissioners who had taxed that transaction, in 1980, where they were selling 30-odd acres, about a seventh of what was involved in 1989, for a larger sum than had been arrived at by way of valuation by the tax agents in 1989. Isn't that right?

A. It was a different price per acre, yes.

Q. In fact, wasn't the 1980 contract based on an overall valuation for 35 acres in the region of $\pounds 1/2$ 35,000 an acre, what's that? Well over a million pounds?

A. 1.2 million approximately.

Q. So 35 acres is purportedly in the sale in 1980 for $\pounds 1/2$ 1.2 million and in 1989, the tax agents are seeking to convince the Revenue that nine years later, when, in fact, land prices had gone up, not down, one would have

thought the same land or rather one-seventh of the same land was only worth the same money. Seven times, I am sorry, Mr. Coughlan corrects me, seven times the same land was worth the same money as it had been in 1980.

A. I would say, in relation to that, as I have already said, the 1980 contract had not been completed.

Q. Where did you get that impression? Could I just stop you there for a minute, Mr. Clayton. Why do you use the expression "Had not been completed"? What's the relevance of that?

A. As I was stating in relation to valuation appeals, there is considerable store put on the fact that one relies on completed sales.

Q. Of course, because it makes absolutely no sense to come into a court and to say to a judge, look, there were 20 contracts for the sale of land in such and such a part of County Kildare and the contract price was $\frac{1}{26}$ million for every hundred acres in the sale and your opponent says to you, but sure not one of those sales is completed. To rely on an incompleting contract is nonsense?

A. Correct.

Q. But we weren't talking about an incomplete contract here, were they?

A. The sale was not completed.

Q. The contract was fully binding on both parties?

A. Sorry, the sale was not completed.

Q. But you know the sale was not completed for a reason unconnected with any dispute over the value of the land.

A. Quite. And Mr. Gallagher was not available in 1989. There was no evidence of anybody else being interested in the land in 1980 at that price.

Q. You and I know when we talk about uncompleted contracts, we mean contracts that are not completed for reasons unconnected with the reason that arose in this particular case, i.e., receivership of the purchaser?

A. It would be my view that the Valuation Office, in arriving at an opinion of market value, would have regard to sales which had been completed.

Q. Genuine sales?

A. Genuine sales which had been completed.

Q. A sale that is completed is, in fact, a genuine sale?

A. Sorry?

Q. A sale that is completed is a genuine sale?

A. And they would have a greater value, shall we say, to one which had arisen in the open market. They wouldn't necessarily exclude a private sale, but a sale which had been which had arisen from an auction or from a tendering process would certainly be taken into account by the Valuation Office and they would not, in my experience of them, I am not an expert in I haven't been dealing with that office for the last fifteen years, they would not take into account a sale

which had not occurred.

Q. Can we forget about 1989 now completely for a minute?

A. Yeah.

Q. And go back to 1980 and we'll go over all of this again. Was that a genuine contract for sale in 1980?

A. I believe it was.

Q. A genuine contract for the sale of 35 acres of land at $\frac{1}{2}$ 35,000 an acre and it did not involve anything else other than a genuine attempt by a genuine vendor to sell to a genuine purchaser, is that right?

A. Well, I should say at this stage, that I am not here to defend that contract.

Q. No. But is that your view of it, that it was a genuine sale of land?

A. Well, I'll put this to you: Over the course of my career I have come across a lot of documents. This particular contract, the Gallagher contract, was certainly unusable. But I have seen conventional deeds, trusts, contracts drawn up in the conventional way which I personally would regard as being shams, and they have been upheld by the courts as being valid. On the other hand, there are less conventional agreements and they are not invalidated for want of form. But I have seen documents, contracts, deeds, which I would regard as being shams which have actually been upheld as being valid.

Q. But let me just think this through. In 1980, what you

had in 1984 and what Mr. Pairceir had and what he was discussing with Mr. Crowley was a contract to sell 35 acres of Abbeville at $\frac{1}{2}$ 35,000 an acre. Now, if that was a genuine contract and the contract couldn't go through, in this case because the purchaser simply went into receivership, then under the contract, the vendor became entitled to forfeit the deposit and as you determined, that gave rise to a liability to Capital Gains Tax.

A. Mm-hmm.

Q. Now, if that was not a genuine contract, if it was not a genuine attempt by a vendor to sell 35 acres of land at $\frac{1}{2}$ 35,000 an acre, then didn't other considerations arise?

A. Well, there is a big "if" at the start of your question. To establish that it wasn't a genuine that it was, as you might suggest, a sham, would have required

Q. I am not asking you to establish it. I am asking for your opinion. If that was the case, if assume the "if" for the moment other considerations applied if it were not the case that this was a genuine contract?

A. Oh, if, of course, in other words, if it was wrong, it was wrong. If it was a sham, it was a sham, of course.

Q. And if it was a sham, then the Revenue, as a major creditor in the Gallagher to the Gallagher Group or

of the Gallagher Group, might have had recourse to other remedies, is that right?

A. To get to that stage and as I said before Christmas, I wasn't involved in the deliberations as to whether that should be challenged or not. It seems to me that the that any attempt to displace it would have been a failure and you have documentation on that account from our parties and I think the cost of challenging the contract would have been very high, and as I said to you before Christmas, the contract was, in effect, signed and witnessed by three parties, by Charles Haughey, Maureen Haughey and Patrick Gallagher, signed and witnessed by three parties, displacing those three parties would not have been an easy task.

Q. Let me put it this way: Had you any doubt as to whether it was a genuine or non-genuine transaction?

A. I have doubts about a lot of contracts put in front of me, including contracts and deeds which are drawn up in very legal form.

Q. I am asking you about this document, Mr. Clayton, because what I want to know is what was the Revenue attitude to it in 1980? That's all.

A. In 1984?

Q. In 1984.

A. The Revenue attitude was to accept it at face value.

Q. So in accepting it at face value, you were accepting it as a genuine sale by a genuine vendor to a genuine

purchaser?

A. Drawn up privately.

Q. Drawn up, however drawn up?

A. Well, it makes a difference. If it had arisen from a tendering process, from an auction, whether it might have been

Q. Valuers don't confine themselves to auction values; they don't confine themselves to tender values, don't we know that?

A. Of course not, they don't, but they have regard to completed sales.

Q. But in this case, the non-completion of the sale was due to a supervening event that had nothing to do with the original deal, isn't that right?

A. It hadn't been completed so it wasn't quotable.

Q. It wasn't quotable?

A. Yeah. It wasn't quoted by the parties.

Q. Somebody was prepared to part with $\frac{1}{2}$ 300,000 for 35 acres of land in the knowledge that he would never get it back. I suggest to you, if I were acting for anybody in that transaction, the one transaction I would have been able to point to, the best transaction was the $\frac{1}{2}$ 300,000 one, because the purchaser was so interested in the land, if it was a genuine transaction, that he was prepared to lose $\frac{1}{2}$ 300,000 on the face of the document, so it was the best possible indicator of the value of the land.

A. It was an indicator of what two people were thinking at a particular time.

Q. It was an indicator that one man was prepared to lose $\frac{1}{2}$ 300,000 in order to get his hands on the land, isn't that right?

A. I would say it's not a very reliable indicator of market value in January 1980.

Q. Don't you see, Mr. Clayton, this particular purchaser put such a high value on the land, a man who, to all intents and purposes, if you take this as a genuine transaction, was a property speculator dealing in land every day of his life and he was prepared to lose $\frac{1}{2}$ 300,000. It was the best contract to rely on to put a value on the land.

A. An answer that might be given to that suggestion is that the fact that Mr. Gallagher did not survive as a property speculator, that it might be said that his views about value of land wasn't exactly reliable were not exactly reliable. In effect, Gallagher was gone by 1985 and he wasn't there in 1989.

Q. Weren't there a number of other property speculators that went to the wall at that time as well?

A. If you say so.

Q. In 1989, if you were treating that transaction, as I am suggesting it should be treated bear with me for a minute now as a genuine transaction, wouldn't it have been referred to the Valuation Office as a factor,

that's all, a factor to be borne in mind?

A. If the sale had happened, I would think the Valuation Office did not need to be told that land in north County Dublin was the subject of interest by builders and developers and no doubt when they were considering the market value of land in north County Dublin in '88/'89, they would have looked at the results of completed sales in north County Dublin in those years.

Q. So you are saying that even if you had that valuation, you wouldn't have taken account of it? That's what the members of the public now should bear in mind, that the Revenue Commissioners are saying that even if they had this information about this $\text{€}1/28$ million valuation of the land, in 1980, they would have turned a blind eye to it because Mr. Gallagher didn't complete it?

A. It's not correct to say there was a valuation of $\text{€}1/28$ million of the land in 1980. There was a value of $\text{€}1/235,000$ per acre for 35 acres which is a small part of the holding. It would be wrong to extrapolate that to the entire holding.

Q. Are you telling me they would have ignored it?

A. No, I am not saying that. I am saying that there was no question of valuing the property in 1980 at that level.

Q. I don't want to be excessively critical of any individual in the Revenue Commissioners, Mr. Clayton, but I am going to have to suggest to you that any

reasonable person listening to this evidence would find it hard to credit that this wasn't an absolutely critical piece of information to take on board in 1989 when the same vendor was selling the same land as he had sold in 1980?

A. He was disposing of it to a different person. The special purchaser who existed in 1980 was not there. That purchaser had, in fact, gone bust and some people would say because he didn't know the value of land in 1980.

Q. This is what you were speculating but do have any actual evidence of that?

A. Of what?

Q. That Mr. Gallagher went bust because he had no

A. If the matter was quoted by another party, that is an answer that would be given.

Q. But you are speculating in other words.

A. Well, of course, this is what we are doing for much of this discussion.

Q. I don't think I am speculating. You see, I suggest that the Revenue cannot have it both ways looking at this in retrospect. If the matter was treated as a genuine transaction in 1980, then it had to be viewed as in some way valuable in 1989. That's one suggestion. The other suggestion I make is that if the Revenue treated it as a sham transaction, then that had consequences. Alternatively, the Revenue could

have treated, as I suggested on an earlier occasion, as a transaction which was probably a sham transaction but that sham element couldn't be proved. But one or the other approach is only admissible. Not all three.

A. To come back to 1980. I don't think one values land in 1989 by reference to events which occurred in 1959 or 1979. One values land by reference to the circumstances of the time and the circumstances of the time are shown clearly by what is referred to in that area as comparables. There was, I dare say, many comparables available for land similar to that being disposed of in 1980. There were many comparables available in the Dublin area and certainly in north County Dublin.

CHAIRMAN: As I understand it, Mr. Clayton, Mr. Healy isn't proposing to you that the 1980 transaction should have dominated or regulated the subsequent value, but he is putting it to you that at least it ought to have been a material factor that the Valuation Office might profitably have been reminded or made aware of.

A. Well, it might well have been of interest to them, but I would think that it would come as no surprise to the Valuation Office to know or to be told that a builder or developer was interested in buying a certain land in north County Dublin, and I don't think the Valuation Office would be terribly concerned with what people

were thinking of doing, they were thinking of doing, say, nine years earlier. They would be much more interested in what actually happened in 1988/'89. Seeing what was the position in practice at ground level so to speak.

Q. MR. HEALY: You say that the Revenue Commissioners rely on the Valuation Office once they, as it were, charge the Valuation Office with putting a value on land?

A. It's my understanding that we have 100% reliance on it for valuation of property.

Q. In this particular case, the tax agents were contending that this was agricultural land, isn't that right?

A. I didn't actually see the valuation put on that, the nature of that valuation certificate, I think, until yesterday. I don't have it with me. I wasn't concerned with it at the time.

Q. Well

A. I would say in relation to that, any land in the vicinity of an urban area, and that applies at any time whether in 1979 or in 1999 or the present time, there would be an amount of hope value attaching to that, hope of development in the future and I suppose, maybe the closer to inner city, the greater the hope value.

Q. Yes, in this case close to an airport and so on, in fact, being enveloped by the city?

A. I suppose one could say that, yes.

Q. Under the new system that is being canvassed in the document that you have in front of you there, and the new proposals to reconfigure the operation of the Revenue Commissioners, theoretically, all of the information that was in separate branches in 1989 would now be in front of the one individual or at least in the one office, would that be right?

A. That is so. The old structure did not preclude that by the way.

Q. The old structure did not preclude it?

A. Did not preclude it.

Q. But there was a logistical problem?

A. Logistical structure perhaps is another way of putting it.

Q. Just so there will be no doubt about it. Was there a way under the old system which would have brought all this information together automatically, as it were, or systematically?

A. I wouldn't say automatically.

Q. Systematically?

A. Systematically perhaps, if a person dealing with one taxpayer, let's see who other people in the Revenue know about this case, whether it's under the excise heading or under Capital Gains Tax or corporation tax or whatever. Contact of that nature was always possible. It would be far more achievable under the new structure.

Q. But even under the new structure, it wouldn't really make any difference, according to your evidence, is that right?

A. I don't know that that would be, would necessarily follow. Certainly the Valuation Office, when consulted, I think might well have come up with the very same figure. I don't think it would have made any difference in their calculations at all. They would have been operating on the basis of comparables.

Q. Can we now go to another point. When you were asking Mr. Haughey to make his PAYE tax returns, you were taking into account a number of factors.

A. Mm-hmm.

Q. At that point, did you have access to all of the information in the custody or control of the Revenue Commissioners concerning Mr. Haughey's tax affairs?

A. No, I didn't look for it in that context. I didn't need to have that information to realise that there was a serious deficiency at that stage. I needed papers from Capital Taxes Branch in 1984/85 and I got them without any difficulty at all.

Q. You did in 1984/85. Absolutely. But in 19 is it 91

A. Late '91, yes.

Q. You didn't need these documents to insist on the returns, I understand that. But do you recall that you gave evidence as to what prompted you to insist on

the returns and that included a number of factors,
factors which were specific to Mr. Haughey in terms of
his relationship to the Revenue Commissioners and
outside factors such as the Greencore, Beef
Tribunal if we can call them that?

A. It was a combination of factors.

Q. After you got the returns in from Mr. Haughey, am I
right in thinking that the information within the
Revenue Commissioners about Mr. Haughey, perhaps not in
front of you, was that he had made returns, eventually
after your discussion with Mr. Kenny.

A. Yes.

Q. That some few years previously in 1989 he purported to
dispose of 227 acres of his land, he and his wife, of
his land for $\text{€}1.2$ million, about how much an acre? I
suppose around $\text{€}3,500$ an acre?

A. I think more. Over five.

Q. About 4.5 thousand an acre?

A. Over 5,000, yes.

Q. I said 4.5. You said over five. It probably is over
five, is it? Well, in or thereabouts anyway?

A. Yeah.

Q. You knew, or the Revenue Commissioner knew, I want to
make it clear, maybe not to you, that the Revenue
Commissioners had information that he may have made
loans interest-free to one of his daughters of some
 $\text{€}190,000$ and some loans of $\text{€}45,000$ through Larchfield

Securities amounting to something in excess of
i½230,000. You were aware that he had had the
resources to pay off a Capital Gains Tax liability was
in excess of i½100,000 in 1988. You were aware that he
had obtained i½300,000 in 1980, which he had been, let's
put it this way, reluctant to disclose to the Revenue
Commissioners until 1985. And you were aware that
land which was now being valued at i½5,000 an acre was
apparently being sold in 1980 for i½35,000 an acre, some
ten years earlier. Now, that information was
available to the Revenue Commissioners. I am not
saying you

A. Yes.

Q. Having regard to the factors that prompted you to
issue the request to Mr. Haughey to make his return of
PAYE income, would it not have been appropriate to pull
all that information together after you got the
returns?

A. The return, as you say, Mr. Healy, I didn't get those
returns, I didn't examine them. And we were operating
a self-assessment system in effect. Mr. Haughey made
formal declarations that the returns were completed and
accurate.

Q. But wasn't somebody obliged to examine them?

A. Not under self-assessment. They can be screened and
perhaps audited if there are, if there seemed to be
good grounds for it. In the case of a person whose

only income is PAYE, that's unusual.

Q. I don't want to go over this all again, Mr. Clayton.

That would make sense if you are getting in hundreds and thousands of returns. Don't we know Mr. Haughey was singled out to get his returns in. He may not have been the only one. You quibbled with my use of the word "unique." He was singled out. There may have been others. So you were prompted to take this step on a certain basis. What was the point, if these were the things that actuated you to take this step, if you didn't check the returns after they came in?

A. There was nothing on the returns on which we could base the inquiry. That information didn't come to light until a few years later.

Q. We had evidence I think from you'll correct me if I am wrong would it be Mr. Harrington, about the process of evaluating returns under the self-assessment system? Am I right in that?

A. That is right, yes.

Q. There is some process of evaluation?

A. There is, yes.

Q. If a taxpayer and we have been over this before is a PAYE taxpayer, and as, in this case, a public servant, his PAYE income is fairly readily accessible, isn't it, except for expenses, it's fairly readily accessible?

A. It is fairly readily accessible, yes.

Q. In calling upon Mr. Haughey to make these returns, if you were prompted by the factors that you mentioned, what was the point in not examining the returns afterwards and putting the information or lack of it on them together and contrasting it or comparing it or analysing it in the context of all the other information you had?

A. We explored this subject before.

Q. But we didn't have this information then, Mr. Clayton.

I was not then aware of the loan. I was not aware of the 190,000. I was not aware of the 45,000, nor was I aware at that time that the Revenue Commissioners were looking at two radically different valuations of the same land. These were other factors which should have been put into the pot.

A. We were aware in '79 that Mr. Haughey had very substantial bank borrowings. We were also aware that he had very substantial assets.

Q. It depends on what you mean by substantial. If you put that value of $\text{£}35,000$ an acre on them, they were substantial. If you put a value of $\text{£}4,500$ an acre on them, maybe they weren't so substantial?

A. Well, the fact of the matter is even on the lowest valuation, they were still substantial.

Q. I am not going to take it any further, Mr. Clayton.

All I am suggesting is that it seems unsatisfactory that the Revenue Commissioners can point to

Mr. Haughey's borrowings and that that seems to be sufficient to preclude them from examining all of his affairs.

A. I would say that the returns of income which were completed by Mr. Haughey in the knowledge that if he made a false declaration, it would leave himself open to a sphere sanctions, would be sufficient.

Q. At the time that you were prompted to make this request for returns in 1991, you were, you say, or you had in mind, the scandals which were blowing up at the time, the Beef Tribunal, Greencore and so on, isn't that right?

A. They were some of the factors which I mentioned, yes.

Q. And what was being canvassed, for instance, I think I am right, in the context of some of the Beef Tribunal hearings, was the fact that politicians may have been getting money in return for favours to people involved in the beef industry, is that right, that sort of thing?

A. I have a vague recollection of that, but an inquiry into that matter would not be a matter for the Revenue Commissioners.

Q. Well, what was it that was prompting you to take this matter up in the context of Mr. Haughey's tax returns?

A. Well, Mr. Haughey had not made a return for a large number of years. He was the Taoiseach of the country.

Q. How did the Beef Tribunal have anything to do with this

if that was the only issue on your mind?

A. They were scandals. It was non-compliance of law.

Q. Had it anything to do with Mr. Haughey getting money or the possibility that he may have got money from people?

A. The primary motivator was the fact that no return had been made since 1985/86.

Q. What was the problem with the Greencore inquiry that worked on your mind?

A. I don't recall at this stage. I was conscious of the fact that there were problems in the semi-state sector, that there was very serious non-compliance obviously in the semi-state sector.

Q. Wasn't the problem that money was sloshing around, and the government, through the agency of inquiries, were seeking to find out about it, isn't that it?

A. Well, certainly the government never approached me to institute an inquiry.

Q. I know that. It was you were the person who said that you were in some way prompted by these scandals to call on Mr. Haughey to fill in a tax return for his PAYE income. That was hardly a big sin on Mr. Haughey's part?

A. It is not correct to say that I asked Mr. Haughey to fill in a return of income for his PAYE income. The return of income, the return that was sent to him, would have covered all his income and all his Capital Gains, not just PAYE.

Q. It would not, of course, as we found out this morning, have covered his capital acquisitions, isn't that so?

A. That is correct, yes.

Q. So if he had, in fact, got gifts from anybody, compelling him to make a statement of his income on a return of income wouldn't have compelled him to disclose any gifts, isn't that right?

A. That is correct, yes.

Q. So it wasn't really a terribly valuable exercise, was it?

A. I don't accept that. It would have been valuable if it had been made if the returns had been made correctly. And bear in mind that if he was prepared to make an inaccurate return in relation to income and Capital Gains, was he likely to make a correct return for Capital Acquisitions Tax?

Q. We now know from the work that was carried out by the Revenue Commissioners, that the Revenue Commissioners taxed the gifts, or taxed, rather, the payments shown by the McCracken Tribunal to have been made to Mr. Haughey as gifts, isn't that right?

A. That is so, yes.

Q. So was there any inaccurate return of income by Mr. Haughey then in the context of the knowledge that you had when you raised those assessments to Capital Acquisitions Tax following the McCracken Tribunal?

A. No, I can't say that. The queries are continuing into

the Income Tax position. There may well have been inaccuracies at least, for example but I cannot say for definite inaccuracies in relation to, let's say, investment income.

Q. Will you now canvass with me at this moment, whether, in fact, it wouldn't have been appropriate if you had the information then in 1990 or '91, to know where Mr. Haughey got the $\frac{1}{2}$ 190,000 so-called interest-free loan to give to his daughter?

A. Well, as I said, Mr. Haughey was known to have substantial bank borrowings and a substantial borrowing capacity.

Q. That can't be the answer to every question, Mr. Clayton. Every time we find Mr. Haughey with more money, you are putting it down to his bank borrowings.

You don't know.

A. Of course I don't know.

Q. What I am suggesting to you is that it would have been appropriate to find out.

A. We had forced him or we had, in effect, forced him to make a return of income. If he had been making truthful returns, we would have discovered these things.

Q. I think in answer to my questions on the last occasion you gave evidence, Mr. Clayton, you mentioned this question of Mr. Haughey's borrowings and his borrowing capacity in the context of how he got the money to pay

his tax of, was it $\frac{1}{2}$ 120,000, was it?

A. It was about $\frac{1}{2}$ 100,000 overall, yes.

Q. 112,000 I think was it about?

A. It was of the order of $\frac{1}{2}$ 100,000 for the Capital Gains Tax between Rath Stud and the Gallagher deposit. I think $\frac{1}{2}$ 102,000 in fact.

Q. And if there is $\frac{1}{2}$ 190,000 and $\frac{1}{2}$ 45,000 there, that's about 330-odd thousand?

A. And against that you have, for example, Gallagher deposit itself, grossed

Q. But you don't know, is my point?

A. Don't know what?

Q. You don't know anything of those things. You are only assuming that against that off the Gallagher borrowing. Couldn't you also have the Gallagher borrowing and that?

A. The Gallagher deposit. I mean, this is properly taxed. He received 300 and we got back 100. We got back net 200.

Q. How did you know that? Couldn't I ask you to look at it another way. Mr. Haughey got 300 from Gallaghers. He had another $\frac{1}{2}$ 330,000 available to him. Could view that as $\frac{1}{2}$ 630,000?

A. Sorry, where did you get the 600?

Q. Mr. Haughey got $\frac{1}{2}$ 300,000 from the Gallaghers. You do not know what he did with it. You do not know it's a net figure?

A. Absolutely.

Q. You know he produced $\text{€}112,000$ to pay tax?

A. $\text{€}102,000$.

Q. Yes. If you add the two of those together you have the guts of $\text{€}400,000$. If you add them together.

A. No

Q. I am suggesting that you add them.

A. I would suggest that the proper course is to treat the matter as a net receipt of $\text{€}200,000$.

Q. You don't know that.

A. But neither do you know the opposite.

Q. Precisely. But if you add to that 400,000, the 230-odd thousand pounds, you have $\text{€}600,000$. I may be wrong in adding all these sums. Maybe they subtracted from one another, but you don't know and what I ask you is: Did it not occur to the Revenue Commissioners that these funds could have given rise to income from Mr. Haughey's point of view, and did you not have an obligation to at some point look for a Statement of Affairs from him?

A. They would be far more likely to produce interest payments by Mr. Haughey, but as interest relief had ceased, they would not have been returnable on his return of income.

Q. All I can say again is that you don't know that, Mr. Clayton.

A. There are many things we don't know about this case,

Mr. Healy.

Q. You don't know that. I am not asking you for answers to whether Mr. Haughey had $\text{€}600,000$. I am asking you whether you shouldn't have considered did he have $\text{€}600,000$ that he wasn't declaring to the Revenue Commissioners?

A. Again I hesitate over the 600, the figure on your line is, I think, possibly more like 400, 450. But the point remains, that we don't have the copy of his bank accounts for those years.

Q. Remember this morning Mr. Coughlan mentioned to Ms. O'Donovan a press cutting that was contained, as far as on her file in the Capital Taxes Branch?

A. That's right, yes.

Q. That was a press cutting of a newspaper report in, I think it was the Sunday or the Irish Independent? The Irish Independent of the 23rd January 1992, it's on the monitor there in front of you. Somebody, as Mr. Coughlan said, obviously thought this would be of interest and put it into the file because it refers to what seems to be the 1989 transaction.

A. I have to say, Mr. Healy, that I don't recall seeing that cutting previously and I don't know what is in the report.

Q. All it does is it suggests that Mr. Haughey's lands were worth in the order of $\text{€}8$ million.

A. I would deduce that from the headline, yes. But I am

not sure, does it include the for example, the residential property? I am not sure.

Q. Yes. I don't know whether it does or not.

A. I have not read this article.

Q. It suggests, in any case, that some property analysts had put a value of $\frac{1}{2}$ million on it.

A. Valued by some property analysts at about $\frac{1}{2}$ million, yes, I have read that, yes.

Q. Somebody thought this was interesting enough to put it on the file that clearly somebody else, perhaps speculatively, might have been total nonsense, had put a value of $\frac{1}{2}$ million on this transaction.

A. Yeah.

Q. If that was, in fact, correct, do you think it would have warranted some reconsideration of the position by the Revenue Commissioners?

A. If it was correct, obviously, but what is referred to here is some property analysts I have no idea what that is referring to. After all, the matter had been with the Valuation Office.

Q. But is that enough? Is it enough to send something to the Valuation Office if you have some doubts yourself or some information which appears to conflict with a valuation from the Valuation Office?

A. I would think the Valuation Office would be well aware of such an article.

Q. One last matter, Mr. Clayton. I think at some stage

in your evidence today you mentioned that in 1985 I think, I'll try to find it on the continuous transcript, you mentioned that in 1985 you sought to pull together an amount of information concerning Mr. Haughey's affairs. It might have been 1984?

A. '84/'85.

Q. You were illustrating how you, in fact, were able to get access to various pieces of information about Mr. Haughey at that time?

A. That's right, yes.

Q. And you pulled them together from various files?

A. Yes.

Q. Can I suggest to you that that seemed to be an appropriate thing to do when you were focusing on his affairs?

A. Well, I was concerned with the Capital Gains Tax aspects of matters. To see was there information thereon which would help me in handling the matter as regards values in the seventies and so on.

Q. Now, when I was asking you about the exercise you carried out in 1991 in December, I wasn't aware that you hadn't, in fact, examined the returns, but why didn't you carry out a similar exercise in 1991/1992 when you got the returns of PAYE income in?

A. Well, at that stage I had been elevated, for my sins, to Chief Inspector and I was delegating the work to other people to do.

Q. Well, if you had been doing it, wouldn't it have been appropriate to do it in 1992, what you in fact did in 1985?

A. Well, I am not clear as to what exactly happened in 1992 when the returns came in. I think that there was consultation with Capital Taxes Branch about the valuation position.

Q. Well, as I said, I was labouring under the impression that you had, in fact, examined the returns. I take it it should be possible to know or is it possible to know at this juncture, whether anybody did, in fact, evaluate those returns when they came in and whether, in fact, anybody did look at the other information available to the Revenue Commissioners concerning Mr. Haughey's affairs?

A. They would have been looked at, but the depth of examination, I am not clear about. I know in my witness statement before Christmas I referred to the fact that sometime, I don't know when, maybe '96/'97, perhaps '97, the matter of Mr. Haughey's last return was brought to my attention and there was an obvious disefficiency in that, as I recall it, a section on that had not been completed and that gave grounds for starting an inquiry.

Q. But you don't know whether there was any pulling together of information such as you, in fact, did in 1984/'85?

A. From the time the inquiry started in whenever it was, '97?

Q. No, no

A. In '92, there would have been consultation with the Capital Taxes Branch as regards the valuation of the land in 1989.

Q. I don't think the files made available to the Tribunal suggest that. Now, I could be wrong in that because I certainly wasn't focusing on that.

A. I haven't really focused on the Income Tax.

Q. Would you agree with me, the inquiry, the one you had instituted in 1991 singling out Mr. Haughey to get his returns in against the background of scandals, that it would have been appropriate to pull together all the information the Revenue had in relation him?

A. Certainly to consult with him, but I am not altogether clear that it would have produced anything useful at that stage, having regard to the construction which we now recognise.

Q. That's beside the point. That's of absolutely no value to the Tribunal, Mr. Clayton.

A. I think there was consultation with the Capital Taxes Branch about valuation, but what other pulling together occurred, I really don't know.

Q. There is no knowing what might have happened if the Revenue had pulled all the information together?

A. Well, the information we had was very, very limited.

Q. But it might have prompted further steps?

A. I am not so sure that it would have, having regard to the things I don't want to bore you again,

Mr. Healy, with the capital position and so on that we knew about.

Q. Thanks, Mr. Clayton.

CHAIRMAN: Mr. Allen?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. ALLEN:

MR. ALLEN: Just one issue if I may take up with Mr. Clayton, hopefully very briefly.

Q. Mr. Clayton, Mr. Healy has questioned you extensively in relation to the agreement which was made between Mr. Charles Haughey, Mrs. Maureen Haughey and the Gallagher Group on the 27th January, 1980.

A. That's right.

Q. Isn't that correct?

A. Yes.

Q. And the premise upon which that questioning appears to have been predicated is that this document established a number of things. One, that it could perhaps have established a template in terms of valuation of the overall holding of Abbeville. Do you understand me?

A. That is the suggestion that could be extrapolated, yes.

Q. That's my understanding, and it's just an issue that I wish to pursue with you very briefly.

A. Yes.

Q. We know from the evidence that you gave before Christmas, and you have referred to it again this afternoon, the manner in which the sum of $i\frac{1}{2}$ 300,000 was treated by the Revenue, isn't that correct?

A. That is right, yes.

Q. Leaving the taxpayer with a net 200,000 as you have indicated?

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

Q. I am not anxious to afford my own way of looking at it, Mr. Clayton. I am just trying to establish my understanding was that that was your view. In terms of the actual agreement itself, you are aware, I take it, that it was a conditional agreement on its face?

A. It was a conditional contract, yes.

Q. And it contained a very particular condition at clause 3 thereof, isn't that right, which provided: "That the agreement was subject to the condition that the purchaser" that would be the Gallagher Group "would provide the vendors with a stud farm of at least 60 acres of land with appropriate stables and within a radius of 20 miles of the general post office" being I take it the building in O'Connell Street "preferably in north County Dublin. The new stud farm and the cost thereof will have to meet with the approval of the vendors. The cost of the new stud farm will be deducted from the purchase price."

A. Mm-hmm.

Q. Here we have, might I suggest to you, a hugely onerous condition contained in this agreement.

A. Certainly, it was, yes, it was onerous.

Q. So when you are asked questions about establishing a valuation for lands, presumably that is a factor which would have to be that is a matter which would have to be factored into the equation if you are seeking to rely upon this contract as establishing a base line value for an overall holding?

A. It certainly would. It was a very difficult clause in the contract.

Q. Yes, but the point I am making to you is that presumably you were also cognizant of clause 5 which recites that: "A deposit of $\text{£}1\frac{1}{2}$ 300,000 has been received and is hereby acknowledged."

A. That is correct, and the very last clause on that page, I don't have it in front of me, but if I recall it, it gave Mr. Gallagher the right of first refusal for a further two years.

Q. That's correct, that's Clause 7. Gave the Gallagher Group the very first refusal for a further period of two years from the 1st January 1986 and going back very briefly, Clause 6 recited that "In the event of the transaction not being completed before the 31st December 1985, the deposit of $\text{£}1\frac{1}{2}$ 300,000 will be non-refundable, but Gallagher Group Limited will then

have no further obligation under this agreement."

A. Yes.

Q. So that is the information which you had available to you, isn't that the position?

A. That is so, yes.

Q. That is also the information which the tax agents had available to them?

A. That is so, yes.

Q. And as a result of the what passed between you and the tax agents, a decision was made, as I understand it, by the Revenue Commissioners to deal with the $\frac{1}{2}$ 300,000 as a capital gain, isn't that correct?

A. Well, the correct sequence is that I had to assess the $\frac{1}{2}$ 300,000 first before I got to agreement, yes

Q. But that is

A. That is the end result, yes.

Q. That was the end result. I don't want to go into the intervening events because you have already given extensive evidence in relation to them, when you were giving evidence here before Christmas. And the full tax due on that sum was paid, isn't that correct?

A. It was all paid. I think by the beginning

Q. I am not concerned with the manner in which it was paid, but insofar as the tax agents were concerned, this was the information which was available to them.

It was also the information which was available to the Revenue Commissioners and it was dealt with on that

basis?

A. Correct, yes.

Q. Thank you very much.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. CONNOLLY:

Q. MR. CONNOLLY: First of all, Mr. Clayton, the reference to the $\frac{1}{2}$ 190,000 interest-free loan to Eimear Haughey, first of all, can I point out that that was a treatment in the accounts of stock on the farm which reduced over a period of time, as opposed to cash being given to her which what may well be the impression given here?

A. Mr. Connolly, as I said to Mr. Healy, I didn't pay a great deal of attention to that set of queries when they came to me.

Q. All right. We can deal with that perhaps through another witness.

A. I accept fully what you are saying.

Q. But it does if that is established in evidence, I suggest we'll deal with it through other evidence, that puts a very different gloss on the availability of cash available at any given point in time?

A. Of course.

Q. You indicated that the Revenue placed 100% reliance on the Valuation Office and that was, that I suggest was because there was in the Valuation Office appropriate expertise to value properties, both then and now?

A. And from my experience in handling Capital Gains Tax valuation appeals, I handled dozens of them when I was in Capital Gains Tax, I had a spiel almost off by heart in going into the Commissioners and Judges as to the extent of the records available to the Valuation Office in their process of estimating the market value of a particular property at a particular date. They had an extensive array of comparables available to them in nearly all cases.

Q. Well, what they took into account at any given time was, as you have described, purchase prices of comparable property within a reasonably short space of time before the time of the actual assessment evaluation?

A. A view on either side would be the norm.

Q. There would have been little value for the Valuation Office in looking at the headline of the Irish Independent which we have been referred to. They dealt with valuation reports and their own expertise?

A. I would say practically no value. That's my opinion of it. They would have known that north County Dublin land was of interest to developers, but to extrapolate a figure or to extrapolate that to the open market, is not something I think they would do. They would place nearly 100% reliance on the comparables.

Q. Now, a document was passed to you by Mr. Healy during his examination, which is a report of a valuation that

was submitted by Haughey Boland on behalf of the taxpayer in relation to the value of the 227 acres of at Abbey as of the 16th March 1989.

A. I have a copy of it here.

Q. And it's appropriate to draw your attention to the fact that this was a valuation that was based on the land being zoned agricultural as they were, in fact, at that time?

A. Yes.

Q. And secondly, another, secondly, the valuers place appropriate emphasis on the second page under "General assumptions," where they deal with the fact that this was a valuation they were putting in place where there would be a willing vendor, there would be a reasonable period for negotiation, that the values would remain static throughout the relevant period, and the property would be freely exposed to the open market; and fifthly, and perhaps most important, that no account was to be taken of an additional bid by a special purchaser.

A. By a special purchaser, exactly.

Q. Do you have a view as to whether the Gallagher document was, in some way, to be categorized as an intended transaction by a special purchaser as opposed to the going rate for the land in 1980?

A. Well, Mr. Gallagher was a special case of course. The contract was special, as Mr. Allen has pointed out,

there were very special features attaching to the contract. I am not sure what more I can say to you, Mr. Connolly, in relation to that point.

Q. Can I suggest this, that there has been an implicit criticism, not of you personally, but of the Revenue in relation to the position taken in 1989 given that there was a certain knowledge of a price being put on the land some nine years earlier. Can I suggest this to you, that the intellectual exercise that was required of the Revenue in 1984 by yourself, or 1985, in determining whether that contract was valid or a sham, was a quite different intellectual exercise required of the Revenue in deciding whether this was going to be a useful document in drawing comparison values when a valuation of the land was being put in place?

A. Yes, I think you have put that very well, Mr. Connolly.

The fact of the matter is that the contract in 1980 was very unusual. As I have said I am not here to defend it. It was there, we took it at face value. And I don't think it would be right to extrapolate the conditions of that contract, the price in that contract, to an event of nine years later and to say this would be the open market price, that consequentially you would be able to get the open market price which is what is required under the Capital Gains Tax legislation. There is a specific section in the Capital Gains Tax legislation which

talks about determination of value and talks about the open market and certainly the what happened in the Gallagher case would not be those criteria.

Q. Well, the criticism that was raised through Mr. Healy's questioning wasn't that you were to be handcuffed to that as a particular valuation that would bind in 1989, but that it was an appropriate piece of information that ought to be factored in either with the Valuation Office or with the appropriate Revenue officials in 1989. What do you say to that specific criticism to be discerned from the questions raised?

A. I would say this was something which happened nine years earlier, or, in fact, more accurately did not happen nine years earlier; the sale was not completed and the sale, or the contract, not the sale, the contract arose privately. It didn't arise in the open market. As an indicator of market value in 1980, it was extremely unreliable. I don't think that one could depend on it at all. If one wanted market value of land in north County Dublin at that time, one would look at the comparable sales in 1980, presumably the same that was in 1989.

Q. Bearing in mind Revenue obligations eventuality in dealings with taxpayers affairs, to what extent would it have been appropriate, if at all, to disclose the Gallagher document to Mr. Haughey's children or their tax advisers in 1989?

A. I don't think it was disclosable to anyone else besides the parties to the contract, because the contract had not been completed. The information was not in the public domain. One would not be allowed to quote that, I think, in the particular circumstances. Stamp duty would be payable by the purchasers, by the acquirers, as far as I know. Capital Acquisitions Tax by definition by the acquirer. So the dispute about the market value of the land would have to be raised with the acquirer of the property, not the disponer. One would not be saying to Mr. Haughey, the value D or the amount of tax the children have to pay is so much. One would be saying that to the children and in saying that to the children one could not quote information private to Mr. Haughey.

Q. Well, that's what I am getting at. Stamp duty didn't arise here. Quite apart from what you have said to us about the lack of usefulness of this as a comparison value, can I suggest that certain difficulties would have arisen for the Revenue Commissioners in the event that they had drawn this to the attention of the Valuation Office or to the Haughey children or to Haughey Boland then acting on their behalf?

A. Difficulties would have arisen if one got at that stage, but I don't believe one would have got to that stage. The valuation would not have taken that on board for the reasons we have been talking about.

Q. Thanks very much, Mr. Clayton.

MR. HEALY: Could I deal with four matters arising out of that?

CHAIRMAN: I think very briefly, Mr. Healy.

THE WITNESS WAS EXAMINED FURTHER BY MR. HEALY:

Q. MR. HEALY: Firstly, one matter on valuation and contracts. This was a contract which the last two counsel to talk to you or to question you noted, contained some very onerous these conditions were onerous on the purchaser, isn't that right?

A. They were onerous on the purchaser, yes.

Q. So notwithstanding these very onerous conditions, the purchaser was still prepared to pay a lot of money for the land, isn't that right?

A. On the face of the contract, yes.

Q. So I suggest to you the onerous conditions increase the potential market value of the land in this case?

A. It's difficult to read into the mind of the purchaser.

Q. These onerous conditions, in any case, made it harder.

They were a burden on the purchaser, an additional burden over and above the price?

A. They were an additional burden. I think you have heard evidence from Mr. Patrick Gallagher to that effect.

Q. Now, you say that the Revenue relied 100% and would

place 100% reliance on the Valuation Office, isn't that right?

A. What I meant by that was that in considering property valuations, we deal with the Valuation Office.

Q. Am I not right in thinking, we'll be coming to this perhaps or we may perhaps have already mentioned it, we may have to go back to it, that in relation to

Residential Property Tax, there was a revaluation of Abbeville after the proceedings of the McCracken Tribunal?

A. That's my recollection of the evidence, yes.

Q. So that notwithstanding a valuation by the Valuation Office prior to the McCracken Tribunal, there was a revaluation afterwards?

A. As you say so, Mr. Healy, yes.

Q. Wouldn't that seem to suggest that these valuations are, to some extent, reviewable in the light of new facts?

A. Well, of course they are. As I said to you, the hundred percent reference was to the fact that we deal exclusively or almost exclusively with the Valuation Office.

Q. Was that revaluation prompted by the Valuation Office or by the Revenue Commissioners, do you know?

A. Which valuation?

Q. After the Residential Property Tax valuation that was carried out after the McCracken Tribunal.

A. I am sorry, I can't I don't deal with the Residential Property Tax. I don't really know.

Q. Mr. Davis tells me that he thinks, in fact, it was the Valuation Office themselves.

A. I see.

Q. Now, one last matter two last matters. In fact, only one of them I think need concern myself with at this point. You were dealing with the tax affairs, of course, of the Haughey children in 1989. Isn't that right?

A. In 1989?

Q. In 1989, on the question of Capital Acquisitions Tax?

A. Me? Not I.

Q. The Revenue Commissioners?

A. The Revenue Commissioners, yes.

Q. Am I right in thinking that Mr. Connolly was asking you about the extent to which it would have been appropriate to refer in that context to dealings which concerned Mr. and Mrs. Haughey as opposed to their children?

A. Yes, that is right, yes.

Q. Now, could I just make two points about that. Firstly, you were dealing with Mr. Pat Kenny, isn't that right?

A. We were dealing with Mr. Pat Kenny, yes.

Q. In fact, the document that was read out by read into evidence a moment ago, parts of which were read into

evidence I think by Mr. Connolly, a valuation of Messrs. O'Farrell Cleere Auctioneers Limited was, in fact, addressed to Mr. Pat Kenny and on the front of it it states: "Report and valuation on the instructions of Mr. Pat Kenny of Haughey Boland & Company."

A. Yes.

Q. So you were dealing with the self-same individual that you had been dealing with in relation to the 1980 transaction?

A. In his capacity as agent for Mr. and Mrs. Haughey.

Q. Now, just one other matter. Whatever you would or would not have been in a position to draw to the attention of the Haughey children, in alerting the Capital Taxes Branch to this matter in the very first instance, you drew from information on Mr. Haughey's file and on his daughter's file, isn't that right?

A. That's right.

Q. And you didn't seem to make a huge distinction between the two of them as to whether you were entitled to cross-fertilize from one to the other?

A. To take relevant information from both, yes.

Q. And are you suggesting that the Revenue Commissioners turned a blind eye to relevant information on Mr. Haughey's file in 1989 in assessing his children to Capital Acquisitions Tax?

A. No, I am not saying that. We were talking about relevance. On that point

Q. I thought you were talking about propriety?

A. As regards Mr. Pat Kenny acting for Mr. Haughey, I don't think that Mr. Kenny would be entitled to disclose to another client of his details of the tax affairs of Mr. Haughey even if they were members of the family.

Q. Even if Mr. Kenny knew the position to be otherwise than perhaps had been stated in the reports he was relying on?

A. I think that's a fairly serious question. It comes back to the question of 1980 versus '89 again.

Q. But is he entitled to put one thing out of his mind, do you think? You are relying on him.

A. I presume he was acting as agent for the children?

Q. Yes.

A. He was acting as agent for the father. But he had communications with Mr. Kenny as agent for Mr. Haughey.

I don't think that we would be permitted to refer to tax information specific to the children or vice versa.

Q. That may have to be taken up again I am sure, you understand.

A. I understand.

CHAIRMAN: Well, Mr. Clayton, I will weigh carefully everything that you have said before forming any view on this. I realise that no case or analogy is exactly on all fours, but could I just put this very rough

hypothesis to you.

Suppose you and I had the good fortune to be able to sell a Yates painting next week and we were being advised as regards a realistic valuation of that painting and suppose it were the case that some reclusive millionaire had paid a larger sum for a not dissimilar painting some ten years ago, it might be distinguishable, it might be old in time, but would we not expect to have that information to hand before committing ourselves?

A. Indeed it might be relevant, but I am sure we could have a very interesting discussion about the value of fine art over decades and how tastes change and so on and how some people who are very wealthy don't know the value of money and they might be thinking, they might pay a dollar figure or a punt figure when they are thinking of pesetas or lire. They mightn't know the value of money. And the Yates painting, you talk about ten years, and we know how Jack Yates' paintings have appreciated more than normally in recent years. There is a difficulty with looking, in fact, I would suggest, for comparable paintings of any Yates' paintings in the last three or four years rather than going back ten years to find a comparable because of the extraordinary increase that has occurred in those paintings.

CHAIRMAN: All right. Thanks for your assistance,
Mr. Clayton. Thank you.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. Quigley, please.

CHAIRMAN: Well we plainly won't get beyond
Mr. Quigley today Mr. Coughlan, so if anybody else has
other business to attend to, no other witnesses will be
required.

DERMOT QUIGLEY, HAVING BEEN SWORN, WAS EXAMINED AS
FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. Quigley, I think you prepared a
statement or a memorandum of proposed evidence for the
assistance of the Tribunal and do you have that with
you?

A. I have a copy, yes.

Q. And I'll go through that with you and then maybe ask
you a few questions to clarify a few matters, if that's
all right with you.

A. Yes, it is.

Q. I think you say that you were the Chairman of the
Revenue Commissioners since the 3rd July 1998?

A. That's correct.

Q. Up to then you served as a Revenue Commissioner with
effect from October 1990, having previously been an
assistant secretary in the Department of Finance, is

that correct?

A. That's correct.

Q. And at the request of the Tribunal, you are making this statement in relation to the settlement of the Capital Acquisition Tax assessments on Mr. Charles J. Haughey arising out of certain payments made to him as identified in the report of the Tribunal of Inquiry (Dunnes Payments) or otherwise known as the McCracken Report?

A. That's right, yes.

Q. Now, I think under the heading of "Making of Assessments and Appeals by Taxpayers," you have informed the Tribunal that during the period following the publication of the McCracken report in August of 1997, the Capital Taxes Division in Revenue was reporting directly to you, is that correct?

A. That's correct. I think there may have been a vacancy at assistant secretary level at the time, but in any event this statement is correct.

Q. I think you informed the Tribunal that you were aware of and approved the action taken by the Capital Taxes Division including the raising of the assessments on Mr. Haughey in December, 1997 and you were kept informed of progress at all stages on the actions taken on foot of the assessments. Is that correct?

A. That is correct.

Q. I think you have informed the Tribunal that following

the lodgment of the appeal by the taxpayer against the assessments, you were also kept informed on the preparations for the hearing of the appeal by the Appeal Commissioners which took place on the 29th July, 1998, is that correct?

A. Yes, I can confirm that.

Q. I think you have also informed the Tribunal that Revenue expressed dissatisfaction with a decision of the Appeal Commissioners to reduce the assessment to nil. You realised, however, that the decision was only the first stage in the process and you were determined to pursue the case vigorously to secure a successful outcome from Revenue's point of view, is that correct?

A. That is correct. I might just note for the record that that decision by the Appeal Commissioners I think was in December '98, which I might have added in there but I didn't.

Q. Very good. And we will come to deal with another witness at a later stage that goes into the detail of the handling of these Capital Tax Assessments and the matters before the Appeals Commissioner and the ultimate settlement. But you, in fact, caused to be published on your web site, the arguments which were made both by the Revenue and the taxpayer

A. Well, I think, Mr. Coughlan, they were published on behalf of the Appeal Commissioners on the institute of

taxation website. It wasn't on the Revenue website because, of course, the Appeal Commissioners are independent of the Revenue Commissioners, but they have made an arrangement with the institute of taxation to publish, which they have discretion to do, information and it's on that particular website.

Q. I think the arguments are published.

A. Yes, and the resume of the Revenue side and the other side's case and the factors which led to the decision by the Appeal Commissioners.

Q. Now, I think that in light of the outcome of the case at the Appeal Commissioners, and notwithstanding the findings of the McCracken Tribunal, the Revenue approach was renewed in depth. It was decided that to ensure success of the hearing, it was desirable that Revenue should effectively be in a position to establish independently through its own efforts, all of the facts and circumstances rounding the payments of the 1.3 million by Mr. Ben Dunne to Mr. Haughey, is that correct?

A. That is correct, I think the emphasis is on independently if I might say, is that we would have placed reliance, not sole reliance, but significant reliance in the Appeal Commissioners' hearing on the findings of the McCracken Tribunal, because we were dealing with a matter not of criminal law, not a matter of admission of justice; a question of a tax liability.

We had, of course, other arguments and other information and evidence which was relevant to the assessments which had been made by Revenue, but in the light of the findings by the Appeal Commissioners, we decided that to ensure reinstatement of the assessments as far as we could ensure it, it would of course be a matter for decisions of a Circuit Court Judge, but to ensure at Revenue's end that we would be in a position to make a successful case for that reinstatement, that we should carry out our own investigations, not foregoing, obviously, the findings of the McCracken Tribunal, but carrying out independent inquiries to enable us to establish all the facts in the case which would be relevant to the identification of the disponent and the assessment of the tax liability.

Q. Now, I think the investigations and preparations were undertaken by a joint team comprising officials of the Capital Taxes Division and of the Chief Inspector's office, is that correct?

A. That is correct.

Q. And I think you have informed the Tribunal that it should be noted that the case was probably without precedent in terms of its features involving the need to establish a trail of money through offshore accounts and complexity. Nevertheless, as a result of the investigation and research undertaken throughout 1999, you were satisfied that the Revenue should be in a

position to have the assessments reinstated at the hearing before the Circuit Court Judge. At the same time, you realised that as with any court case, the outcome was not without risk of course.

A. Yes, I think that is a correct statement of our feelings at the time.

Q. You felt you were in a strong position, but of course, every case has some risk attaching to it?

A. Absolutely, and there was no guarantee that we would succeed, but we had done the work and we were optimistic, we were quietly confident that we could make whatever case, whatever arguments might be needed to sustain a favourable decision by the Circuit Court Judge.

Q. I think you have informed the Tribunal that the board made a decision on the settlement and you say that you and the other members of the Revenue board were aware of the approaches made on behalf of Mr. Haughey on the possibility of securing a settlement of the liabilities in advance of the rehearing of the appeal, is that correct?

A. Yes, that is correct. And the decision was a board decision in Revenue.

Q. And as the negotiations intensified in the first few months of the year 2000, a number of meetings were held with the Revenue team to discuss the possible content of a settlement and to assess its implications, isn't

that correct?

A. Absolutely correct, yes.

Q. And that you say that while Revenue regularly settles tax liabilities with taxpayers, you are conscious that in this particular case, the matter would have to be considered very carefully, taking account of the background to the case, the public controversy that had attended the decision of the Appeal Commissioners to reduce the assessment to nil and the imminence of the scheduled rehearing before the Circuit Court Judge?

A. Yes.

Q. And you say that having rigorously considered the pros and cons, the board agreed in principle at a meeting on the 6th March 2000 to enter into a settlement subject to a detailed agreement being worked out and that subsequently on the 31st March 2000, the board agreed that a settlement should be entered into with Mr. Haughey in the form of the documents being drawn up?

A. That is correct. The agreements would have been signed by Mr. McCabe, but he did so on the basis of a formal agreement by the Revenue board which took responsibility and of course as Chairman, I ultimately take responsibility for the decision.

Q. The decision and the settlement?

A. And the settlement, yes.

Q. Now, I think you informed the Tribunal that entering

into settlement negotiations with Mr. Haughey's agents, the Revenue's position was that in all the circumstances of the case, any settlement would have to be practically as good as a win at the rehearing before a Circuit Court Judge?

A. Yes.

Q. In other words, I think you would be expressing the view that if you were going to give a little discount for the potential hazard or risk of any form of hearing, it would only be small?

A. I think that's a fair statement of our attitude at the time.

Q. And you say that in that regard, Revenue's view was that when set against the amounts of the gifts in question, which were identified in the course of the McCracken Tribunal as being 1.3 million

A. Yes.

Q. When measured against assessments of tax and interest totalling 1.164 million, and having regard to the uniqueness of the case, a result before the Circuit Court Judge confirming a liability of around $\frac{1}{2}$ million, would be viewed as a good outcome from the Revenue's perspective?

A. Yes.

Q. And in Revenue's view therefore, if a monetary settlement was to be considered, the sum on offer would have to be in the order of $\frac{1}{2}$ million or

thereabouts?

A. That is the case.

Q. And you informed the Tribunal as it turned out, over the course of the discussions with the taxpayer's agents, the settlement amount was agreed at $\text{€}1,009,435$, is that correct?

A. That's right.

Q. The settlement, however, went beyond an agreement solely beyond the monetary sum due. It also established the means by which payment of the agreement sum would be agreed and the timeframe within which the liability would be discharged. I'll come back and deal with that and we can explain what that means in a moment.

A. Yes.

Q. You go on to say that this went beyond what a rehearing before a Circuit Court Judge could give which at best would be would have confirmed the Revenue's assessment, that is the assessments raised on the taxpayer?

A. Yes.

Q. But could have made no determination as to how or when payment should be made or secured.

A. No. It would have reinstated, if we got a favourable decision, the assessments made by Revenue. The pursuit of the collection of the tax liability arising from the reinstatement of those assessments, would, as

in the normal course, be a matter for Revenue to pursue itself. There would have been no assurances other than the fact, of course, that a Circuit Court Judge had found in our favour, so there was in existence, or would have been in existence, a clear liability, but the pursuit of liability to translate the paper liability into actual collection of money, would have been a matter for Revenue to undertake using its normal collection procedures.

Q. You'd have to go after the money?

A. We'd have to go after the money.

Q. Now, I think you have informed the Tribunal that the size of the settlement offer which represented a sum close to the amount assessed, and in effect, the maximum tax and interest normally collected in a gift tax case when balanced against the fact that the original appeal had been lost, the risks inherent in appeal hearings generally, the uniqueness of the case, the probability of further protracted litigation irrespective of the Circuit Court outcome, the ongoing legal and administrative costs that would be incurred, and the arrangements as to payment was such as to warrant, in Revenue's view, settlement of the case?

A. That was the conclusion we came to.

Q. Taking all of these matters into account?

A. All of these factors into account, yes.

Q. And I think you say that you and your colleagues on the

board were fully satisfied that the settlement arrangements represented that the settlement arrangements represented a satisfactory outcome?

A. Yes, I confirm that.

Q. I think you also say that under the terms of the settlement Mr. Haughey agreed to pay, by the 1st October 2000 a sum of $\text{€}1,009,435$ comprising full tax as assessed which was $\text{€}507,663$ and interest of almost 100% of the tax. $\text{€}501,772$ in settlement of the assessments totalling $\text{€}1,164,739$, is that correct?

A. That's correct.

Q. You say in addition specific undertakings regarding payment involving the sale of family assets were also given to Revenue. These undertakings were honoured and on the 30th August 2000, a cheque in the sum of $\text{€}1,009,435$ was paid over to the Revenue, is that correct?

A. That is correct. The money has been paid and received by Revenue.

Q. The agreement made it clear that the settlement was confined to the gift tax assessments made by Revenue in December 1997 in respect of the payments identified in the McCracken Tribunal Report. Is that correct?

A. That is correct.

Q. "It has no application to or implications for any other tax liabilities that may exist or arise. Revenue's investigations are continuing, taking account of

further disclosures made at the current Tribunal." I

take it you mean this Tribunal, is that correct?

A. That is right, Mr. Coughlan, yes.

Q. You say that having to report to the public accountability aspects of the case, Revenue sought and obtained the agreement of the taxpayer to the publication of an agreed statement giving details of the case. And you also elaborated publicly on the basis of the settlement in response to queries from the media?

A. That is correct, Mr. Coughlan, yes.

Q. Now, there are probably a number of matters that I do wish to take up with you, Mr. Quigley, and I may not get them completed today. Would you have any difficulty in coming back at some stage next week?

A. No, I am available to the Tribunal.

Q. Very good. Perhaps there is just one or two issues which I would like to take up with you, if you can be of assistance or it may be that somebody else will deal with them in due course.

But the Revenue's interest in Mr. Haughey in relation to the matters which gave rise to these assessments arose as a result of evidence given at the McCracken Tribunal, isn't that correct?

A. That's right. And the clear findings of the Tribunal as set out in the report, which was published in

August 1997.

Q. And the Revenue would have had, by reason of the evidence and the clear findings of the report, an interest and a duty to move to see if tax was due, to deal with the taxpayer, raise the appropriate assessments if the Revenue were of the view tax was due and set about the process of collecting it in due course, isn't that right?

A. That is correct. There were clear findings in the report of the Tribunal about the gifts which had been obtained by Mr. Haughey. Revenue did not have the information about those gifts in advance of the Tribunal hearings, the McCracken Tribunal hearings and the report and Revenue obviously had a duty and was determined that on the basis of the information which became available in the Tribunal and in the clear findings of the report, that it should move, as quickly as possible and with all due circumspection, to take the appropriate action. We would have considered the various steps that might be taken and our conclusion was that we should proceed in any event, while other wider investigations might be taking place and are taking place, are continuing, are ongoing, that we should proceed with the assessment to tax of the particular gifts disclosed in the Tribunal report.

Q. Now, you use the term gifts, Mr. Quigley. This was a matter of huge public controversy at the time of the

evidence being heard by Mr. Justice McCracken and at the time of the publication of his report, isn't that correct?

A. It was indeed, yes.

Q. And I take it that Revenue, at the highest level, would have been paying attention to what was going on?

A. Absolutely.

Q. And can we take it that in that regard, that the Revenue, and I use the corporate identity, would have pulled together all information it had in relation to this particular taxpayer to enable it to consider how it might proceed?

A. Well, we were dealing with a particular set of circumstances. We were dealing with the disclosure in the course of the McCracken Tribunal proceedings of gifts totalling amounts of money totalling $\text{£}1.3$ million. We were quite clear that that wasn't the information which was available in Revenue, had not been available in Revenue. So we would have proceeded on that basis, that we would deal with that. Of course, that wasn't, as I have indicated already, the totality of our action in relation to the case or in relation to the taxpayer, so that the proceeding with the assessments in December of 1997 was a prudent a correct step to take to proceed with all due speed to pursue the interest of the general body of taxpayers in raising tax on this liability, but of course it didn't

represent the full total of the activity which was under consideration or the investigations which, as I say, are ongoing.

Q. Well, let's be clear about this, Mr. Quigley. You raised the assessments notwithstanding the setback before the Appeals Commissioners. You got your money in terms of the assessments raised and you collected money on behalf of the general body of taxpayers from this particular taxpayer.

A. That is correct.

Q. There is no doubt about that.

A. As a result of the assessments that were made at that time, we have achieved an outcome which more or less gave us the total amount of the assessments and indeed, allowed us to build into the agreements two very important things. First of all, arrangements which would, as I have indicated in my statement of evidence, ensure or go as far as possible to ensure that we would receive the payment within a specified time. And secondly, a specific provision ring-fencing the actions which we were taking solely to the gifts we were dealing with in those assessments and explicitly carving out from the agreements any other matters under any other tax heads in relation to any other monies that might arise as a result of the investigations or as a result of further disclosures in this Tribunal or otherwise.

Q. Or otherwise. Now, you use the term "gifts" all of the time and the assessments were raised in relation to what the Revenue described or assessed as gifts. The assessments were raised on the Capital Taxes side of things as Capital Acquisition Tax on the Capital Acquisition Tax side of things?

A. That's right.

Q. Now, because the McCracken Tribunal gave rise to huge public controversy and, in fact, gave rise to this Tribunal being set up, there was so much public controversy following it. Did a debate take place in Revenue as to how this matter might be approached?

A. You mean in terms of whether we should proceed with the particular assessments

Q. Yes.

A. which we made? There was discussion at the time, certainly. There was discussion. If I might say in relation to the comment which I think is underlying in question you are putting to me, I am not aware that there was any suggestion in the course of the McCracken Tribunal proceedings or in the report that these amounts totalling 1.3 million were anything other than gifts. I am certainly not aware of any evidence adduced in the course of those proceedings that they were anything other than gifts or their consideration might have passed which would make them something different. But there was discussion and I would have

been involved in those discussions and I would have approved of the proposal to make the assessments in December 1997 on the basis which was clearly, to us, consistent with the findings of the McCracken Tribunal Report.

Q. Of course, the McCracken Tribunal was not the Tax Collector, it was not the Revenue Commissioners, isn't that correct?

A. That is correct.

Q. And I am just wondering, or the Tribunal would like to know, was consideration ever given by the Revenue Commissioners that these payments might have been viewed as income because there were a substantial number of them over a concentrated enough period of time which might have taken them out of the category of being gifts and brought them into the category of at least consideration as to whether they were income or not?

A. I think, to the best of my recollection, there would have been some discussion around that, but as I have indicated already, we were quite clear on the basis of the McCracken Tribunal findings of fact, not of tax matters, but of fact, as the Tribunal found it, that these were correctly categorized for our purposes as gifts. We had no evidence to the contrary. We would not have been in a position to demonstrate that they were anything other than gifts. But we did feel

satisfied, and we would have discussed this carefully in Revenue in our team, we did feel satisfied that we should proceed on the basis of assessing them to Capital Acquisitions Tax as gifts and that's what we did.

Q. You did. The only thing I want to ask you about before we finish this evening is really this: The reason I am asking you these questions is, I have to ask these questions on behalf of the public and the public will want it inquired into every way and the Revenue has to expose itself as to what considerations it gave to matters.

A. Mm-hmm.

Q. Mr. Clayton got Mr. Haughey to make tax returns back in the early 1990s.

A. Mm-hmm.

Q. Those related to income.

A. Yes.

Q. Now, it is our understanding, and correct me if I am wrong, that the Revenue consider it very important to commit a taxpayer to make a return. That establishes the base line from which everything subsequently moves, isn't that correct?

A. Yes.

Q. But it is also more significant in this regard, that if a taxpayer doesn't make a return, that carries a certain type of penalty, doesn't it, statutory penalty?

It might be $\frac{1}{2}$ 500?

A. For failure to file

Q. It might be $\frac{1}{2}$ 500 or $\frac{1}{2}$ 1,000?

A. $\frac{1}{2}$ 500, $\frac{1}{2}$ 1,200, depending on the taxpayer.

Q. If a taxpayer files a return under self-assessment and he misleads the Revenue, that carries a significant penalty, doesn't it, in the event of the taxpayer being found out?

A. Yes, it could. It could, depending on the circumstances. Depending on the case. I wouldn't like to generalise about it.

Q. Because there may be error, of course there may be errors and those can be explained to the Revenue and the Revenue may accept those matters. But if a situation arises that the situation is not as declared to the Revenue under self-assessment, the taxpayer would be liable for the tax and interest which would have accumulated over a period before the Revenue found out about matters, but over and above that, a penalty almost equal to that again may apply, isn't that correct?

A. That is correct. That could be the case. If there was negligence in dealing with the affairs of the taxpayer, there could be, if you like, a tax-gearred penalty. It would depend on the circumstances of the case.

Q. And I am not suggesting that it should apply in every

case, and it may be a situation that the Revenue might view sympathetic that somebody had just been in error in a return or something of that nature, but if the Revenue were of the view that something significant had not been disclosed to them that should have been, something significant, that could give rise to a penalty equal to the tax and the interest that was being applied, isn't that correct?

A. That is correct. In the case of Income Tax, that would be the case and it would be something that we would consider in the particular circumstance.

Q. Now, I don't know if you can assist me, and perhaps we'll all have to look at the legislation in relation to this. In relation to CAT, Capital Acquisitions Tax, I can't remember the form, whether it's IT38 or whatever it is

A. Right.

Q. Do the same type of penalty provisions apply there or do you know off the top of your head?

A. Well, there are different types of penalty provisions that apply for Capital Acquisitions Tax also, but they are analogous to the situation you have been describing. There is a penalty in the case of Capital Acquisitions Tax for failure to file a return. There is a requirement to file a return within, say, four months of a gift, and there is provision in I think Section 63 of the Capital Acquisitions Tax Act for a

penalty for failure to file. There is another situation where a return is filed, but it's filed negligently or in a fraudulent way and in that situation, in that situation the case would bring into play the potential of tax-gearred penalties. Analogous to what you are describing, in the incomes tax code, but that would apply in the specific circumstances that I have outlined and where Revenue could demonstrate that a return had been filed which of course didn't apply in this case

Q. That's the point I am coming to next

A. And that a return had been filed then with negligence or with fraud intent.

Q. That's the point I want to come to next, because whilst Mr. Clayton did the correct thing in getting the taxpayer to make returns back in the early 1990s as regards income, we know in this case that there was never a self-assessment form filed in relation to Capital Acquisition Tax, isn't that correct?

A. That's right. There was never a return filed. The return was requested and not filed and it wasn't filed, of course, at the time of the gifts, obviously Revenue didn't know about them as I have indicated. But nonetheless, in the interests of pursuing the liability, and very substantial amount of interest which has been paid in this case, we decided we decided, having weighed all the factors on an area

within our responsibility, I agree with you completely, not the responsibility of the McCracken Tribunal, we decided on an area within our responsibility that we should proceed as quickly as possible to assess what were categorized as gifts to Capital Acquisitions Tax and that's what he did with a very significant outcome, I would suggest to you, in terms not only of the arrangement but the actual payment arrangements.

Q. I am not being critical of the Revenue. You collected a lot of money in that regard, Mr. Quigley. I just want to lay out for the public's understanding the various positions and implications of not making a return which can carry a penalty which might be 500 or 1,000 for not doing that, but that if one makes a return and makes a neglect a significantly negligent return or a fraudulent return, that can carry huge penalties, isn't that correct?

A. That is correct. The only thing I would add, of course, is that to prove the situation giving rise to a penalty, you would have to establish, and ultimately of course it's only the Court which can impose penalties. We may in the course of a settlement on Income Tax and so on agree on penalties, but it's only the Court which would so you would have to be in a position to go to court and demonstrate by the facts of the case, in this instance very complicated facts, that a return which should have been made had not been made within a

certain timeframe.

Q. I think I'll leave it there for today, Sir, and I will have to ask you to come back to a short period.

CHAIRMAN: Mr. Quigley, I think because of other ongoing Tribunal commitments next week, it will be necessary to hold a number of partial or afternoon-only sittings. And I would envisage we will be resuming at two o'clock on Tuesday. I am conscious you have a lot of responsibilities, apart from running the Revenue Commissioners, to other bodies. Is it convenient for you to conclude your evidence at two on Tuesday or

A. Yes, indeed, Chairman, I will cooperate fully with the Tribunal. Thank you very much for your consideration.

THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY, 13TH FEBRUARY 2001, AT 2PM.