THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 13TH FEBRUARY 2001, AT 2PM:

CHAIRMAN: Thanks very much. Mr. Quigley, would you be kind enough to come back to the box.

CONTINUATION OF EXAMINATION OF MR. DERMOT QUIGLEY BY MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. Quigley, I think on Friday we had dealt with the question of penalties which may have applied where a taxpayer did not make returns and penalties, different penalties which may have applied if a taxpayer made negligent/fraudulent returns, isn't that correct?

A. Yes.

Q. If I could, and I don't think it will take much longer, if we could deal with the assessment in this case the assessments were raised, I think, on the 10th December, is that correct, of 1997?

A. I think that is correct, yes.

Q. I am just looking through them. They all seemed to have been raised on the same day?

A. On the same day.

Q. And the assessments calculated the value of the gift-applicable exemptions, threshold exemptions and matters of that nature, Section 53 exemption, that was related to raising gifts for charitable or political

purposes, isn't that correct, and then there was a taxable value arrived at, the thresholds were applied. They may have been nil in some instances. And then the tax was calculated on an ascending scale on various amounts within the gift, isn't that correct?

A. With the appropriate rate of tax.

Q. I think we'll be going through those in detail with Mr. McCabe and I don't intend going through them with you at the moment.

Now, when the tax was assessed, the exercise carried out by the Revenue then was to apply interest?

A. That's right.

Q. To the amount of tax assessed?

A. That's right, from the date of the gift.

Q. From the date of the gift and that varied in different instances depending on the evidence and the matters as found by Mr. Justice McCracken in his report?

A. That's right. They weren't precise dates, as I recall it, but we did make a conclusion, for example, where there was a date which showed the date of conversion of a foreign exchange amount, we took that date as being the date. So the appropriate dates in the light of the McCracken Tribunal and the other findings we have were used for the date of the gift for the purpose of the assessment.

Q. And it was those assessments then which were the subject matter of the hearing before the Appeals

Commissioner and subsequently those were the numbers which were used for the purpose of compromising the matter when it went to the Circuit Court, isn't that correct?

A. Yes. These were the assessments which were appealed by the taxpayer in January of 1998 which formed the basis then of the hearing by the Appeal Commissioner which took place, I think, in July; and a decision from whom was delivered in December of 1998. So it was in respect of a rehearing of that, if you like, adjudication on those assessments that Revenue, having expressed dissatisfaction, applied to the Circuit Court on, so it's the same assessments throughout.

Q. It's the same assessments throughout. The same numbers apply throughout the various steps?

A. That's right.

Q. But of course then when we came to the settlement, there was a question of what the settlement amount was and how an adjustment might be made in respect of some of the interest figures included in those assessments for the purposes of the overall agreement and the specific adjustment for interest for a number 4, I think, of the individually assessed amounts, because we had seven individual assessments, as I recall it, that can be reconciled with the total number of 5 payments, by the fact that the individual sterling drafts were each assessed separately. So we had a total

altogether of seven assessments and my recollection is that the agreement concluding the overall settlement made adjustment for interest in respect of four of those individual assessments and left the other interest calculations in the remaining three unchanged. I just want you to bear in mind, this is not a criticism of the Revenue. You collected tax, but on behalf of the public, I would like to ask you a number of questions surrounding the question of the application of continuing interest or whether that was done in these particular assessments.

Now, the assessments were raised as of December of 1997, isn't that correct?

A. That's correct.

Q. Did the calculation of interest cease as of that time?

A. It did, yes.

Q. Now, there may be technical and legal reasons why interest may have ceased for a period. Can you be of any assistance in relation to that?

A. Well, in theory, there could have been interest continuing to clock up, in theory, I think that is correct to say. Of course, the position after the hearing by the Appeal Commissioners in December of 1998 sorry, the decision announced by the Appeal Commissioners, the hearing as I have indicated, took place in the preceding July, but after the decision

announced in December, the 15th December 1998, the assessments were, of course, reduced to nil.

Q. Yes, of course.

A. That is the first point I would make. So that it would be a difficult position to be asserting interest in respect of assessments which with due process had been reduced to nil.

The other point that I would make, which is relevant to the final conclusion, the agreement is that there is a facility in the Capital Acquisitions Tax Act, I think it's Section 44, which allows the Revenue Commissioners to cap the total amount of interest at 100%, and in the final settlements which we made with the taxpayer, that is what we did. So that if you like, we adjusted the individual assessments, some of which would have involved interest more than 100% and we reduced that interest to 100%. And that was exactly what the adjustment was that we made in the course of the final conclusion. A number of the other individual assessments had not been reaching 100% interest and they were left unchanged, but as far as we were concerned, in the course of settling for the total amount which we obtained, over one-million-nine-thousand-and-some-odd-pounds, over the course of making that settlement, what we did was to reduce the interest so as to more or less arrive at a figure which equated with 100% in accordance with the

provisions of the Act.

And that would be fairly normal in dealing with a Capital Acquisitions Tax assessment.

Q. Again, please bear in mind, this isn't a criticism, but the public have a right to know how these matters were arrived at.

A. Absolutely. I have no difficulty with that at all.

Q. Was there a formal determination by the Revenue Commissioners in that regard, that is applying the provisions of the act to cap the interest at

100 about 100% of the tax?

A. Well, there was a very informed determination by the board of the Revenue Commissioners in approving the overall settlement and that was in the full knowledge of how the calculations were made and how the settlement figure was arrived at. So that was a decision by the Board of the Revenue Commissioners, the three Revenue Commissioners acting together.

Q. Now, I am unaware at the moment as to what criteria would be used in making a right determination under the act at capping interest at about 100% of the tax. Can you be of any assistance to the Tribunal?

A. Well, my understanding is that capping interest at 100% would be fairly normal for a Capital Acquisitions Tax case and that provision is in the legislation for that purpose.

In this particular case, of course, it was quite complicated. The Revenue Commissioners were dealing with a situation where, as a result of the Appeal Commissioners' decision, we had a nil assessment and we going towards a rehearing in the Circuit Court, as I indicated previously in evidence; a quiet confidence that we had done the work to enable us to retrieve that situation. But we also, of course, had, as we discussed, risks involved in that as in any court action. So those factors were taken into account by us in deciding on the overall figure that we would settle for. And that was after lengthy discussions in the board over a period of months.

Q. Yes. Just bear with me for a moment if I try and tease this out with you.

There are there were two distinct matters here. One was that there is a statutory provision which allows the Revenue to exercise some discretion in relation to capping interest at 100% of tax in the case of Capital Acquisitions Tax.

A. That's correct.

Q. Then on the other side, you were facing into a hearing in the Circuit Court and of course whilst you had confidence, everybody approaches court always with some degree of apprehension perhaps, that things might not work out exactly as you might have hoped going in. So

you would put that into the melting pot and say, are we getting a reasonable amount of money here that would justify perhaps adjusting it slightly so that we can get over the difficulties of having to go to court and perhaps running into choppy waters that we mightn't have anticipated, isn't that correct?

A. That is correct. The two things were coming together.

Q. Was it the latter consideration was the more significant consideration rather than the application of Section 47 of the Act as you say?

A. Well, I think the two things came together, as you have indicated. We were certainly not prepared to settle for a figure less than ï¿½1 million of of that order, we felt that that that, if we could secure it, would be a satisfactory outcome. So we were dealing with an unusual situation where we were starting behind because we were trying to retrieve a decision which had gone against us at the Appeal Commissioners, and we were, in principle, disposed to make a settlement, after a lot of consideration. It wasn't something we rushed into. But once we decided that we were, in principle, subject to satisfactory conditions being worked out, that's what I mean by "in principle," prepared to make a settlement, we then had to focus on the amount. And in looking at the adjustments to the interest figures which would give a satisfactory outcome, over ï¿½1 million, we certainly had account to that statutory

facility that you mentioned in Section 44. But the two things came together and certainly we were dealing with a settlement situation provided the overall amount was satisfactory and provided the all-important question of securing payment could be worked out to our satisfaction.

Q. Now, I think the board agreed in principle on the 6th March 2000 to a settlement and the settlement was reached on the 31st March 2000, I think, isn't that correct?

A. That's broadly correct. In terms of the board's decisions, the board certainly agreed in principle, after a lengthy meeting on the 6th March, that we would be prepared to go the settlement route subject to the caveats that I mentioned, all of which had to be still negotiated. On the 31st March I think we recorded the formal decision that the Board of Revenue Commissioners, having read reports from the negotiating team, having taken all the appropriate advice, decided unanimously to go with the settlement in the form of the documents then emerging. I think the actual finalisation of the specifics in the documentation would have taken a few days longer and my recollection is that the formal agreement was signed on behalf of Revenue as a result of the board's approval. It was signed only on the basis of the board's approval, that that signing took place on the 3rd April 2000, which

was the day before the scheduled commencement of the rehearing at the Circuit Court.

Q. I see. Now, I think the tax was paid on the 30th August 2000, is that correct?

A. That's right.

Q. The agreed figure.

A. That is correct, yes.

Q. Now, again, was there any interest applying to the sum of money that was to be paid between the 31st March and August of 2000?

A. No. The only provision for interest, if I might add, was that if the amount wasn't paid, I think, by the 1st September, that interest would start again.

Q. At what rate, can you remember?

A. Well, it would be the normal rate of interest, which is 1% per month.

Q. That is equal to 12% in the year?

A. That's right.

Q. Is that compounded?

A. It's not.

Q. Now, if the agreement had not been honoured, in other words, if the payment hadn't been received, was the interest to be backdated, that is at 1% per month, was that to be backdated to December of 1997, do you know?

A. No, no. It was only to relate to the period from the 1st September. That's my recollection, from the agreements. Because the agreements specifically

provided for payment, I think, by the 1st October, but also provided that the interest would begin to clock in from the 1st September. I just want to, if I may, Sir, just to refresh my recollection on that.

Q. Of course.

A. Yes, there was a specific provision to say that the taxpayer would agree to pay interest on the tax element of the aforesaid Revenue debt, that's the total amount we have been discussing of ï¿½1,009,435, that's 1,009,435. That the taxpayer agrees to pay interest on the tax element of the aforesaid Revenue debt at the rate of 1% per month from the 1st day of September 2000 until the debt has been paid in full. And the reference to October, which I mentioned, I think I can find here also, "That is taxpayer accepted that as a result of the agreement, he was liable for the payment of the Revenue debt and undertakes to discharge the debt in full not later than the 1st day of October 2000."

Q. Now, if you had been successful before the Appeal Commissioner, would the Revenue have been entitled to collect the well, sorry, you'd have to go and collect but would the Revenue have been entitled to the full amount plus interest from that date, that was the date of the determination by the Appeal Commissioner?

A. I think in principle, the Capital Acquisition Tax practice hasn't been exactly the same as other practice

in the office. It's something that we are looking at. But in principle, I think we probably would have been entitled to charge interest. Whether we would have sought to do so, it would depend on the payment arrangements. The very significant plus for Revenue in this agreement was that not only were we securing the tax, but we were securing precise arrangements for payment within a certain time period.

Q. And that involved the disposal of some assets, isn't that correct?

A. That's right. Which therefore required some period to allow that to take place. We were being given assurances that that would happen.

Q. I understand that.

A. Within the timeframe I have just mentioned.

Q. And I think the assets that were involved here was some land, is that right?

A. That's right, yes.

Q. Now, just looking at it, and would you agree, that the factual situation appears to be that between December 1997 when the assessments were raised, and August of 2000, when the payment was made, there was no deterioration in the situation from the taxpayer's point of view? He didn't have to pay any more?

A. That is a way of looking at it. Of course, from the point of view of the taxpayer, the taxpayer, as from the 15th I think, of December, 1998, had a favourable

decision from the Appeal Commissioners which reduced the assessments to nil.

Q. Yes, I understand that.

A. So that that was the situation which Revenue was dealing with. Revenue didn't have a position there. But of course, in the overall settlement, we took account of the amounts assessed and what would be and the interest included, very significant interest equivalent to just 100% of the tax because the tax was just over ï¿½500,000. So we are talking about a very significant amount of interest in the assessments. And in the overall conclusion, we were satisfied that coming from a nil assessment in December 1998, we were securing a good outcome, a satisfactory outcome for the general body of taxpayers in getting the amount we got.

Q. This isn't a criticism.

A. I appreciate that.

Q. I am just trying to ask this question from the point of view of members of the public. From December of 1997 and I understand the difficulties the Revenue had and the position the Revenue found itself in after the determination by the Appeals Commissioner, but between December of 1997 and August of 2000 when the tax and interest was paid, the taxpayer did not suffer any deterioration in his own position, isn't that correct? That was the objective status of the taxpayer?

A. That's right. But, and I don't want to labour the point, I appreciate completely it's a question of accountability here and I am most happy to have the opportunity to respond to these issues of very significant public accountability, but of course I would emphasise again that the taxpayer's position as and from the date of the Appeal Commissioners ruling was a nil assessment. That was the taxpayer's position, it couldn't disimprove any further in the sense that the taxpayer had a nil assessment, subject, of course, to the right of the Appeal Commissioners to seek a rehearing.

Q. Well, I think from the Revenue's point of view you expressed your dissatisfaction at the determination of the Appeal Commissioners.

CHAIRMAN: Just from the public point of view, that's not a phrase that is emotional or critical. It's effectively the jargon of the Revenue Tax Code for saying you want to appeal.

A. Absolutely, Sir. If immediately the decision by the Appeal Commissioner is given you must, within a specified time, indicate that you propose to and the jargon, as you rightly say, is to express dissatisfaction. And that's what he did.

Q. MR. COUGHLAN: Again, I am not being critical in relation to the Appeals Commissioner in relation to

this matter. From the Revenue's point of view, you were of the view that it was an erroneous determination. That's why you wished to appeal the matter?

A. Yes. We were dissatisfied. We felt that we had made a case. Of course, I am not criticising the Appeal Commissioner either, but the fact of the matter was that the determination was very unsatisfactory from our point of view and we were quite determined, as I indicated in my Memorandum of Evidence, to pursue the matter to secure a successful conclusion from Revenue's perspective.

Q. And for all practical purposes, from the point of view of the taxpayer, the fact that he didn't have to pay the tax until August 2000 by way of the disposal of assets through his family, put him in a position where the assets were appreciating in the meantime also, isn't that correct?

A. I haven't checked the property movement in that period, but I have no doubt

Q. Or there was the potential for that to happen?

A. Absolutely. But

Q. Again, this is not a criticism of the Revenue. I am looking at it from the taxpayer's point of view at the moment.

A. Yes. I would just add, Mr. Coughlan, that of course the realities of the agreement was that we had secured

a very significant amount of money much higher than had been mooted in the course of the negotiations and that the reality was that we were also securing a very significant element from our point of view, the precise timetable for payment which had to be secured through specific agreements and sale of assets and we, therefore, reasonably, in my view, took the viewpoint that we had to allow a reasonable period of time to do that. If we had gone to the Circuit Court and if, based on our own work, we had won, we would have been in the position where we had absolutely no undertakings, agreement, guarantees about a timetable for payment. We would have had to pursue, using our normal collection machinery. So we were securing a very significant bonus, if I might use that expression, in relation to the payment arrangements that would apply here.

Q. And just in case there is any misunderstanding, when I asked you a few moments ago whether you believed that the Appeals Commissioners was in error, I want to be clear about it is what was involved here was a highly technical matter and very fine interpretations of law, isn't that correct, in the matter before the Appeals Commissioner?

A. There was a complicated issue around the question of the disponer of the funds here, of the gifts, and there was a question of the source of the funds which was

complicated. Revenue had a very clear position on it based on the McCracken Report findings and based on the advice we had and based on our reading of company law. But the Appeal Commissioner, of course, had to look at the issue de novo and argument was made on the other side about the different elements which were required to secure a disposition in this case, and the Appeal Commissioner reached a conclusion, which he did.

Q. Yes, he accepted the submissions that were made by lawyers for the taxpayer?

A. Effectively.

Q. On the whole?

A. Effectively, he did, yes.

Q. And again, just to say that this type of thing happens all the time, it happens in courts, the Revenue express their dissatisfaction, appeal and hope to persuade a higher authority or jurisdiction to see it their way?

A. Absolutely. I think in my Memorandum of Evidence, I used the expression that we realised that it was the first stage in the process and it is, as you say, quite a normal occurrence in relation to all taxation matters. The machinery, gifts, rights, and guarantees to taxpayers which they are entitled to take up. Equally Revenue is entitled to be dissatisfied with the outcome if it feels that its case is well-founded and therefore to pursue it through the judicial process to secure a more favourable outcome.

Q. And sometimes you succeed and sometimes you don't?

A. That is correct, that is correct.

Q. Thank you.

CHAIRMAN: Just before inviting counsel, Mr. Quigley, may I just raise one matter on the interest that may be marginally in favour of Mr. Haughey. Mr. Coughlan makes the point to you, and it is one that you accept, that Mr. Haughey would have had the use for some two and a half years, or a little more, of assets that probably were appreciating without suffering further detriment. I suppose, on the other hand, there is an element that when you decided to appeal after what may have been a somewhat troubling outcome, you wouldn't have wanted to bring an appeal hearing on immediately. It would have taken you some period to go back to the drawing board, research and prepare matters.

A. I think that's a point very well made, Sir. And it is consistent with the reality. In fact, I had tried to recall making it earlier, but I just, in answering some of Mr. Coughlan's questions, I left it out. But of course there was a period of time needed because, as I indicated in my Memorandum of Evidence, we decided that to minimise the risks of a court action, that we should seek to prove independently the facts of the gifts, the course of the movement of the money and so on and that took a certain amount of time; and that is absolutely correct and I think we would have wanted sometime, as

the other side would have wanted also, but we would have wanted sometime to perfect our case before seeking a precise date for the rehearing.

CHAIRMAN: It could, on the other hand, two and a half years could seem a bit long.

A. Well, there were situations that arose. When we sought the initial date, there were problems about the calendar and so on, and that accounted for some of the time, but we did undertake the investigations as expeditiously as we could and we brought them to a conclusion in time for the Court hearing, rehearing, which was scheduled for April of 2000.

CHAIRMAN: Thanks, Mr. Quigley. Mr. Allen?

MR. ALLEN: I have no questions for Mr. Quigley.

CHAIRMAN: Mr. Connolly?

MR. CONNOLLY: Just one matter. It's one and a half years between the December '98 it's an observation.

CHAIRMAN: Thanks very much for your assistance, Mr. Quigley.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. Brian McCabe please.

BRIAN MCCABE, HAVING BEEN SWORN, WAS EXAMINED AS

FOLLOWS BY MR. HEALY:

Q. MR. HEALY: You provided the Tribunal with a very sort of comprehensive overview of the dealings the Revenue Commissioners had with Mr. Haughey and his advisers in connection with the taxation of the matters mentioned by Mr. Quigley in his evidence, would that be fair?

A. That's correct, yes.

Q. I think you deal in rather more detail with some of the matters that he has dealt with in broader terms.

A. That's right.

Q. You have also provided the Tribunal with a considerable amount of documentation, some of which you refer to in the course of your statement and some of which simply fills in the details of the dealings between the Revenue Commissioners and Mr. Haughey in the period between the McCracken Tribunal, if I can put it that way, and the settlement of some of his liability in October of 2000?

A. That's right. Essentially, I have given all of the external contact with the taxpayer or his agents.

Q. Now, I may refer to some of that material, but I don't propose to refer to all of it at this time, though ultimately the Tribunal will be coming back to it and that is because, in light of some of the very helpful information provided by the Revenue Commissioners in that material, it may be necessary to do some further investigative work because I am sure, as you will

agree, a lot of that material would be useful to the Tribunal in looking at the circumstances in which the monies, the subject of your investigations, were originally accumulated, wouldn't that be right?

A. Yes.

Q. Because you were given accounts as to how that money was accumulated and explanations as to where it came from, isn't that right?

A. That's right, yes.

Q. By Mr. Haughey, through his various advisers?

A. Yes.

Q. Now, you have made a lengthy statement, and what I propose to do initially is to briefly go through the statement. I may stop in one or two places to clarify one or two things and I may come back over the statement later.

A. That's fine.

Q. You say that you are a principal in Capital Taxes Division of the Revenue Commissioners. You say: "I joined the Revenue Commissioners in May 1995 at principal level having previously worked in the Department of Finance. At the request of the Tribunal, I am making this statement in relation to the raising of Capital Acquisitions Tax assessments on Mr. Charles Haughey arising out of certain payments made to him as identified in the report of the McCracken Tribunal and the ultimate settlement of these

assessments."

You start off by saying that: "In July of 1997 I was assigned to follow up on the Capital Acquisitions Tax position of Mr. Charles Haughey, in the light of the revelations at the McCracken Tribunal that he had received some ï¿½1.3 million in gifts from Mr. Ben Dunne. Following the publication of the McCracken Report on the 25th August 1997, I wrote to Mr. Haughey's then-known agents, Deloitte & Touche, on the 28th August indicating that it had come to the attention of Revenue, that their client had received substantial sums by way of gift but that according to your records, he had filled no gift tax returns nor paid any tax in respect of those gifts.

You go on to say: "The letter sought an explanation within 21 days as to why their client had not met his statutory obligations in this regard. The letter made it clear that the request related to all gifts received by Mr. Haughey and not just those specifically identified in the McCracken Report."

Now, it might be useful if I might just refer to that letter. It's on the overhead projector. You can see it on the monitor in front of you.

A. Yes.

Q. And the letter simply says what I have just read out.

I just want to emphasise the second last paragraph where you sought an explanation as to why gift tax returns had not been delivered in accordance with Section 37(2) of the Capital Acquisitions Tax Act 1976, and you say that the request for information and an explanation, I take it, relates to all gifts received by Mr. Haughey.

A. That's right, yes.

Q. You got a letter in reply from Mr. Pat Kenny of Deloitte & Touche informing you that his firm no longer acted in the case, and he went on to say the taxpayer's affairs are being handled by Mr. Paul Moore of 45 Templemore Avenue, Dublin 6. It says Mr. Moore has only recently been appointed to the case in the last day or so. He has a copy of your letter. We would request that you might extend the period requested in your letter to allow Mr. Moore to acquaint himself with the case and to contact you.

I think you then wrote to Mr. Moore, I won't go into the details of the letter. And Mr. Moore contacted you. He eventually wrote to you on the 15th October of 1997. Now, I don't want to go into all the details of that correspondence, other than to say that you initially took the matters up with Messrs. Deloitte & Touche presumably on the basis of the evidence you heard at the McCracken Tribunal?

A. Internally in Revenue it was known that Deloitte &

Touche was the agents of Mr. Haughey. It was normal to contact the known agents.

Q. We know that from the evidence in McCracken and from documentation that has been mentioned in evidence in this Tribunal over the last few days that you had been dealing with them in the 1970s and '80s and '90s indeed. But Mr. Kenny wrote back saying that his firm no longer acted.

A. That's correct.

Q. And that Mr. Moore acted. And when you wrote to Mr. Moore then, Mr. Moore said that he had been appointed to deal with taxation matters arising out of the report of the McCracken Tribunal, but he said: "I have not been appointed Mr. Haughey's ongoing tax compliance agent."

A. That's correct.

Q. So do I understand that to mean that Mr. Moore was dealing solely with what arose from the McCracken Tribunal Report according to himself?

A. Initially, yes.

Q. Initially?

A. Yes.

Q. And that he was not the ongoing Tax Compliance Agent. Did he become the ongoing Tax Compliance Agent?

A. No, but his role expanded after that, as I recall, to include all tax matters arising out of the McCracken Tribunal. But Mr. Haughey's ongoing tax agent, as far

as I know, is Mr. Ciaran Ryan.

Q. Could I just clarify two things then at this point. You sought an explanation as to why returns had not been given in relation to the McCracken Tribunal, if you like, gifts, because that was the introduction in your letter, and any other gifts.

A. Yes.

Q. And the response you got was: Well, I am only dealing with the McCracken Tribunal?

A. That's right, yes.

Q. Had you ever taken up the matter of the wider ambit of your request with Mr. Haughey's Tax Compliance Agents or Mr. Haughey himself?

A. As I say, subsequent to that initial correspondence, Mr. Moore, in effect, was dealing with the wider tax aspect, the wider gift tax aspects of the case.

Q. Not just the McCracken Tribunal; not just the Moriarty Tribunal, but all gifts?

A. Yes.

Q. Whether they are within or without the ambit of a Tribunal?

A. Yes.

Q. I see. Now, I have examined the documentation you have provided to the Tribunal, but I am not a tax lawyer, but would I be right in thinking that you have never received, although I think you may have referred to it time and again in the correspondence, you have

never received an explanation as to why gift tax returns were not made?

A. Well, no, except so that I that when the issue went as far as the appeal stage, in the letter from Mr. Moore, which I think was early January 1998, he put forward a reason as to why, in his view and in his client's view, tax might not be due on the payments. Which would explain why gift tax returns had not been made. Essentially, what

Q. I understand that, but be that as it may, tax has now been paid.

A. Yes indeed.

Q. As of this moment?

A. That's right, yes.

Q. And am I right in thinking, we can go into the individual letters later on, but I do think that you kept reminding Mr. Moore, in your letters saying, you realise that your client still has statutory obligations, he has obligations to comply with the requests contained in earlier letters and that these obligations continue notwithstanding any discussions we may have about the ongoing situation, would that be right?

A. That's correct.

Q. And all I want to clarify is that to this day, have you received any answer to that? This is my explanation as to why I didn't pay gift tax or I didn't make a

return for gift tax purposes?

A. I would have to say, in fairness to Mr. Moore and the taxpayer, that in the letter that they sent to me where they were raising the appeal or indicating they were appealing against the assessments, their line of argument was essentially, that even if the McCracken Tribunal had found that these payments were made, they were made by companies, companies within the Dunnes Stores Group, their view was that these companies didn't have the power to make those gifts, and Mr. Dunne wasn't in a position to make those gifts on behalf of the company. In other words, they were ultra vires the power of the company; therefore, beneficial ownership of the monies never moved to Mr. Haughey, they were retained at all times within the companies, right?

Q. Yes.

A. And the only time that beneficial ownership would move and a gift would be made was when each individual shareholder of each company involved specifically indicated to Mr. Haughey, that they were not pursuing him nor return of this money.

Q. Converting them from ultra vires to infra vires.

A. Exactly. One could argue that the statute of limitation could kick in there, but the position taken by the taxpayer was that the statute didn't apply to constructive trusts, which is essentially what they

were saying. So in effect, the argument was, I have received the 1.3 million. I have used the 1.3 million but there is no gift for tax purposes and there won't be a gift until sometime in the future when each and every shareholder indicates that they are not pursuing me. And on that basis then, there was no need for him to make a return if that stood.

Q. Ultimately, it didn't stand because they backed off and made a settlement with the Revenue, is that right?

A. Well, they made a settlement

Q. That's what I want to understand, the status of the settlement. Was the settlement converted into any ruling of the Court?

A. No, no. The settlement was made under Section 94(2)(8) of the Taxes Consolidation Act which allows for a tax inspector and a taxpayer to agree between an original appeal and a rehearing to settle the case and that's essentially what happened.

Q. And does that mean that when the settlement, I am trying to ascertain the status of the settlement. Does that mean that when the settlement is made, that it takes the place of all of the taxpayer's preexisting obligations?

A. In relation to those specific gifts, yes.

Q. Does that mean that if a settlement is made, the taxpayer cannot be pursued for failing to make a return in relation to those gifts?

A. In theory, the taxpayer could be pursued, but you have to remember that the whole basis on which the appeal and rehearing was being taken was: Is there a return due here or not? Right? Now, that was never determined, so if we were to try and take a case in court to prove that a return should have been made, we'd effectively have to air those arguments at the court, you know. So there is

Q. You would, but you wouldn't be on the risk of losing any tax at this point if you were to do that now?

A. No, but you have to recall the amount of penalties involved are very, very small. You are talking about at maximum ï¿½11,000.

Q. Maximum?

A. ï¿½11,000 for failure to deliver returns. And it's not guaranteed by any manner or means that we'd actually win that case.

Q. I simply want to establish what the status of the settlement was and the benefit of the settlement to Mr. Haughey, so at the moment, Mr. Haughey has made a settlement with you in respect of these monies.

A. Yes.

Q. You could theoretically pursue him for failure to make the returns or to explain why he didn't make the returns, if you like?

A. Theoretically, yes.

Q. Theoretically. He could be theoretically fined or

penalized to the tune of ï¿½11,000?

A. Maximum, yes.

Q. Maximum. And this is in respect of sums of money paid over in the 19 mid-1980s/early 1990s. Mid-1980s, in fact, is that right?

A. That's right. Well, it runs from the late eighties to the early nineties. From 1987 to 1991 or '2.

Q. Now, in relation to the way ordinary taxpayers are treated, other than those who might become embroiled in a Tribunal, is it usual if a settlement is reached with a taxpayer, we'll say many, many years after the events which gave rise to the tax occurred, that the Revenue Commissioners do not prosecute or take other action on foot of a failure to make returns?

A. I can really only speak for Capital Taxes Division there and certainly to my knowledge we have never prosecuted a taxpayer for failure to deliver a return.

Q. Does that mean that from the taxpayer's point of view, that if you don't make a return, you really have the use or the benefit of the money that should be taxed until such time as you reach a settlement with the Revenue Commissioners?

A. No. It's more a reflection of the fact that normally the threat of legal proceedings is sufficient to actually cause a taxpayer to get his act together and deliver a return and pay any tax due.

Q. But it is, in fact, the case that if a taxpayer is not

prosecuted and if, as I am sure, the Revenue community, i.e., both yourselves and the accountants on the outside that there has never been prosecutions, isn't it, in fact, the case that the taxpayer, as in this case, may have the benefit of his untaxed gift for many, many, many years before having to account for it?

A. But interest would be clocking up.

Q. But sure what does interest matter if you have the benefit of the money?

A. But it's very substantial interest. It's 12%.

Q. Mr. Haughey sold some land, we know, to pay this debt, isn't that right, according to our accounts?

A. Well, what happened is that his children gifted land to him, sufficient to cover the tax debt.

Q. And I would think I'd be fairly correct in saying that between 1987 and 2000, the value of that land would have increased by far more than the amount of any tax that was paid on it?

A. It may well have, I couldn't comment on that.

Q. Isn't that a benefit, that's all I am saying, to the taxpayer?

A. Yes.

Q. You can accumulate assets without paying tax?

A. Yes.

Q. You say that on the 23rd September 1997, Deloitte & Touche wrote to inform you that they were no longer acting in the case and that Mr. Haughey's affairs were

now being handled by Mr. Moore. They sought an extension as we discussed, given that Mr. Moore had only recently been appointed. You wrote to Mr. Moore, you afforded him a further 21 days to respond. The following day Mr. Moore phoned you to say, in advance of the receipt by him of your letter, to say that he had been appointed Mr. Haughey's agent and among other things in his working instructions from his client for absolute and full cooperation with the authorities. He also indicated that he would be seeking a legal opinion regarding how the Moriarty Tribunal might affect matters.

"On the 15th October 1997 Mr. Moore formally wrote to me confirming his appointment as specialist advisor to Mr. Charles Haughey to deal with the taxation matters arising out of the report of the Tribunal of Inquiry (Dunnes Payments). That's the McCracken Tribunal. He indicated that he was having difficulties responding to my letter of the 25th September on legal grounds given that the Terms of Reference of the Moriarty Tribunal covered both Revenue and his client. The letter indicated that he had sought Senior Counsel's opinion on the legal implications for himself and his client of corresponding with the Revenue during the work of the new Tribunal, but that definitive advice had not been forthcoming within the 21-day period I had

afforded him and he sought Revenue's views on the matters raised."

You say that: "Following consideration of the issues raised by Mr. Moore and our legal advisers, I wrote to him on the 10th November 1997 indicating that the legal advice available to the Commissioners confirmed that the existence and conduct of the Moriarty Tribunal did not put into suspension any of the Revenue statutory functions, or for that matter, Mr. Haughey's obligations under the tax acts. The letter indicated that Revenue did not intend to cut across in any way the investigations of the Moriarty Tribunal and would, in fact, be cooperating fully with it. A response to the original inquiries of the 25th September was again requested and it was indicated that immediately upon the expiry of an additional seven-day period, the Commissioners would be taking whatever action was necessary to progress their investigations and processing of the case."

You say that you also sent a copy of that letter to Mr. Charles J. Haughey.

A. That's correct, yes.

Q. You say that: "Mr. Moore replied by letter of the 13th November 1997 in which he accepted Revenue's legal advice on the matter and sought an extension of two months to allow him to assemble the necessary

information and resolve any outstanding matters between his client and the Revenue. The request for a further extension of time was not acceded to and on the 10th December 1997, I wrote directly to Mr. Haughey enclosing notices of seven tax assessments totalling ï¿½1.164,739, in respect of gift tax on known gifts to him. I also formally requested, by way of statutory notices certain particulars of any other gifts or inheritances that would affect the tax assessments issued with a period of 60 days for reply and secondly, self-assessed returns in respect of all gifts and inheritances taken by him with the statutory four-month period for reply." You also sent a copy of the correspondence with a covering letter to Mr. Moore on the same day.

A. That's correct, yes.

Q. And those are the assessments that I think have already been mentioned in evidence by Mr. Coughlan I think when dealing with other witnesses?

A. That's right.

Q. And they included a formal request for the information that you had already sought, if you like, informally, in the letter that we discussed at the outset of your evidence?

A. There was now a statutory notice with four months to reply basically.

Q. "By letter of the 7th January 1998 Mr. Moore notified

you of his client's intentions to appeal to the Appeal Commissioners against the assessments issued."

On the 23rd January you wrote to Mr. Moore advising him that you had put in train the procedures for having the case listed for hearing.

And then you say: "I enclosed a copy of the completed form, AH-1, which I had sent to the Appeal Commissioners that same day. The AH-1 form is used to advise the Appeal Commissioners of a case and the points at issue. As per standard practice, I also enclosed with my letter to Mr. Moore a blank AH-1 form for completion and forwarding to the Appeal Commissioners by him, in the event that he felt that the version I had completed was deficient in any respect.

"Mr. Moore acknowledged my letter on the 27th January and subsequently forwarded a copy of his version of the form to me on the 9th February."

A. That's correct, yes.

Q. Now, the Revenue Commissioner's view was that these gifts had been made to Mr. Haughey by Mr. Ben Dunne, putting it as simply as that.

A. Yes.

Q. And that however the money was routed to Mr. Haughey by Mr. Dunne, whatever circuitous route it got before it landed in Mr. Haughey's hands, it was Mr. Dunne who put

the money in his hands by that circuitous route, would that be a fair way of putting it?

A. Yeah. Our argument was based essentially on what McCracken had said. But in addition, taking account of the company law and CAT law as well. It wasn't simply because McCracken said that Ben Dunne arranged the payments. I mean, that in itself wasn't sufficient, although it was an argument we would have put forward if the Appeal Commissioner was willing to accept it.

Q. You have described them as immediate gifts by Mr. Ben Dunne as claimed by the Revenue Commissioners.

A. Yes.

Q. And you raise then the issue which Mr. Moore had raised with you and which he also mentioned in his appeal form, if you like, to the effect that this was, in fact, Dunnes Stores money is what Mr. Haughey was saying. "This money I may have received from Mr. Ben Dunne, but in fact what Mr. Dunne was giving me was money belonging to Dunnes Stores and he wasn't entitled to give it to me and until such time, effectively, as Dunnes Stores said they weren't looking for it from me, it hadn't been given to me beneficially." Would that be fair?

A. Yes, it wasn't a taxable gift.

Q. I am only interested from the point of view of what Mr. Haughey was saying. Am I correct in saying that that's a summary of what he was saying that he got that

from Dunnes Stores?

A. Yes, would go on then to say, of course, that in addition to that, the actual companies from which the money came were offshore companies, companies in Switzerland and the Isle of Man, which made it even a further remove.

Q. I am only interested in it at this stage from the point of view, in this question, from the point of view of what Mr. Haughey was actually saying through his tax agents as to where he got the money.

A. That's absolutely right, yes.

Q. And I understand that a further, if you like, or a deeper element of that argument was the point you make about the foreign companies.

A. Yes.

Q. You say: "On the 20th February 1998, the Appeal Commissioners acknowledged receipt of the AH-1 and indicated that given the subject matter of the appeal, they would need detailed written submissions from Mr. Haughey before allocating a date and time for the hearing. On the 5th May the Appeal Commissioners wrote to advise me that Mr. Haughey's agents had made their submissions on the 27th April and sought submissions from the Revenue by the 27th May which was duly complied with. The respective submissions were then exchanged between the parties on the 3rd June via the Appeal Commissioners. On that date the Appeal

Commissioners also asked for further submissions by the 17th June concerning the evidential status of the McCracken Report for the purposes of the appeal. The Revenue Solicitor forwarded those submissions from our legal advisers on the 17th June which were to the effect that the findings of fact as determined by the McCracken Tribunal ought to be received and admitted as reliable evidence by the Appeal Commissioners. On the 28th July, Mr. Haughey's solicitors Messrs. Ivor Fitzpatrick & Company wrote to the Appeal Commissioners confirming their client's consent to the McCracken Report being admitted in evidence at the appeal hearing."

Now, I want to bring you back just to one letter you received from Mr. Moore on the 3rd April of 1998. That is to say in the course of that entire period that I have just covered in your statement.

A. Yes.

Q. It's a letter of the 3rd April of 1998 addressed to you from Mr. Moore. Mr. Moore says: "Dear Mr. McCabe, I refer to previous correspondence. This case has proved extremely difficult to bring to finality for a variety of reasons, not least being the legal second-guessing of all parties involved." Do you know what that means, in that context, because I don't, or what does it mean to you? If you don't, you needn't

worry.

A. I am not sure what he means.

Q. Obviously, I am not asking Mr. Moore, I am asking you, so I understand you may not

A. Perhaps he means second-guessing what the McCracken Tribunal had found in terms of who did what, when, you know, but apart from that, I can't offer any explanation.

Q. He then goes on to say: "When I took over this case in October of 1997 the client agreed to engage a specialist forensic accountant to gather the information so that I could put 'tax order' on it. Mr. Des Peelo of Peelo & Partners were engaged in November 1997, the delay being caused by legal issues and immediately set to work first on the expenditure side from 1985 to date. Comprehensive schedules were prepared and are available.

"The receipts side has proved more difficult. The client and Mr. Peelo have received no cooperation from banks. Whatever information was given to the Revenue and other State agencies was not given to either Mr. Peelo and partners or my client.

"In addition Mr. Padraig Collery, who controlled the S8 and S9 accounts, has been slow to come forward with information again it appears due to legal reasons. Last Wednesday Mr. Peelo finally got information from

Mr. Collery and even at that late stage he thought he would be in a position to issue a final report to me in a matter of days. The information from Mr. Collery only went back as far as 1992 and consequently Peelo & Partners are not in a position to let me have the final report. I attach a letter from Peelo & Partners setting out the current position. You will note that Mr. Collery is abroad at the moment.

"You may be aware that Investigation Branch of Landsdowne House are inquiring separately into my client's affairs. Des Peelo and myself met them on the 23rd February 1998 at Mr. Peelo's office. Arising out of that meeting I arranged for authorisation of Investigation Branch to meet Deloitte & Touche and Mr. Stakelum to continue their inquiries in more detail. We gave Investigation Branch the comprehensive schedules prepared by Peelo & Partners. We asked Investigation Branch if they could let us have any information they had received from clients.

"Arising from the latter points I received the attached letter from Mr. S Tracey dated 30th March 1998 which is receiving attention from the lawyers.

"The upshot of all this is that the client is not in a position to deliver the returns mentioned in the notices dated 10th December 1992 by the 10th April 1998.

"I hope you appreciate that we are endeavouring to bring this case up to date as quickly as we can but due to the long time that has elapsed, the unique nature of the case and the legal applications it has not been possible to meet the deadlines.

"In view of the remarks in Mr. Peelo's letter, I would respectfully request an extension till the 31st May 1998.

"If you wish, Mr. Peelo and myself could meet you to discuss the matter."

Now, the letter from Mr. Peelo said was addressed to Mr. Moore. And it says: "Dear Mr. Moore, as you know we are engaged by Mr. Haughey to undertake certain forensic work relating to his financial affairs over a defined period.

"We have expended considerable efforts in this regard and whilst good progress has been made we are still some time away from the completion of some meaningful information. In particular, our client did not directly manage his own finances, instead relying on third parties.

"In this context, a Mr. Padraig Collery apparently played a pivotal role in recent years. It has taken sometime to establish contact with Mr. Collery and a meeting is now scheduled for Tuesday, 21st April next.

We understand that Mr. Collery is abroad.

"Depending on what Mr. Collery may inform us, we are hopeful of completing some form of interim analysis/review of Mr. Haughey's financial affairs in or around the first week of May of 1998.

"The matter is complicated by the lack of immediate and direct access to what might be described as normal records of financial matters hence it is proving necessary to involve third parties such as Mr. Collery and others to obtain information and explanations.

"We cannot say for certain that we can present a complete picture in the first week of May of '98 but we are endeavouring to do so, so far as is possible in the circumstances.

Now, I may come back to this letter at a later point. I just want to ask you one question at this stage. In this letter, it is stated that "Mr. Padraig Collery apparently played a pivotal role in recent years in the managing of Mr. Haughey's finances." Would that be a fair abstraction of what it says in the letter?

A. That's what it says.

Q. Was Mr. Collery ever made available to you or did you ever seek to conduct an interview with him to assist you in ascertaining the details of Mr. Haughey's finances?

A. No, but I am fairly sure that he was interviewed by the Investigation Branch of the Chief Inspectors Office. If you like, they were sort of parallel investigations going on. I was specifically interested in the income side of the equation here, what payments, what gifts were coming in. The Chief Inspector's Office Investigation Branch were looking at the broader picture in terms of accounts and stuff.

Q. Obviously, I may have to come back to you in relation to that in the course of the Tribunal's investigative phase.

You then go on to deal with the appeal hearing and the outcome of the appeal hearing. You say: "The appeals, again the seven assessments heard by Commissioner Ronan Kelly on the 29th July 1998 over a full day's sitting. He delivered his determination on the 15th December 1998 in which he reduced all seven assessments to nil. The reasons for the decision were given orally. On the day, Revenue's counsel expressed dissatisfaction with the result." Meaning that they indicated they wished to appeal or take time to consider whether to appeal?

A. That's correct.

Q. "On the 21st December, pursuant to Section 52(5)(b) of the Capital Acquisitions Tax Act 1976, a statutory notice signed by me was issued by the Revenue

Solicitors office to Messrs. Ivor Fitzpatrick & Company, solicitors for Mr. Haughey, advising them that Revenue would be seeking a full rehearing of appeals before a Circuit Court Judge. A copy of the statutory notice was sent to a Circuit Court office by the Revenue Solicitors Office on the same day."

You go on to say then: "In the light of the Appeal Commissioner's determination and following consultation with our legal advisers, it was decided that in advance of the rehearing of the appeals before a Circuit Court Judge, it would be desirable to establish independently to the McCracken Tribunal Report, the facts and circumstances surrounding the payment of ï¿½1.3 million by Mr. Ben Dunne to Mr. Charles Haughey. To this end, all material considered relevant was sought either by request or by the use of Revenue power specifically the issue of notices under Section 905 and Section 902 of the Taxes Consolidation Act of 1997. The result of these investigations was that the funds used to make gifts to Mr. Haughey could be traced through a number of legal entities prior to their delivery to him directly or to his agents on his behalf. As a result of investigations and findings, I was satisfied that it could be established that the disponer of the ï¿½1.3 million was domiciled in the State and accordingly that the gifts were taxable in the hands of Mr. Haughey. Preparations for the hearing proceeded on that basis."

Now, the Revenue decided that they wouldn't rely wholly and exclusively on the McCracken Report and would carry out their own investigation using their own powers to establish what you have just asserted here.

A. That's right, yes.

Q. Now, am I right in thinking that assuming it to be the case, that while nobody can be certain about the way any litigation can go, that assuming it to be the case that you built up a sufficiently strong case to support these assertions, they would also form the basis of any action that could be taken or might be taken for failure to deliver returns, or does the settlement preclude that?

A. Well, the settlement it doesn't preclude, as I say, the question of proceeding to hearing, but apart from the fact that the amount available would be ï¿½11,000, you know, there is no huge additional benefit to be got from the actual returns themselves.

Q. Is there surely not more to it than simply the amount involved? Isn't there a question of equity as between one taxpayer and another?

A. Well, as I said earlier, I mean, we have never taken proceedings or failed to deliver returns and we are not treating Mr. Haughey, if you like, any differently this that respect.

Q. But do you have many people who got gifts in 1987 who

didn't pay tax on them until the year 2000?

A. Probably very few.

Q. And gifts of ï¿½1.3 million?

A. Probably very few. But I mean, you are right in the sense that the case we built up to establish the fact that the gifts were taxable, would essentially be the same case that would have to be presented with all the same difficulties and the uncertainty as to outcome that the Chairman mentioned.

Q. I accept all of that and I don't want to be churlish and suggest to you that while you are emphasizing the difficulties in your statement here, you are quite proudly and confidently asserting the solidity of your case?

A. Yes, we certainly believed it stood up.

Q. You say that: "On the 21st September 1991, a formal request seeking four days in late November 1999 for the rehearing of the appeals was made to the Circuit Court by the Revenue Solicitor's office. The time sought proved, however, to be unavailable. At the request of the Circuit Court Registrar, the legal advisers for Revenue and Mr. Haughey were asked to agree on their availability so that a date could be set for early in the year 2000. As a result a date for the rehearing was fixed for a four-day period commencing on the 4th April 2000.

A. That's correct, yes.

Q. You then refer to other contacts you had with the tax agents. You say arising from the letter of the 10th December 1997 to Mr. Haughey in relation to the assessments and statutory notices, further contacts took place with his agents during 1998 and 1999. "On the 9th January 1998, Mr. Moore wrote to me indicating that the matter of a payment on account was being actively pursued. On the 5th February, Mr. Moore wrote in relation to the statutory notice requiring particulars of gifts or inheritance affecting the assessments for which a 60-day deadline for reply had been set. He indicated that Mr. Haughey had recently broken his thigh in an accident as a result of which he was in considerable distress in hospital and therefore unable to give attention to his affairs. Mr. Moore sought an extension of the deadline to coincide with the four-month deadline which had been specified in relation to the second statutory notice requiring returns in respect of all gifts or inheritances. In the circumstances I acceded to this request and informed Mr. Moore by letter of the 9th February."

Can you tell just when was the 60-day deadline due to expire?

A. The 60-day deadline would have been due to expire 60 days after the 10th December, you are talking about roughly two months, which would be 10th February or

thereabouts.

Q. Right. And he wanted an extension up to

A. What I wanted to do, he suggested that the deadlines, there were two different deadlines set. One was 60 days.

Q. He wanted a further two months?

A. He effectively wanted the two of them to come together as four months, and in the circumstances we agreed that we should do that.

Q. "On the 3rd April, Mr. Moore wrote to me again outlining the difficulties he was facing in trying to respond to the statutory notices. In this letter he indicated that the client had engaged a specialist forensic accountant, Mr. Des Peelo, to gather the information but that he had not yet produced his final report. As a result, Mr. Moore stated that his client was not in a position to deliver the returns required under the statutory notices by the deadline of the 10th April and he sought an extension to the 31st May. Following consideration of the request with our legal adviser, I wrote to Mr. Moore on the 30th April refusing the extension of time. In the letter I pointed out that there was sanctions associated with failure to comply with the statutory notices and that appropriate action in relation to them would be considered in due course. In this letter, I drew attention again to the fact that Mr. Haughey was

entitled to make a payment on account and I pointed out that there was no requirement that all gifts and inheritances taken by him be identified before a single gift or inheritance was accounted for."

Now, again in that in the correspondence or in the dealings to which you refer to, what you are saying I think is that I still want you to make returns.

A. Absolutely, yes.

Q. You have a statutory obligation to do so?

A. Yes.

Q. And what Mr. Moore was saying is, I can't get information.

A. Yes, yes, although even in the context of that correspondence, I would say that there was recognition that given that the gifts, the McCracken gifts, had gone to appeal, that perhaps our ground was less strong in insisting on returns because the very issue under appeal was whether returns were due or not.

Q. Yes, but you had other gifts. You said you wanted all gifts?

A. Yes, we didn't there were other gifts. We obviously by definition suspected there might be other payments.

Q. Would I not be correct in saying, and I think this is alluded to in other places as well, that what Mr. Moore was telling you and referring in support of what he was telling you to Mr. Peelo, was that look, Mr. Haughey didn't largely direct his own finances. Mr. Traynor

did. There is no documentation and we know nothing. And we are going to have to wait until the Court tells us or the Tribunals tell us or whatever?

A. Yes, I think that's a fair summation.

Q. Would that be throughout the whole array of letters and reports he provided you with?

A. Notwithstanding the fact that

Q. I am not criticising

A. Again and again and again Mr. Moore indicated the taxpayer's willingness to cooperate fully with the authorities. We didn't actually get information and the reason was that Mr. Haughey, according to o Mr. Moore, didn't know, wasn't involved in his affairs, couldn't confirm.

Q. And, in fact, I want to jump ahead to a letter, I won't put it on the overhead projector, of the 29th June 1998 from Mr. Moore where he says at last we have got a memorandum from Mr. Peelo. I think you had been explaining that notwithstanding you were being told efforts were being made, no information was being forthcoming, and he said to you: "It has proved possible to reconstruct the financial affairs of the client over the past 20 years to a limited extent only due to the death of Mr. Des Traynor and the consequent lack of records."

Now, it's that word "consequent" that interests me.

Were you ever informed how the death of the Des Traynor led to a consequent lack of records?

A. No.

Q. And throughout your dealings with Mr. Moore and Mr. Peelo, am I correct in thinking that you were it was represented to you that it was Mr. Traynor, to a limited degree Mr. Stakelum, and Mr. Collery who were controlling these finances?

A. Yes, yes.

Q. Now, we know from evidence given by, I think, Mr. Kenny of Deloitte & Touche, that he had never consulted with Traynor, you may not have known that at the time?

A. No.

Q. That he had never consulted with Mr. Traynor during the time he was dealing with Mr. Haughey's finances and that Mr. Haughey had never directed him so Mr. Traynor?

A. I can't comment on that.

Q. I am simply saying that that is the evidence that we have heard in the course of the work of this Tribunal.

A. Yes.

Q. But what was being represented to you was that it was Mr. Traynor was the person who had the information which would enable returns to be made or not as the case may be?

A. Yes, which was in line, I suppose, with what the McCracken Tribunal had indicated as well or had been indicated to the Tribunal, the McCracken Tribunal.

Q. And I think I am right in saying that from Revenue records of its dealings with Mr. Kenny or anyone else in Deloitte & Touche going back to the 1980s in any case, Mr. Traynor had not been dealing with the Revenue?

A. As far as I am aware, that's correct. He never although I can't be definitive on that, but certainly he never had any dealings with Capital Taxes Division. I doubt if he had dealings with the rest of Revenue.

Q. I think from the information the Revenue have made available to the Tribunal, if there had been any dealings with Mr. Traynor, he would have seen documentation?

A. Yes.

Q. Though I think Mr. Traynor may have been the tax agent right back into the sixties?

A. He may have been when he was with Haughey Boland.

Q. So that while Mr. Traynor never featured during the eighties and never featured during the nineties up until his death in any case, he was now being represented as the key to responding to Revenue requests, and I am sure quite rightly, by Mr. Moore. That's what you were being told?

A. Yes, yes.

Q. You say that on the 8th May Mr. Moore acknowledged your letter and indicated he expected to have a submission

to you by the 22nd May. He again indicated that the issue of a payment on account was being pursued. On the 25th May Mr. Moore wrote to state that Mr. Peelo's final report had been promised to him by the 2nd June. On the 2nd June, you say that you wrote to the agent and among other things pointed out that while the option of a payment on account had been drawn to his attention on a number of occasions it had never got beyond being and, you quote, "actively pursued." Meaning that you were told we are actively pursuing this but you never got a result of this active pursuit?

A. That's right.

Q. On the 24th June, Mr. Moore wrote enclosing, on behalf of Mr. Haughey, a draft for ï¿½100,000 on a without-prejudice basis as a "Payment on account in respect of any tax liabilities that may arise as a consequence of inquiries into his tax affairs". You acknowledge the payment on the 26th June. So what Mr. Haughey is saying here is here is ï¿½100,000. It's on account of any tax I may owe as a result of what you find out, what some Tribunal points out, but I am not saying I owe any tax?

A. Yes, it's a normal thing

Q. I understand that. Whether it's normal or not, it's what he wrote and what he said. And he was still insisting at this point that what he had got was Dunnes Stores money which had been illegally given to him by

Mr. Ben Dunne?

A. Just in fairness to the taxpayer, it's a fairly standard quote there. I mean, most taxpayers who are making payments on account would be making them on the basis of any tax liability that might become due.

So...

Q. If we could look at this in the round.

Mr. Haughey was saying I didn't handle my affairs at all. It was Mr. Traynor handled them. If I didn't make returns I don't know whether they were due or not. It's up to Mr. Traynor. He is not around. He is gone. There are no records and nobody knows anything.

A. Yes. Plus the legal arguments.

Q. I mean, that was one legal argument, for instance, he was putting forward, that whatever did happen, he didn't know what happened and it would be up to somebody else to find out what did happen; you, the Tribunal, or anybody engaged in looking into it?

A. It's certainly yes.

Q. If all taxpayers behaved in that way, put their affairs in the hands of somebody and then turned to the Revenue and says I don't know anything about my affairs, it's the person into whose hands I consign them, who knows about it, I don't know if I should make returns or not, would you find that acceptable behaviour?

A. No, no, because in the normal course the agent is acting on behalf of the taxpayer and acts of the agents

effectively are the acts of the taxpayer.

Q. You say that on the 29th June 1998 Mr. Moore submitted a detailed letter with a memorandum from Peelo & Partners enclosed. In summary, the bottom line put forward in the letter was effectively that Mr. Haughey this was the point I was making had left the management of his finances to Mr. Des Traynor and was not in a position to offer any assistance on the source of the unexplained amounts as between his income and expenditure. The letter referred to payments of ï¿½80,000 and ï¿½125,000 received from Mr. Ben Dunne and Mr. Dermot Desmond respectively in the period 1st October 1992 to 31st March 1997. The payments from Mr. Desmond were described as loans. Other than to say that the payment from Mr. Dunne was in addition to those already identified in the McCracken Report, Mr. Moore stated that he had no other knowledge of the payment. The letter also referred to the 1979/1980 settlement with AIB. The letter concluded with an offer to meet with you in relation to settlement of any CAT liabilities due.

A. That's correct, yes.

Q. Now, lest there be any confusion about it, the ï¿½80,000 mentioned, appears, subject to what Mr. Haughey may ultimately say, to be one and the same thing as the ï¿½180,000 that Mr. Ben Dunne, in the form of three cheques, appears to have given to Mr. Haughey through

Mr. Traynor as disclosed in evidence to this Tribunal, is that right? And I say appears

A. I think it's been described as the Carlisle cheque.

Q. Yes, the Carlisle payments?

A. Yes, the ï¿½80,000 seems to fit with that.

Q. In fairness to

A. Subject to Mr. Haughey's

Q. Also in fairness to Mr. Byrne, it was his company, Carlisle, through which this company was washed in the form of three cheques and came out the other side as two cheques?

A. Simply using the Tribunal's shorthand for describing it as Carlisle cheques.

Q. Of course, I understand that. And the reference to money from Mr. Dermot Desmond, I think while that money had not been mentioned in the course of any Tribunal dealings, it did ultimately feature in Tribunal evidence at a later point, isn't that right?

A. Yes, yes.

Q. Now, you were provided with a very lengthy memorandum and a long letter from Mr. Moore. And the memorandum came to you under cover of Mr. Moore's letter of the 29th June, isn't that right?

A. That's correct, yes.

Q. And while I don't want to go into all of the details of that, I simply want to mention one matter at this stage. There are no page numbers on the

document there are, sorry, page 3 of the, I think the memorandum. There is one aspect of it I want to draw to your attention. This, Sir, is a memorandum attached to document number 30.

A. Yes, I have that.

Q. And page 3 of that document, of the document now, not of the letter

A. Yes.

Q. refers to something that I just wanted you to clarify for me. It refers to balances in IIB on what have come to be known as the S Accounts. If you go to the previous page you will see that.

A. Yes.

Q. And it gives the total opening balances of ï¿½1.274 million and then deposit interest. Is there a suggestion in the memorandum that this was money which Mr. Haughey accepts was held on deposit for him?

A. I don't think I'd go so far as to say that, no. This is simply the descriptive memorandum. You know, I don't think it's making any calls on who did or didn't own the money, you know, in those deposit accounts. And just to be clear, my specific interest, I suppose, in this correspondence was in relation to payments, gifts coming in.

Q. And you have made that point earlier?

A. It's just a minor analysis in terms of S8 and S9.

Q. You can understand that. But if so, can I ask you to

direct me then in the context of the concrete query that I have. I think what the memorandum says is that it appears that prior to 30th September '92 one or more bank accounts were maintained on behalf of CJH is what the memorandum says, in IIB or and/or in Guinness & Mahon. These accounts were not in the name of CJH and were likely part of a mingled account with separate memorandum accounts as to the constituent account holders.

And then it goes on to refer to, I think, two accounts: S8A with a sterling lodgment in September of '92 of ï¿½100,000 and S9, a Deutschemark account with 3.049981 in it as of that date.

A. Yes.

Q. On the next page it refers to the interest earned. Is that something that would be taken up by the Inspector of Taxes dealing with income and income returns?

A. Absolutely, yes, yes indeed.

Q. And would I be right in taking that matter, in therefore approaching another arm of the Revenue in relation to what action may have been taken in relation to it?

A. Yeah. I mean, any interest income earned on deposits of the 1.3 million is clearly another issue that Mr. Haughey may or may not have to address depending on what the evidence is.

Q. It's not just the evidence. I am also interested in the status of the document.

A. Yes. I would think that it's perhaps an issue to be addressed elsewhere.

Q. You say that: "On the 22nd July, following discussions with our legal advisers, I wrote to Mr. Moore agreeing to a meeting not for the purposes of settlement, but to pursue further Revenue's investigations into the tax affairs of my client. I also sought further clarification of the circumstances of the Ben Dunne and Dermot Desmond payments. Following a telephone call from Mr. Moore on the 31st July, the meeting was agreed for Wednesday 5th August 1998. It was attended by Mr. Moore and Mr. Terry Cooney representing Mr. Haughey. I was accompanied by Mr. Stephen Tracey from Investigation Branch and Ms. Ann Sheridan from Capital Taxes Division. The meeting added little to Revenue's state of knowledge as the agents, in the absence of Mr. Peelo, were either not in a position or felt constrained about answering most of the questions put to them. They undertook to get back to me at an early date with the required information and explanation. I wrote a reminder letter to Mr. Moore in that regard on the 11th November 1998. The matter was raised again in a telephone contact with the agent on the 20th November; at a subsequent meeting on the 27th November on another matter; in a call from the agent on

the 15th February and in a further reminder letter on the 24th February. Mr. Moore provided a detailed reply on the 11th March 1999. The contents of this reply consisted largely of information relating to Mr. Haughey's affairs that was already in the public domain as a result of the public sittings of the Moriarty Tribunal and which Revenue alre3ady had access to. The letter repeated earlier references to the role of Mr. Traynor and the lack of records and qualified the information again by stating that Mr. Haughey was not able to confirm many of the statements made in the letter."

Now, you refer to a number of contacts that you had with Mr. Moore and/or with Mr. Peelo over a six-month period or something like that?

A. Mr. Moore. I never had contact with Mr. Peelo.

Q. I understand Mr. Moore and partly, perhaps, Mr. Cooney on maybe one occasion?

A. Never direct contact with Mr. Cooney. I always operated with Mr. Moore.

Q. Was Mr. Cooney, did he not accompany Mr. Moore?

A. He did indeed, but in terms of correspondence or telephone contact, my contact tended to be with Mr. Moore.

Q. Mr. Moore was the agent. Mr. Cooney was simply assisting him in one or other aspect of what he was dealing with in his contacts with you?

A. That's correct.

Q. And during all that time, do I understand that Mr. Moore, and perhaps to some extent Mr. Cooney, but certainly Mr. Moore was telling you that he was relying on Mr. Peelo and that they were relying on what information they got from the Moriarty Tribunal, for instance to assist them in answering quite significant queries you had addressed to them?

A. In part, yes, that is true.

Q. They said they were depending to a degree on that and they would sometimes tell you, we have got material from the Moriarty Tribunal, we'll look at it and if it provides us with any answers, we'll come back to you?

A. I am sure they were telling the truth in the sense they were having serious difficulties, you know.

Q. Were you under the impression that during all this time they were furnishing the Moriarty Tribunal with answers to queries as well?

A. We didn't know.

Q. That was the impression that you had?

A. We got the impression from them that they didn't know about the information that was being uncovered by the Moriarty Tribunal and, in fact, a considerable amount of documentation arriving almost daily or weekly from the Moriarty Tribunal which they were sifting through and trying to come up with answers to, so one would have expected that they would have been contacting you

direct on things.

Q. I am just interested in what was going on during all that period, as I think evidence at this Tribunal has shown and correspondence has been put in evidence has shown, the Tribunal was getting no answers to a whole load of queries similar to the ones you were raising?

A. Obviously in the same boat so.

Q. But the Tribunal had no knowledge of your existence or of the inquiries you were tearing out and nor was anybody telling the Tribunal that the Revenue were going to find out the answer to all these queries, whereas I think somebody was telling you in the person of Mr. Moore, look, we may get some information from the Moriarty Tribunal?

A. Yes, I mean, that was a line of argument.

Q. The impression I had from looking at the file was that you were operating in what you thought was an atmosphere in which Mr. Haughey's adviser I don't blame them - they knew nothing or had no instructions, in which you were under the impression that the Moriarty Tribunal and Mr. Haughey's advisers were engaged in a two-way process trying to come up with information?

A. Yes.

Q. As I say, that was not, in fact, the case even though you may have been under that impression.

You say that: "In the context of the investigations being carried out in preparation for the rehearing of the appeals before a Circuit Court Judge, I wrote to Mr. Haughey on the 23rd July 1999 enclosing a copy of a statutory notice which I had served on Mr. Ben Dunne under Section 902 of the Taxes Consolidation Act 1997 in relation to Tutbury Limited for the purposes of inquiring into Mr. Haughey's tax liability. The letter invited Mr. Haughey to put forward any reasons as to why the notice should not be enforced. I faxed Mr. Moore with a copy of the correspondence on the same day."

You then deal with the events dealing with the settlement. "On the 20th December 1999 I received a phone call from Mr. Moore requesting a meeting early in the new year to talk about the case and the forthcoming appeal rehearing. During the course of the call he mentioned the possibility of settling the assessments. Having discussed the matter with my then-assistant secretary, Ms. Maureen Moore, I telephoned Mr. Moore back and arranged a tentative date of the 5th of January 200 for the meeting. In the phone call I emphasised having regard to his earlier reference to possible settlement, that Revenue's position was that the tax and interest as assessed must be discharged.

"On the 21st December I wrote to Mr. Moore in relation

to the meeting advising him that in light of the fact that the subject matter of the meeting had already been listed for a rehearing before a Circuit Court Judge, it would take place on a without-prejudice basis. In the letter I referred again to Revenue's position in relation to the discharge of the assessments and asked him to confirm the suitability of the date and who would attend on his side. The letter also made it clear that in light of past media comment on the case, the meeting's occurrence, its purpose and any details discussed should not be revealed by their side to any other parties." There wouldn't be anything unusual in that. You didn't want your position prejudiced by any irregular or unauthoritative comment in the media?

A. Yes, and certainly post the Appeal Commission decision, there was a huge furore, let's say.

Q. "Further phone calls took place between myself and Mr. Moore on the 22nd December 1999 and the 4th January 2000 relating to the timing of the meeting and who would attend. In the end the meeting was settled for Thursday 6th January 2000 in Dublin Castle to be attended by Mr. Moore and Mr. Terry Cooney on behalf of Mr. Haughey and by Ms. Maureen Moore and Mr. Paddy Donnely, Mr. Stephen Tracey and myself for Revenue. Mr. Donnely and Mr. Tracey are attached to the Investigation Branch and were involved in the wider investigation of Mr. Haughey's tax affairs following on

from the McCracken Tribunal Report."

A. That's correct.

Q. "Following the initial meeting on the 6th January, further meetings were held with the agents on 2nd and 21st February and on the 13th and 21st March during which the possibility of a settlement was explored and developed. The same parties on both sides attended these meetings with the exception of Mr. Stephen Tracey. In addition there was correspondence on the 8th February, 1st March and 16th March 2000 from Mr. Moore in relation to aspects of the discussion. Throughout this period, the members of the Revenue board were regularly briefed on the negotiations and they, along with other senior members of Revenue and our legal team, met with Ms. Moore, Mr. Donnely and myself on a number of occasions to discuss developments and determine future actions. During this period preparations for the rehearing of the appeal before the Circuit Judge continued.

"Following an initial offer by Mr. Haughey to pay ï¿½750,000 not later than the end of the year 2000, a final settlement offer was increased, during the course of the discussions, to ï¿½1,009,435 representing the full tax assessed plus interest at effectively 100% of the tax to be paid not later than the 1st October 2000.

"On the 20th March, 2000, Maureen Moore wrote to Mr. Haughey's agents advising them that the board of

the Revenue were prepared in principle to accept the offer subject to the signing by Mr. Haughey of a detailed written agreement and the putting in place of satisfactory payment arrangements to include security by way of a separate guarantee. The letter also specified that the agreement should allow for the issuing of a press statement. On the 22nd March, the agents replied indicating Mr. Haughey's agreement to the proposals.

"Both teams then formulated the agreements, one between Mr. Haughey and the Revenue in relation to the discharge of the assessments and the other between Mr. Haughey's four children and the Revenue in which they undertook to gift to their father part of the land at Abbeville so that the net proceeds of sale would realise sufficient monies to discharge his debt to the Revenue in respect of gift tax and interest. The agreement with the children also provided that in the event of the gift not taking place, they would indemnify the Revenue in relation to Mr. Haughey's debt and discharge it from the proceeds of the sale of the land.

"On the 3rd April 2000 the agreements were signed by Mr. Haughey and his four children. With the approval of the board, I signed both agreements on behalf of Revenue on the same day. The agreement obviated the

need to proceed with the rehearing of the appeals before the Circuit Court Judge which were scheduled to commence the following day.

"On the 30th August 2000 a cheque in the sum of ï¿½1,009,435 was paid over to the Revenue Commissioners in full and final settlement of the gift tax and interest due under the agreement."

Now, could I just ask you one or two things about the settlement.

Firstly, just in relation to the settlement, maybe you'd just clarify one or two details for me. The settlement involved a gift by his children to Mr. Haughey to enable him to pay the monies due to the Revenue Commissioners?

A. That's correct, yes.

Q. Did that happen?

A. Yes, it did, yes.

Q. And was there gift tax charged on that gift?

A. There will be. I mean, that's something that's currently being discussed with his agents. There would be gift tax. But the gift tax would, in fact, be reduced by a CGT charge that would also apply in the same event.

Q. In the case of the children?

A. Yeah.

Q. They will incur a charge to CGT on the increase of the

value of the land over the valuation at which it was gifted?

A. And offset it against any gift tax arising. It's provided for in the legislation, so at the end of day there may be no net gift tax due it. May simply be a CGT charge.

Q. There may be more CGT due than gift tax owed by Mr. Haughey?

A. Yes.

Q. And there is a statutory provision which allows one to be set-off against the other?

A. Yes.

Q. Do you know if the land has actually been sold?

A. I think it certainly has, yes.

Q. And are you responsible for assessing whatever gift tax you have been paid in respect of the gift back of the land to Mr. Haughey?

A. Yes.

Q. And I am not interested in whether that has or is in the process of being assessed as long as you tell me that it is being done, but do you know what value the land was sold for?

A. As far as I know, there were two parcels of land sold. There was the amount that was gifted to Mr. Haughey by the children and then there was, I think, a disposal on the part of the children as well. I think it was sold, approximately sold for something like ï¿½6 million.

I am not absolutely certain about that.

Q. Am I right in thinking that there had been discussions between you, I think, and Mr. Haughey's agents in which at one point it was mentioned that land would be sold and the agents referring to what the sale was expected to yield mentioned that land nearer, indeed opposite Abbeville, had been sold for 600,000 per acre?

A. That's absolutely right, yes.

Q. You can well understand from the evidence from the other day that I am interested in that price of 600,000 an acre in the year 2000 as compared to the valuation that the Revenue Commissioners were proposing of 5,000 in 1989?

A. Ill just qualify that. The land was sold, I think was development land you know, so

Q. I quite understand that.

A. You couldn't equate that with the other

Q. I quite understand. I did a little calculation. You will correct me if I am wrong. The ultimate sale price of that land in that area and with the zoning benefits that you have described, was 13,333 times the valuation in 1990. There seems to be something wrong there, doesn't there?

A. Well, again, I mean, just to emphasise that the land that was sold was specifically described in the development plan, I think, as development land. In other words, it would obviously get a premium price.

Q. Of course, but I don't think that that differential is one that can be explained by the mere zoning of land. The land had to have a hope value in 1990 which was far in excess of ï¿½4,500 an acre?

A. Well, again, I mean, I can only say, it's been said several times, that the State Valuation Agency, the Valuation Office, who are the experts in valuation, placed a price tag of ï¿½1.2 million on it in 1989.

Q. I quite understand that. The land was valued in the course of what the Revenue treated as a commercial deal in 1980 at ï¿½35,000 an acre. Now, I am sure you are better at maths than I am, but 600,000 is what? A 20 times multiple of 35, is it, or more? Ms. O'Brien tells me it's a 60 times multiple, is it?

A. Could I take this opportunity of just clarifying, there been some sort of misunderstanding in the media about the Valuation Office and its relationship with Revenue. They are two absolutely distinct and separate organisations.

Q. I quite understand that. But the only point that I think I was making to Mr. Clayton the other day was that information concerning a valuation of ï¿½35,000 in 1980 would have been relevant to making a valuation in 1989. That's the only point I was making. I understand the media may have made a different point.

A. I take the point you are making, but equally that's not to say that the Valuation Office, in carrying out the

valuation, would have regard to that original idea, you know. You know, maybe that's a question for the Valuation Office, but

Q. I think your point might be that you are not in a position to comment?

A. No, perhaps I am not.

Q. One last point. You may recall that Mr. Coughlan was asking Mr. Quigley about the interest, and again I am only interested in this from the point of view of the benefit to the taxpayer. I am not saying that you could have done what you did in any other way. You were dealing with a situation a litigation situation. In the ordinary event, interest would have been applied between the date of the assessment, is that right, 1997 and the date of payment, in the ordinary way?

A. No, no.

Q. I understand

A. I think what the Chairman was saying, as I understand what he said was while the legislation doesn't put any impediment in the way of Revenue of charging interest, allowing interest to clock up, the practice has always been that when a case is before the Appeal Commissioners or when a case is going to a Circuit Court rehearing, that interest would not, in fact, clock up for that period irrespective of how the determination went. That's the practice. And it's understandable in the sense that, for example, when the

appeal, when we lost the appeal and were going for a Circuit Court hearing, you could argue that, as I think Mr. Coughlan pointed out or maybe the Sole Member pointed out, there was quite a delay and that blame, if you like, in inverted commas could be placed on Revenue. It would seem to be very harsh, if because of a delay caused by Revenue the payer was hit with additional interest. So I think the Chairman was saying that statutorily, there is no impediment, the practice is it's not charged. And, in fact, just to maybe add another point, that in relation to the 100% rule, in fact, what we were doing during the course of the negotiations was pulling the original offer of 750 up to 100% you know, and we succeeded in doing that.

Q. Would that normally be the most you would extract?

A. Yes, under Section 44, as the Chairman said, there is specific provision to allow the Revenue Commissioners to remit interest once it has reached 100%, to 100% and that would be standard practice.

Q. And you felt then you were putting this case into the category of the most serious cases where you would calculate the interest?

A. Yes.

Q. Thanks very much.

CHAIRMAN: Well, I'll just see, Mr. McCabe, if we can dispense with your interest of today by checking the

position of Mr. Allen and Mr. Connolly.

MR. CONNOLLY: I will only be a couple of minutes.

THE WITNESS WAS EXAMINED BY MR. CONNOLLY:

Q. MR. CONNOLLY: Mr. McCabe, firstly to deal with the matter that was raised there last by Mr. Healy, the question of the charge of interest, while an appeal was pending and given what you have said to the Sole Member, that interest generally was not charged in that situation, if it had in theory been imposed by the Revenue, there could well be an argument made that they were singling out Mr. Haughey for harsher treatment than anybody else than the way they had been treated all along?

A. That's certainly a view. Of course, even if we had attempted to get interest there because the interest charged in the original assessments had effectively already reached 100% and we would then be applying 100% rule. I mean, there was simply no point in pursuing that, although we might well have used that as a lever in the course of negotiations.

Q. But to impose any more than the 100% which might have been applied in theory, would have been singling him out for treatment above and beyond that which he was entitled to expect in terms of treatment for him vis-a-vis the treatment of other taxpayers in a similar situation?

A. It would be highly unusual, yes.

Q. The other matter I want to deal with is the question of penalties.

Now, the Chairman had described the risks that were identified both in terms of factual material and also legal difficulties that would have been in place for the Circuit Court hearing just as much as they were present for the hearing before the Appeals Commissioners. Those risks would still have been present in any case that would have to be brought to impose penalties for failure to file a return on Mr. Haughey's part?

A. Yes.

Q. All of those risks would still be there both the legal difficulties and the factual material?

A. Yes.

Q. And the likely prospect originally was that this was going to take perhaps a week or more of hearing time before the Circuit Court, putting the Revenue in the situation where they could establish first-hand the kind of material that was originally available before the McCracken Tribunal in reaching its conclusions?

A. That's correct. There was dates set for the Circuit Court rehearing.

Q. In the event that a case was brought for penalties, there would be further difficulties in this respect;

firstly, the onus of proof would now be on the Revenue Commissioners bringing the case for penalties, and secondly, the onus of proof would be beyond any reasonable doubt rather than on balance of probabilities. These were two extra difficulties the Revenue would have to face in a case being brought for penalties?

A. Yes.

Q. Thanks very much, Mr. McCabe.

Mr. Healy just asked me to check this. Are you aware of anyone who was put in a position of having to pay more than 100% interest?

A. No, I am not aware. I am not aware.

Q. Thank you very much.

CHAIRMAN: Thank you very much for your assistance this afternoon.

MR. HEALY: Sorry, Sir, just in relation to that, and Mr. Connolly can check this for me, Ms. O'Brien has reminded me that Mr. McCabe has only been there since 1995. Maybe you can check it out.

A. My observation is based, say, on conversations with people who have been there a lot longer than me and

Q. That is the question in any case.

A. My feeling is it just doesn't happen.

Q. Thank you very much.

CHAIRMAN: Thank you very much. Well, I think the same procedural commitments arise tomorrow, Mr. Coughlan. So it should again be two o'clock in the afternoon.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY, WEDNESDAY, 14TH FEBRUARY 2001, AT 2PM.