

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 14TH

FEBRUARY 2001 AT 2PM:

MR. COUGHLAN: Mr. Stephen Treacy.

STEPHEN TREACY, HAVING BEEN SWORN, WAS EXAMINED AS

FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. Treacy, I think you prepared a

statement for the assistance of the Tribunal, isn't

that correct?

A. That's correct, yes.

Q. And I think you have informed the Tribunal that you are

a Senior Inspector of Taxes in Investigations Branch,

office of the Chief Inspector of Taxes, Revenue

Commissioners.

A. That's correct.

Q. You commenced working in Investigations Branch in 1981

and at the request of the Tribunal, you are submitting

this statement relating to your ongoing investigations

into the Income Tax affairs of Mr. Haughey?

A. That's correct, yes.

Q. I think you have informed the Tribunal that arising

from the McCracken Tribunal on the 21st July 1997, a

special project group led by you was set up in

Investigation Branch to deal with certain matters

arising from that Tribunal, in particular the affairs

of Mr. Haughey?

A. That's correct.

Q. And that following your examination of the files and papers in the case, you requested certain additional information from Mr. Haughey and some of this has been supplied, is that correct?

A. That's correct, yes.

Q. However, you have been advised by Mr. Haughey's tax agents that the legal advice to Mr. Haughey is that as his tax affairs and the Moriarty Tribunal are interconnected, and as Mr. Haughey would be a witness before the Moriarty Tribunal, they should answer to the Moriarty Tribunal before replying to the Revenue?

A. That's correct.

Q. Now, I think a list of the meetings and correspondence with Mr. Haughey's agents since the inquiry began, you set out in an attached appendix, isn't that correct?

A. That's correct.

Q. And the substantive points which are still outstanding are contained in a letter sent to you or a letter dated 4th May 1999.

A. That's correct.

Q. I think that you have informed the Tribunal that on the 10th December 1997, you applied to the High Court under Section 80 in the Finance Act 1983, now Section 908 of the Taxes Consolidation Act 1997 with a view to obtaining High Court orders against Guinness & Mahon Ireland Limited and against Irish Intercontinental

Bank?

A. That's correct.

Q. On the same day in a hearing in camera, Mr. Justice Costello granted High Court orders against the respondents?

A. That's correct.

Q. I think you informed the Tribunal that on the 20th January 1998, Guinness & Mahon (Ireland) Limited supplied a single page account statement in the name of Charles J. Haughey in connection with the requirements of the High Court order under Section 908 of the Taxes Consolidation Act 1997?

A. That's correct.

Q. I think correspondence took place between the Revenue solicitor and the respondent solicitors in connection with the scope of the High Court order of the 10th December 1997, is that correct?

A. That's correct.

Q. At a further hearing before the High Court on the 27th February 1998, the order of the 10th December 1997 was amended by consent of Irish Intercontinental Bank; also the High Court order that Irish Permanent plc and Guinness & Mahon (Ireland) Limited have further liberty to apply within 14 days in relation to the amended order of the Court.

A. Yes.

Q. Now, I think you informed the Tribunal that on the 11th

March 1998, documentation was delivered to the Revenue Solicitors from Irish Intercontinental Bank in connection with the High Court under Section 908 of the Taxes Consolidation Act 1997?

A. That's correct.

Q. On the 22nd April 1998 a meeting on a without-prejudice basis took place at the offices of Irish Intercontinental Bank Limited to discuss previous correspondence in connection with the High Court order under the Taxes Consolidation Act of 1997, is that right?

A. Yes.

Q. On the 12th June 1998, further documentation was received from Irish Intercontinental Bank Limited in connection with the High Court order under Section 908 of the Act?

A. Yes.

Q. On the 27th July 1998, further applications in these proceedings were brought before the High Court in connection with Section 908 of the Taxes Consolidation Act 1997 in order to clarify the extent of the entitlement of the Revenue Commissioners under that section, is that correct?

A. Yes.

Q. I think several appearances took place in the High Court, and on the 17th September 1998, Mr. Justice Geoghegan gave an order against Guinness & Mahon

(Ireland) Limited in favour of the Revenue

Commissioners, is that correct?

A. Yes.

Q. On the 15th October 1998, Guinness & Mahon (Ireland)

Limited supplied documentation in connection with the

requirement of the High Court order under Section 908

of the Taxes Consolidation Act 1997?

A. Yes.

Q. I think on the 28th January 1999 a further hearing in

connection with Section 908 of the Taxes Consolidation

Act 1997 in relation to Irish Intercontinental Bank

took place in the High Court and arising therefrom,

further documentation was received from Irish

Intercontinental Bank Limited on the 24th February

1999?

A. Yes.

Q. I think you have informed the Tribunal that in relation

to ongoing investigation, your monitoring of events

unfolding at this Tribunal and the revelations relating

to further payments which may be or further payments

to Mr. Haughey from various sources, is that correct?

A. Yes.

Q. So if I might ask you in summary, you have, since the

completion of the McCracken Tribunal, been conducting

correspondence with Mr. Haughey's tax agents, you have

been making various applications to the Court to seek

access to bank accounts and Guinness & Mahon or Irish

Permanent and Guinness & Mahon as it now may be, and Irish Intercontinental Bank.

A. Yes.

Q. Mr. Haughey's agents have advised you that their legal advice is that his affairs, his tax affairs, are inextricably linked with the proceedings of this Tribunal and that they should answer here in the first instance before replying to matters which you may have raised with them, is that correct?

A. That's correct, yes.

Q. And you are monitoring things as they unfold here also, is that correct?

A. That's correct.

Q. That's basically the position.

Now, the documentation and apart from corresponding, making court applications, dealing with banks, looking at the documentation you receive, reviewing it, going back to court and dealing with the banks again, you continue to monitor what's happening here?

A. That's correct.

Q. Now, in relation to what you were told by Mr. Haughey's agents, that his affairs were linked to what was happening at this Tribunal, was it your understanding that the case that was being put forward was that information would be supplied to this Tribunal in the first instance, before replying to queries which you may have raised?

A. I am going from recollection now. That's not my recollection, but I'd have to recheck the correspondence. My understanding was that Mr. Haughey would be a witness, but it wasn't my understanding that they had information that they were going to give firstly before they gave it to me.

Q. I see.

A. It's not my understanding that they have information to clarify the substantive matters that I have raised.

Q. I see. Well, what was your belief, so, when this proposition was put to you? You were seeking information from his tax agents, isn't that correct?

A. Yes.

Q. In the normal course of Revenue and Tax Agent interplay?

A. Yes.

Q. And what was said to you may I ask you then, did you cease seeking information from the tax agents when this proposition was put to you?

A. Well, their advice was, as I have said in my statement, that the legal as you have just read, that they were acting on legal advice. I don't recall that we probed precisely what the nature of the advice was or the whys and wherefores of the advice. They had been given legal advice. We accepted that that was the case.

And thereafter, there was no further reply to my letter of the 4th May in any substantial way.

Q. Now, I am not asking you whether you probed the nature of the advice, legal advice that had been given. What I am trying to ascertain here is that it was being suggested to you that because of legal advice, that Mr. Haughey's affairs were inextricably linked with the workings of this Tribunal and he would be a witness before this Tribunal.

A. Yes.

Q. How was that to affect the queries you were raising with his tax agents?

A. I am not clear as to why it should have prevented them from replying, but they didn't reply, and the fact of the matter, it was conveyed that there wasn't going to be a reply.

Q. I see. And in relation to the information being sought, were you ever told by his tax agents that that information was not available?

A. Again, subject to re-reading the correspondence, the impression that I recollect is that they weren't in a position to give me clear-cut replies and I think I was getting the impression that I wasn't likely to get clear-cut replies.

Q. And can I take it that that was because the agents, I want to distinguish here, wouldn't give it to you or they couldn't give it to you because they didn't have it?

A. I understand that they couldn't because they would be

relying in turn for information from the taxpayer, I

presume.

Q. Thank you, Mr. Treacy.

CHAIRMAN: Mr. Allen?

MR. ALLEN: Yes, Chairman, just a very small matter.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. ALLEN:

Q. MR. ALLEN: Mr. Treacy, I take it you are in a position to confirm that the tax agents to whom Mr. Coughlan has been referring, with whom you had correspondence, were not my clients, Deloitte & Touche?

A. I am corresponding with Mr. Paul Moore on this matter, not Deloitte & Touche.

Q. Thank you.

CHAIRMAN: Anything, Mr. Connolly?

MR. CONNOLLY: Nothing arises, Chairman.

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

THE WITNESS THEN WITHDREW.

Mr. Maurice O'Donoghue.

MAURICE O'DONOGHUE, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. O'Donoghue, I think you are an assistant principal officer in the Capital Taxes Division of the Revenue Commissioners?

A. Correct, yeah.

Q. And that from 1980 to 1996 you were a higher Executive Officer in that division?

A. Correct.

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

A. Correct, yeah.

Q. And in making this statement you have examined the relevant papers and documents on the appropriate Capital Acquisition Tax file and you give the file numbers?

A. Indeed, yeah.

Q. Now, I think you have informed the Tribunal that self-assessment became mandatory for Capital Acquisition Tax from the 1st September 1989, is that right?

A. That's correct, yes.

Q. New administration procedures were put in place within

the Capital Taxes Division to process the new

self-assessment returns, is that correct?

A. That's correct, yes.

Q. These involved checking each return for arithmetic

accuracy with minor errors being corrected by Capital

Taxes staff.

A. Yes.

Q. Significant errors would require the return to be

referred back to the agents?

A. Yes, indeed.

Q. Screening on each return to determine whether a

detailed examination by way of an audit was required

and the issuing of a certificate of discharge in

respect of the disclosed gift where the return and

payments were accepted?

A. Yes.

Q. I think in December 1989, four self assessment returns

for the gifts taken by the four Haughey children from

their parents were submitted to Capital Taxes Division

by Messrs. Haughey Boland & Company?

A. That's correct, yes.

Q. You would have processed the returns in accordance with

the new procedures then in force, is that correct?

A. Absolutely.

Q. The file shows that the returns were accepted following

the screening, and certificates of discharge from

Capital Acquisition Tax were then issued on the 4th

April 1990, is that correct?

A. That is correct, yes.

Q. As a result of the screening of the returns, you would have been aware that the values returned for the gifts to the land equated with the opinion of value provided by the Valuation Office which was on the file?

A. Yes.

Q. In the case of the self-assessment return submitted for Eimear Haughey in screening the return, you would have noted the fact that an amount of $\text{€}150,000$ was included for prior gifts, is that correct?

A. That is correct, yes.

Q. The file showed that in December 1988 Messrs. Haughey Boland & Company had submitted a significantly lower value for gifts at $\text{€}102,290$?

A. That's correct.

Q. The increase result in all of the taxable value of the gift of the land from her parents being subject to tax?

A. Correct.

Q. She had reached the threshold, in other words?

A. Yes.

Q. Reflecting that and in the context of self-assessment, you decided to issue certificate of discharge which, in effect, brought the issue to a close notwithstanding Ms. O'Donovan's query letter which had been overtaken by the submission of the return.

A. Yes.

Q. You took the decision effectively

A. I did, yes.

Q. in this case?

Like Ms. O'Donovan who was also attached to your division or branch who gave evidence here, were you unaware of any previous dealings in relation to the land on the Capital Gains side of the Revenue?

A. Completely unaware of any such dealings.

Q. If you had been aware of them and of the existence of the purported contract, which I presume you are now aware of, would you have taken any steps before issuing the certificates of discharge in these cases?

A. At the stage I issued the certificates of discharge, the report from the Valuation Office was already on the file. They had determined the value at the set figure which corresponded to the figures in the return. If I had been obviously it wasn't the Valuation Office report was back on the file at the time the decision was made that I made to issue the certificates. If I had had prior dealings with the file and had prior information regarding valuation issues, I would have obviously referred them to the Valuation Office before issuing any certificates.

Q. That's what I just wondered. Is it something that you would have considered well, I better throw this back to the Valuation Office to see if they know about it?

Does this affect the value that we are dealing with

here for the purpose of this case?

A. Absolutely, because it's obviously the critical element in the returns was the valuation of these lands. From that valuation, you can draw a direct line to the actual final figure in the assessment in the returns and from my perspective in looking at the file, the value had been finally determined by the Valuation Office and there was no question outstanding regarding that value. If there were other valuation items of correspondence on the file, I would have had to obviously considered them and gone back to the Valuation Office.

Q. Yes. That's what I am just asking you. It's something you would have said, well, look, this is the value and the Valuation Office are wrong. It's something you might have said you would have said to yourself, I better send this back to the Valuation Office to see if

A. I would have ensured that the Valuation Office were in possession of the full information.

Q. Yes. Thank you very much indeed. Sorry there is just one other matter.

The prior gifts which had been returned in 1988 as being $\frac{1}{2}$ 102,000 and there is this new value came in of $\frac{1}{2}$ 150,000 which brought Mrs. Mulhearn above the threshold in effect. Can you be of any assistance to

the Tribunal about that?

A. In broad terms, the function of somebody screening the return is to take an overall view of the return. It's only a screening process. The important factors I think in relation to that particular value are that it resulted in the current benefit being fully taxable. That's the return in which we were dealing with the returns for the transfer of the lands. The share of the lands taken by Mrs. Mulhearn was now fully taxable because the threshold had been fully utilized by the value of the prior benefits and in the context of moving over to a self-assessment system at this stage, and in light of the previously much lower value submitted for those prior benefits, an overall view was taken of the return to accept it at that stage. We were trying to move away from the older system of Revenue Officials issuing queries, reminders being issued, information being obtained, further queries issuing, reminders and so forth. You will recall that in this particular case, queries in relation to this particular item had initially issued five years previously practically and no definitive decision had been reached as to the exact value to be put on these prior benefits. So in the context of now an actual self-assessment return having been received, we closed off the issue of the exact value of those prior benefits primarily because it resulted in the full

value of the benefit now being taxable in any event and also because the prior benefits were not taxable in their own right.

Q. Well, was this a matter of administrative convenience or was it a matter of an assessment of the true state of affairs in relation to the taxpayer?

A. No, it was a matter of judgement that a screening officer has to exercise in screening any return as to whether there is a significant element of tax at risk overall when the officer has screened the return.

Q. Now, who were you the officer who exercised the judgement or made the decision in relation to all aspects of the certificate of discharge being issued in these cases?

A. From looking back at the file eleven years afterwards, that would appear to be the position. There is no note of any instruction from anybody else on the file.

Q. And there was a letter submitted by Messrs. Haughey Boland on behalf of these taxpayers isn't that correct by letter dated 22nd December 1988?

A. I think that's correct, yes, that's correct.

Q. And it sets out if we could just put it on the overhead screen and I'll give you a hard copy.

(Document handed to witness.)

"Dear Sir, we wish to refer to previous correspondence in the matter of interest-free loans and rent free use of the land at Abbeville by Ms. Eimear Haughey.

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

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

"From the 2nd June, there are three areas to be considered.

"1. 25% share of interest-free loan of $\text{£}45,000$ to Larchfield Securities Limited.

"2. Interest-free loan personally from Mr. Haughey to his daughter.

"3. Free use of lands at Abbeville, Kinsealy.

"Larchfield Securities Limited.

"The Larchfield Securities Limited loan has had no movement on it since the 2nd June 1982.

"Personal loans.

"The movement on the loan has been as follows:

"Opening balance, 14th December 1979, $\text{£}190,600$.

"Then there is a balance as per the 31st December 1982, the same.

"Balance on the 31st December 1984, i.e. 184,352.

Balance on the 31st December 1985, i.e. 177,684.

Balance as of the last day of 1987, i.e. 164,000 and a balance as of the last day of 1988, i.e. 140,000."

"Free use of land.

"The land has been totally well maintained by Ms. Haughey and in no way left to fall fallow or into disuse. This would differ greatly from an eleven-month letting to an unconnected party. Ms. Haughey has maintained the land in all respects in terms of quality and aspect. There is also the fact that of the total of 1.6 acres approximately, 40 acres are woodland and amenity lands and are not available for farming.

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

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

Then the loan is set out. And the interest rates are set out. Then coming to the free use of land, 146 acres and the land valued and a letting of i.e. 40 per acre, isn't that correct?

A. That's correct, yes.

Q. Now, queries were raised by Ms. Iris O'Donovan in relation to matters in that letter, isn't that correct?

A. Yes, indeed.

Q. She looked for the best price available on the open market for the letting and the cost of the fertilising, repairing of fences and matters of that nature. No information was furnished in respect of the queries raised, isn't that right, by Ms. O'Donovan?

A. There was no specific reply to the queries.

Q. There was no reply?

A. No reply, yes.

Q. Now, when you came to make a decision on the self-assessment, what did you have before you? What did you take into account? And how did you arrive at your decision?

A. I had at this stage an actual self-assessment return before me with a figure in that self-assessment return that put in a figure into the return for all prior benefits taken by Ms. Eimear Haughey. And a decision was made in the round to accept the return overall based on a screening process examining the major building value, if you like, of that return. The return was examined to ensure screened to examine a number of items in the return to see were they dealt with correctly in the return, and as I said, the principal item that needed to be looked at was the actual value of the lands themselves which had been

definitively dealt with. There were obviously a number of items that a screening would take into account in screening the overall return, obviously apart from the value, but in my judgement at the time I decided to accept the return and submit it on the basis that there wasn't any significant tax at risk. The full value of the lands taken by Ms. Haughey had been now taxed and that was the return I was dealing the transfer of the lands to her effectively.

Q. I know you made the decision and I know you say that screening took place. What was involved in the screening is really what I am trying to ascertain.

A. Well, obviously, when you are screening a self-assessment return, there are a number of items, but you would obviously take into account the terms of the original deed of transfer. Look at the deed of transfer, ensure that the self-assessment returns equated to the terms of the transfer itself, that the beneficiaries were the same as shown on the deeds of transfer, that the share of the lands taken by the beneficiaries equated to the shares transferred under the deed; that there were no unusual deductions or expenses claimed to reduce the taxable value; that the beneficiaries had used a correct tax-free thresholds; in the case where tax was assessed, that tax had been assessed at the correct rates. If interest was due on the return, that that interest had also been

self-assessed and obviously that a remittance for the full tax and interest would be included as assessed on the return. You know, there are a number of broad items to be looked at. And also obviously, in relation to prior benefits that were included on the return, whether they had been properly aggregated with the value of the current benefit and tax assessed on the full value of the disclosed prior benefits.

Q. May I ask you this: In relation to the screening or the processing on this self-assessment basis, as long as the current value was being taxed, it was immaterial to you what may have been a previous value or you had no interest in attempting to ascertain that?

A. No, it would be material because it could affect the tax on the current benefit, but in light of what was already on the file in relation to the value of the prior benefits, and in relation to the substantially uplifted value that was now included on the self-assessment return, in the overall, a judgement was made to accept that return.

Q. What were the prior benefits, or do you know?

A. I beg your pardon?

Q. What were the prior benefits, if any, do you know?

A. The prior benefits on that we had notification of on the file related to the free use of lands since June '82 and free use of certain monies.

Q. Now, that was the information which was furnished in

the letter from the agents on the 22nd December 1988.

A. Yes, that's right.

Q. In respect of which queries were raised and not replied to?

A. That's correct, yes.

Q. And notwithstanding that on the self-assessment form that came in, a different value was being attributed to the letting value of the land, isn't that correct?

A. That's correct, yes.

Q. I think we may have to come back to you once we have discussed the matter with other potential witnesses.

Thank you.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. ALLEN:

Q. MR. ALLEN: Mr. Donoghue, I don't know if you were here yesterday, but I don't think it's a contradiction that counsel for the Tribunal, Mr. Healy, referred to using as a term of art I think, the Revenue Community and he went on to explain that he meant the Revenue Commissioners on the one hand and tax agents on the other and the interplay between them, do you understand

A. Yes, yes.

Q. what he meant? As I understand it, in relation to matters of the valuation of lands, and we can be specific, the valuation of the particular lands which have been the subject matter of the Tribunal's

inquiries in public sittings over the last few days,
may I establish firstly, that the Valuation Office is
entirely independent of the Revenue Commissioners,
isn't that correct?

A. That's correct, yes.

Q. That notwithstanding, it is to the Valuation Office
that the Revenue Commissioners look for valuation of
property where a dispute arises, isn't that correct?

A. That's correct, yes.

Q. And equally, am I correct in thinking that the tax
agent will, in ordinary circumstances, pass the matter
on to a valuer for the purposes of dealing with the
Valuation Office?

A. That's correct, yes.

Q. And indeed, that was what happened in this case, we
know, isn't that the position?

A. That's right, yes.

Q. Mr. Kenny, who was the tax agent, employed a firm of
valuers, asked them to furnish a valuation. That
valuation was furnished to the Revenue. In turn, the
matter then became an issue between the Valuation
Office and the valuer, isn't that the position?

A. That's correct, yes.

Q. Am I also correct in thinking that once the valuers,
when I am talking in this instance about the Valuation
Office on the one hand and the valuer retained on
behalf of the taxpayer on the other, once a valuer's

engaged in their exercise and their work, until such time as an actual valuation is agreed at, in effect, the Revenue Commissioners and the tax agents stand back from the situation?

A. That's correct, yes.

Q. And ultimately, there is either agreement or the matter goes further?

A. That's absolutely right, yes.

Q. And in this instance, the valuation which was furnished to the tax agents on behalf of the taxpayer was in a sum of $\text{€}750,000$, isn't that correct?

A. That's correct.

Q. The valuation which was provided to the Revenue Commissioners by the Valuation Office was in a sum of $\text{€}1.2$ million, isn't that correct?

A. Absolutely correct, yes.

Q. And in negotiations between the valuers, and again correct me if I am wrong in anything that I am saying, they reached agreement. In other words, the valuers acting on behalf of the taxpayer agreed the Valuation Office's valuation, isn't that correct?

A. They agreed a value, yes.

Q. They agreed the value at $\text{€}1.2$ million?

A. Yes.

Q. Which was in accordance with the advice you had received from the Valuation Office?

A. That's correct, yes.

Q. Which you were in the habit of relying upon, isn't that correct?

A. Absolutely, yes.

Q. Now, we haven't, of course, yet heard from any witness from the Valuation Office, so this may be a question which you can't answer in which case I will fully understand, but are you yourself by any chance familiar with the criteria which are employed by the Valuation Office in performing the service or in providing the service of valuation which they provide to the Revenue Commissioners?

A. Only in broad terms, that the valuation that Revenue require is the open market value.

Q. At the time?

A. At the time of the gift or inheritance in question.

Q. Indeed. So your knowledge would be I mean, your knowledge, as you say yourself, is in broad terms?

A. Yes.

Q. Because I would be hopefully we will hear from the Valuation Office, we'll be able to establish the five criteria which they have long since adopted and which they apply in each case without distinction. But in any event, it's not your area of expertise. Thank you very much, Mr. O'Donoghue.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. QUINN:

Q. MR. QUINN: Just two questions, Mr. O'Donoghue.

When you came to assess the situation, you were dealing with an actual return, a self-assessment return, isn't that correct?

A. That's correct, yes.

Q. There had been by way of response to an earlier query, a return made which wasn't necessarily a self-assessment return, but a return made by way of correspondence from Haughey Boland acting on behalf of the taxpayer, isn't that right?

A. A letter had been received.

Q. A letter. And that letter purported to show a prior gift of a sum, I think, of $\text{€}102,000$, isn't that right?

A. That's right, yes.

Q. But the self-assessment return which you had received I think had shown a prior gift of $\text{€}150,000$, isn't that right?

A. That's right, yes.

Q. And just finally, in relation to the Valuation Office, when you came to assess the self-assessment return, was the Valuation Office assessment on the property on the file at that stage?

A. Absolutely, yes.

Q. You wouldn't have been second-guessing the Valuation Office return at that stage?

A. Oh, absolutely not. The definitive determination of the Valuation Office regarding the value of the lands at the date of the gift was on the file and that was

the only item of correspondence regarding the value that was on the file. The Valuation Office's determination at the $\frac{1}{2}$ 1.2 million.

Q. I think when Ms. O'Donovan was dealing with it, she was dealing with it before it had gone to the valuation or shortly after the stamp duty office had referred it to the Valuation Office?

A. Yeah, yes.

Q. It would have been at that stage that any additional information that might have been on the file might have got to the Valuation Office, not when you were looking at it?

A. That's correct, yeah.

Q. Thank you.

CHAIRMAN: Could I just raise one query with you, Mr. O'Donoghue, more on the question of the system operated by the Revenue. It has emerged, I think, from the evidence of Mr. Clayton and also I think Ms. O'Donovan that effectively your branch, the Capital Taxes Branch administers Capital Acquisitions Tax, stamp duty and Residential Property Tax, the last being a largely historical matter now.

A. That's right, yes.

CHAIRMAN: And has it always been the case that Capital Gains Tax has fallen totally outside that particular category.

A. Absolutely, yes.

CHAIRMAN: To the layman, it does appear to have certain common factors in that it will often be involving land which may have been subject to valuations and represents a different way of capitalising the taxing that is due.

A. To the layman it would, but there are two separate taxes that on occasion interface with each other in the way that where both taxes can arise at the same time on the same property and there is a system of setting off, in those circumstances, the Capital Gains Tax which may be payable against any Capital Acquisitions Tax, but they are separate taxes completely.

CHAIRMAN: Now, there have been certain differences in emphasis between witnesses as to how material the knowledge of what we may call the Gallagher transaction may have been to you and your colleagues as regards the present case. Has it been the practice as was mentioned by Mr. Clayton, that pursuant to a leaflet and fresh or consolidating procedures, that there is a greater degree of liaison between the two sections in recent times?

A. There would be indeed, because we now have a full audit system in place and where Capital Taxes staff are actually auditing particular transactions, they will regularly now contact, in that capacity, the offices of

the Inspector of Taxes for additional information. So there would be a freer flow of information, in my opinion, between the two offices.

CHAIRMAN: Thank you very much.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. Pat Kenny please.

CHAIRMAN: Thank you very much for coming back, Mr. Kenny. Of course you are already sworn. Please sit down.

MR. ALLEN: Chairman, just before Mr. Healy commences his examination, there is a matter that I should have brought to my colleagues' attention. Just for the record, Sir, there was a communication received by my clients yesterday evening on behalf of and from Mrs. Mulhearn pointing out to them that she was aware of the fact that Mr. Kenny was to be giving evidence here today and drawing to his attention the fact that she had not given a waiver to Mr. Kenny which would enable him to disclose information about confidential information about her affairs. Now, Mr. Kenny, of course, is here and entirely subject to the direction of the Tribunal, but I do want the record to reflect the fact that there was that communication. There was an invitation then to the solicitors who represent

Mrs. Haughey to put the matter on paper, but that invitation wasn't accepted.

CHAIRMAN: I'll note that, Mr. Allen. Is it likely to hinge on this?

MR. HEALY: It's of absolutely no consequence to the Tribunal, Sir. It only affects the witness obviously in that I assume that Mr. Kenny is anxious to explain that he would not have been in a position to assist the Tribunal in a voluntary capacity in advance of any evidence he gives here, and I am sure Mr. Kenny, had he received a waiver, would have been quite happy to have assisted the Tribunal in private in the investigative phase of its work, but because he does not have a waiver, could not do so.

MR. ALLEN: Indeed, Sir, as he has done on many occasions.

CHAIRMAN: It's entirely analogous to a situation in regard to another family member.

MR. ALLEN: My intervention was in ease of Mr. Kenny, in order that the record might so show.

CHAIRMAN: I am fully aware of that.

MR. ALLEN: I appreciate that it doesn't in any way hinge or impinge upon Mr. Healy's obligations and duties. Thank you, Sir.

PAT KENNY, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY

MR. HEALY:

Q. MR. HEALY: Thank you, Mr. Kenny. You are already sworn and I understand the position that you are now having to deal with these queries for the first time, if you like as I address them to you in the witness-box and you haven't had an opportunity of discussing them with me or with any other member of the Tribunal team privately with a view to ensuring that as much information was available for these hearings as you might normally wish to bring to bear, and that is because you don't have a waiver.

A. That's correct.

Q. Now, I just want to go over one or two aspects of the evidence which I think may have already been given by you and indeed by other members of the firm of Deloitte & Touche, formerly Haughey Boland, so that the evidence you are going to give on this occasion can be put into some context.

The firm of Deloitte & Touche, formerly Haughey Boland, has had a long association with Mr. Haughey, isn't that right, and with the Haughey family?

A. Yes, up to the recent past.

Q. Up to the recent past. We heard yesterday from Mr. Moore that you ceased to be Mr. Haughey's tax compliant agents or his tax agents of any kind I think

in 1997?

A. That's correct.

Q. And he took over that role and other accountants took over other roles which had previously been fulfilled by your firm?

A. Correct.

Q. So you now have no involvement with Mr. Haughey, Mrs. Haughey or any member of the Haughey family in connection with their personal or corporate tax affairs?

A. I personally don't, but we, the firm, does act for Mrs. Eimear Mulhearn.

Q. I see. Now, the role of the firm from a very early stage has been to advise Mr. and Mrs. Haughey in relation to tax matters to begin with, isn't that correct?

A. Well, to be compliance agents I think. Advice as we had it preChristmas, Mr. Healy, is not quite correct.

Q. Did I not understand you to say to me on an earlier occasion that Mr. Michael McMahon gave advice to Mr. Haughey?

A. He certainly did, but since 1984, that has not been the matter.

Q. Your role since 1984 has not been one of adviser. Purely a tax compliance agent?

A. Exactly.

Q. Purely your role of telling Mr. Haughey what he would

have to do to comply with his obligations under the tax codes?

A. Precisely.

Q. The firm had a role in dealing with other aspects of Mr. Haughey's affairs connected with Larchfield, a family company that he was involved in and also connected with Celtic Helicopters, is that right?

A. My understanding is we were never auditors of Larchfield Securities Limited. We were and I know still are auditors of Celtic Helicopters Limited.

Q. Were you also, nevertheless, advisers to the Haughey family in the person of Mr. Ciaran Haughey, in connection with the setting up and from time to time, the operation of Celtic Helicopters? We have heard that evidence in this Tribunal.

A. I would think, yes, Mr. Carty certainly had some roles in the past in that respect.

Q. I don't think I want to spend too much time on this, Mr. Kenny. He didn't have some role. He had a huge role in getting the initial finance going and an even bigger role in trying to get the company off the ropes in 1992. He was also, in fact, a director of the company, an actual hands-on individual involved in the management, admittedly only at director and board level up until I think 1992 when the law changed and I think he felt it might be preferable

A. He was a non-executive director.

Q. Now, there was also, until it was taken over by Mr. Stakelum, there was the bill-paying service operated by Deloitte & Touche?

A. That's correct.

Q. Now, so far as taxation is concerned, the role you say from 1984 was one of tax compliance agent. As you say, prior to that, Mr. McMahon appears to have had a role also in providing tax advice in addition to merely advice on tax compliance on an annual basis?

A. Again, going back to pre-Christmas, Mr. Healy. I explained to you I didn't know that, but Mr. Haughey has said so in evidence and I accept it.

Q. Now, the firm also had a peculiar, and as we have on an earlier occasion canvassed, a somewhat unusual role about which we have a very limited amount of information, in connection with the drafting of a contract for the sale of some 35 acres of Abbeville in 1980.

MR. ALLEN: Chairman, I am sorry to interrupt My Friend. I don't think it's something I have done very often and would intend to continue that practice, but I would like to draw your attention, Sir, to the fact that Mr. Kenny is here to give evidence on foot of a letter from the solicitor to the Tribunal dated 12th February 2001 which gives him specific notice of the matters upon which he will be required to give

evidence. I presume you have a copy of that letter, Sir. But the second paragraph of it sets out in very precise matters the matters on which the Tribunal wishes to hear evidence from Mr. Kenny, and none of those are encompassed or embraced by the matters which have thus far been raised by Mr. Healy. We were told my clients were told, through their solicitors, that: "The Tribunal wished to hear evidence from Mr. Kenny in connection with his firm's involvement in relation to the assessment of Capital Acquisitions Tax on Mr. Charles Haughey's children arising from the transfer of Mr. Haughey and his wife of lands at Abbeville, Kinsealy in March and in relation to the valuation of the benefits received by Mrs. Eimear Mulhearn in connection with the free use of land in Abbeville and an interest-free loan provided to her by Mr. Charles Haughey."

I would like to think, Sir, that your legal team will be in a position to acknowledge that at all times, Mr. Kenny and any other of the firm have cooperated with this Tribunal to the very fullest and put a great deal of work into preparing themselves in order to be in a position to properly assist the Tribunal. The efforts of Mr. Kenny have been directed at putting himself in a position where he could properly and fully, to the best of his ability, deal with the matters of which he was given notice. That aside, it

appears that Mr. Healy at the moment is doing nothing more than reading into the record again evidence which has already been canvassed in relation to evidence which now forms part of the proceedings of the Tribunal. That's a peripheral that's more an observation than anything else, but I would like to think, Sir, subject to obviously what you feel is appropriate yourself, that matters of which Mr. Kenny has no notice really shouldn't be canvassed to any great extent with him without such notice being provided to him, particularly in circumstances where he presented himself to this Tribunal privately and publicly for the purpose of dealing with all of those matters in the past.

CHAIRMAN: Well, no one has remotely questioned Mr. Kenny's cooperation, or yours Mr. Allen.

MR. ALLEN: I am not suggesting that.

CHAIRMAN: And my understanding, indeed, that Mr. Healy proposes to make some inquiries of Mr. Kenny in the context of the gift tax transaction and the earlier benefits that appear to have been received by Mrs. Eimear Mulhearn, but as you, having been present for the last two days, and the earlier portion of this, will have realised that certain of that evidence has related to the possible evidential value of knowledge

of the 1980 transaction involving the Gallagher family and as I understand it, it is in that context that Mr. Healy is addressing his initial questions. Am I correct, Mr. Healy?

MR. HEALY: That's correct, Sir. I simply wished to put the questions that I want to take up with Mr. Kenny in context and I should say that, I don't have the impression that Mr. Kenny is having any difficulty, but if he does, I will certainly adjust the way I propose to deal with it.

CHAIRMAN: If something arises that surprises you or your client, Mr. Allen, of course I will seek to make allowance but not least in the context of the clear evidence of the last witness, I would have thought it was Mr. Healy's responsibility in the diligent examination of the facts to try and put these matters along with others, to Mr. Kenny.

MR. ALLEN: Indeed. I hope you would accept, Chairman, that my intervention is prompted not by any wish or indeed the perception of the necessity to protect or closet Mr. Kenny, but I am aware of the fact that he treats the proceedings of this Tribunal with great seriousness and he is a man who is meticulous in his preparation. He prepared to deal with the matters of which he was given written notice. Presumably he was given written notice for some purpose. In other

words, to put him on notice of what he was to deal with. Those are not matters which are now being canvassed, but I am entirely in your hands.

CHAIRMAN: Let's proceed, Mr. Allen. It seems to me that it is unlikely that Mr. Kenny is going to be greatly disadvantaged. If something arises, we will consider it.

MR. ALLEN: Thank you Chairman.

Q. MR. HEALY: I think, prior to Mr. Allen's submission, Mr. Kenny, what I was dealing with was the somewhat unusual role about which, as I said, we had a very limited amount of information in connection with the drafting of a contract, apparently, by Mr. McMahon, for the sale of some 35 acres of Abbeville in 1980, according to Mr. Haughey's evidence, and I emphasise that, according to Mr. Haughey's evidence?

A. Mr. Haughey, in evidence, I think in October 2000, indicated in his view, Mr. McMahon was involved in drafting that contract of the 29/1/1980. I confirmed and I reaffirm now that I have no knowledge of that.

Q. But in any case ultimately you had a role after Mr. McMahon's death in dealing with queries from the Revenue Commissioners concerning Capital Gains Tax?

A. Correct.

Q. And you dealt with these queries in the context,

firstly, of Capital Gains arising on the sale of Rath Stud which had occurred in 1977; and secondly, in the context of queries which were being addressed to you by the Revenue Commissioners and which, to shorten matters, we now know ultimately led to the assessment of Capital Gains Tax of the forfeited Gallagher deposit of $\text{€}300,000$?

A. Correct.

Q. That was in the tax was agreed I think around 1986.

There were some there was some to-ing and fro-ing about payment. Eventually it was all paid off around 1988, the early part of 1988?

A. Again, from my recollection, the essence of the computation and the formal agreement for finalisation of the assessment was probably in early 1986, I would have thought about March or so of 1986, I could be wrong.

Q. And ultimately the payment

A. was staggered over three or four installments.

Q. And ultimately completed the final instalment in 1988?

A. That's right.

Q. Some of those installments you were able to identify inasmuch as they involved a routing through accounts under the control of your firm, but I think at least one of them you knew nothing about and maybe two of them, I am not sure?

A. I think it may be two, Mr. Healy. But I wouldn't

dispute with it.

Q. Now then, in 1989, your firm had a role in connection with a disposal by Mr. and Mrs. Haughey of, I think, some 227 acres of the lands of Abbeville to their children, isn't that right?

A. That's correct, yes.

Q. And firstly, can I ask you, were there tax implications in that for Mr. and Mrs. Haughey, potentially yes, because a gift which this disposal was effectively, can give rise to Capital Gains Tax for the disponers who would be Mr. and Mrs. Haughey, apart from gift tax for the disponees, who were the four children? Do you know if it did give rise to a Capital Gains Tax for Mr. and Mrs. Haughey?

A. I know it didn't, it gave rise to a computation which was submitted with indexation which would be a standard for agricultural land and the indexed value gave rise to no Capital Gains Tax which was formally accepted and agreed.

Q. And I take it that your firm or you yourself were involved in that?

A. I was.

Q. Now, in addition to that you were acting for the children in connection with the acquisition side of the transaction?

A. Correct.

Q. Now, inasmuch as the firm were acting for both sides

and I make no criticism. We were talking about effectively an intra-family disposition of family land such as I am sure happens countless times all over the country and you acted in advising, in this case, the parents and then the children in relation to their respective taxation positions?

A. Correct.

Q. Now, where the capital acquisitions aspect of the children's position was concerned, the first issue that you, as a tax adviser, had to address was the question of the threshold.

A. Correct.

Q. If the threshold wasn't exceeded, then obviously no tax arose. And there was some correspondence between your firm and the Revenue Commissioners on the question of prior gifts and whether they might have affected the computation of tax N this case, whether they might have affected the threshold?

A. In fact, Mr. Healy, that arose as a result that I know now from the transcripts which I read of Mr. Clayton's evidence on Friday last, that that arose as a result of Mr. Clayton, out of Mr. Donnely's farm tax district file, alerting or advising Capital Acquisitions Tax, Capital Taxes Branch and that was a separate query because those queries were raised over a period of time and really they were replied to when no deed or no relevant document existed for the transfer of the land.

No return would be required because earlier the previous witness talked about return, Capital Tax Law does not require return unless 75% of the threshold was exceeded. In this case 102 was not 75%. But it was clearing up the erosion.

Q. If you leave aside the question of returns in relation to those gifts themselves at the time that they were occurring and they were a sort of a rolling gift, so there was increasing the gift or the cumulative effect they have impacting on the obligation of threshold?

A. They would have had to because they were continuing.

Q. We'll just deal with that aspect of the whole matter first and try to get that out of the way.

Now, Mr. Coughlan referred to some of this relevant correspondence which is really just an abstract from the Book of Documents?

A. I got that anyway, you sent it to me because it was in Ms. Iris O'Donovan's evidence.

Q. I have simply taken out the one or two documents which appear to deal with this precise issue and I will just give you a copy of it. For My Friend's benefits it's the documents on numbered page 14, 23 document number 14, document 23, 25 and document 28. I won't be referring to them all at this point.

(Documents handed to witness.)

Now, the first letter states, it's a letter of the 28th

August 1985. It's understood that Ms. Eimear Haughey took over the running of Abbeville Stud farm on the December 14th 1979 and that she was given interest-free loans from her father amounting to $\text{€}190,600$. It is also understood that Ms. Eimear Haughey had the free use of the aforesaid stud farm since December 14th 1979 and that she had a 25% interest in Larchfield Securities which received an interest-free loan from her father amounting to $\text{€}45,000$.

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

Now, again, to put this letter in some kind of context.

The cutoff date mentioned there, 14th December 1979, is the date mentioned in the handling of farm tax accounts as its significance date of Mr. Haughey's involvement of farming and the takeover date of Ms. Eimear Mulhearn, is that right?

A. Correct.

Q. There is a letter then on the 22nd December 1988 which I think really may be the culmination of other intermediate dealings, and you will correct me if I am wrong. It's the culmination of some intermediate dealings and contains what seems to be a response to

those queries.

A. That's correct.

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

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

"In view of the amendment effective from 2nd June 1982, we conclude that no exposure to gift tax would arise in respect of that period from the commencement of the gift to the date of the amendment." That's all Greek to me.

A. If you wish I will clarify.

Q. If you can

A. Three sentences hopefully. In the Finance Act of 1982, the Minister for Finance, at the time some thought that maybe that wasn't the original intention, annihilated all previous use of threshold and restored the thresholds to their full new use, so a la, everybody had the threshold restored no matter what erosion had occurred.

Q. So if you had received hundreds of thousands of pounds of gifts prior to that year, it was not going to be taken into account. You could start all over again?

A. You could start at the $\frac{1}{2}$ 150,000 one against if you were

a child of a disponer.

Q. I understand. If you were getting a gift from your own parent?

A. Precisely.

Q. From the 2nd June there are three areas to be considered.

"1. 25% share of interest-free loan of $\text{€}190,000$ to Larchfield Securities.

"2. Interest-free loan personally from Mr. Haughey to his daughter for free use of land at Abbeville.

"3. Has had no movement on it since the 2nd June 1982."

Now, do you mean by that that there has been no reduction in the loan?

A. The amount was $\text{€}190,000$ on the 3rd June 1982 and was still $\text{€}190,000$ at the point I wrote the letter.

Q. What about the interest-free aspect of the loan from that date, June of 1982, onwards?

A. I allocated that in the following calculation because Mrs. Eimear Mulhearn

Q. It may be that I misunderstood something. Does that $\text{€}190,000$ take account of the $\text{€}190,000$?

A. No. The $\text{€}190,000$ is taken account for Mr. Healy by the 11,250 because she only enjoyed a quarter of that loan.

The four children had that loan.

Q. Could you just tell me what figure is included?

A. If you go to page 2 of my letter. And the heading about one third of the way down.

Q. You see the second loan?

A. That's her share. I see that. It makes sense to me.

Q. You deal then with the personal loan: "The movement on the loan has been as follows:" Opening balance and so on. Then you have a reducing balance from 1982 down to 1988 and the balance as of that date is $\frac{1}{2}$ 140,000?

A. Yes.

Q. Can I just ask you, how did you calculate the reductions on the loan?

A. I went to a person in our office doing the farm accounts of Mrs. Eimear Mulhearn and I asked for the balance sheet of the value of the loan for each date.

Q. When you say you asked for the balance sheet value of the loan, maybe you'd just explain.

A. There was movement on the loan and I don't want to mislead what gave rise to the movement. But the loan movement not in the first two years at all.

Q. Does that mean money was paid back?

A. Money was paid or something was done on behalf of her father. But certainly the loan moved downwards, never upwards.

Q. Right. So from that I take it that you were able to satisfy yourself that either in cash or in kind, something had been done to reduce the loan during those years?

A. Correct. Because a set of an account portrayed each balance that I was seeking.

Q. So that the loan was reduced by in or about $\frac{1}{2}$ 50,000 in that period?

A. Yes.

Q. Which would have meant $\frac{1}{2}$ 50,000 going back to Mr. Haughey in some way or another?

A. In some way or another, precisely.

Q. And do I understand that you were never asked for any verification of that by the Revenue Commissioners?

A. No, I was never asked

Q. This letter wasn't followed up?

A. I was never asked for verification. I confirmed what I found and what I was told.

Q. You simply provided these figures, not any vouching backing documentation?

A. No, purely the letter, nothing else.

Q. You then refer to the free use of land and you make the point that this wasn't an ordinary eleven-month letting where the farmer taking the letting would have no care for the land and I think this was to justify a smaller rate per annum as the appropriate rate per acre?

A. Smaller conacre value per acre per year.

Q. You then go on to value, as I understand it, the interest free element of the loan, is that right?

A. Correct, yes.

Q. Of both loans.

A. Yes, both loans, yes.

Q. And you calculate what the interest free value was in each year.

A. Yes.

Q. And that generates an amount of interest in each one of those years between 1982 and 1988?

A. Correct.

Q. And at a later point in your letter you say that you have used deposit rates as the rate of return on the interest-free loans for the period in question?

A. Yes.

Q. Can you explain to me why deposit rates would have been used rather than loan rates? I understood

Ms. O'Donovan to say yesterday that she would have thought loan rates?

A. On Friday morning Ms. O'Donovan in the evidence said that, on cross-examination by yourself Mr. Healy

Q. I think it was Mr. Coughlan.

A. Sorry. Said that in her estimation, borrowing rates would be more appropriate. She also, in fairness to her, said she was a number of years out of Capital Acquisitions Tax. In fact, I know the deposit rates are the correct rates to use, not borrowing rates. I have had that confirmed on a number of occasions by Capital Acquisitions Tax to me.

Q. I am sure somebody in the room

A. They probably can, but it was a point of argument for a

while but it's been clarified.

Q. Anyway, as far as you were concerned, the appropriate rates were deposit rates?

A. Yes, because it's the opportunity cost of the money foregone which I would consider was the factor, not the cost of the money.

Q. But surely the opportunity cost was the cost to Mr. Haughey?

A. The opportunity cost, and this is the way it was argued and it is agreed, Mr. Healy, believe me, is that if Mr. Haughey had $\frac{1}{2}$ 190,000 or $\frac{1}{2}$ 140,000 and this is quite important considering the person we are talking about, he would put it on deposit and that's what we pay for it.

Q. That's the benefit to the person who is getting it?

A. Yes.

Q. It's not the benefit they would enjoy by not having to borrow the money themselves?

A. There has been substantial discussion on this point, in fact.

Q. I understand the point. Now, can I just ask you one or two other questions about this.

You continued to be involved, am I right in thinking, with the Haugheys in connection with their tax affairs subsequent to the date of this letter?

A. Oh, yes.

Q. And do you know if there were any queries to you from the Revenue Commissioners or any returns by you dealing with the continuing value of these benefits?

A. You mean post gifts now, Mr. Healy?

Q. Post 1989.

A. To my knowledge, no. I stopped dealing with the children individually once I got rid of the gift tax, but it's something that I have asked about internally in the office because it would be unreasonable not to do and the view which I actually subscribed to, although I think I don't actively involve myself this year, is that in 1990, the State in the Finance Act of 1990 introduced indexation on the threshold. There is also the fact that from the 15th March 1989, when Mr. Haughey and Mrs. Haughey gifted the land to the three children, that Mrs. Mulhearn was actually now taking the free use of land gift from their three brothers and not from her parents. The indexation plus

Q. I am more concerned with the loans rather than with the land.

A. Either one, the loans indexation the general view was that indexation and the annual exemption limit which started its life at $\text{€}250$ for individuals, went to $\text{€}500$, is now $\text{€}1,000$, would take out any possibility of tax on an ongoing basis right up to the present time.

Now, I don't have figures for that, but when I

questioned, that's what I was told.

Q. I think the Revenue or it may also have been raised with the Revenue as to what subsequently happened in relation to the balance of $\text{€}140,000$ on that loan and/or the continuing value of the interest free element?

A. I believe that there is still a loan there sorry, I should correct that straight away by saying that I understand that at the start of October 1997 when I had ceased to act, although I presume if I go to the balance sheet of Mrs. Mulhearn for whom I still act, there is there is still a loan on that today.

Today may be wrong. But on the last day of the balance sheet, there is still an outstanding loan.

Q. I won't go into the detail of it because it wouldn't be entirely fair with Mrs. Mulhearn. It can be taken up with the Revenue Commissioners and we can see what the position is. I would ask My Friend Mr. Connolly to note that and the appropriate inquiries can be put in train. Now, ultimately, the 1989 transaction was carried through?

A. That's correct.

Q. Initially a valuation of $\text{€}750,000$ was put up?

A. That's correct.

Q. Isn't that right?

A. Yes.

Q. And ultimately a valuation proposed by the Valuation Office of $\text{€}1.2$ million was accepted by the taxpayers?

A. Correct.

Q. Then the valuation that was put up i.e. £750,000 had been obtained by you from the firm of auctioneers in the area, Messrs. O'Farrell Cleere Auctioneers Limited, is that right?

A. That's correct.

Q. Now, you will understand I should just deal with one other matter I'm come back to it.

Now, you will understand that the Tribunal has a concern, and indeed the last witness clearly had a concern that one aspect of the valuation of these lands must have included whatever consideration was to be given to the sale or purported sale of the part of lands in 1980 to the Gallagher Group for i.e. £35,000 an acre. Your involvement in this consisted in relying on the i.e. £750,000 valuation that you put forward from Messrs. O'Farrell Cleere?

A. Yes.

Q. Now, in valuing the land on your instructions, I take it that Messrs. O'Farrell Cleere were not informed of the Gallagher contract?

A. Yeah. Maybe, if I may, Mr. Healy, I'll put it in a bit of context. It is not or wasn't unusual in those days for the valuer to address his valuation to those whose instructions he received. The taxpayer nominated the valuer, I had nothing to do with that, which is normal. He addressed it to me and without

being unfair to him, I can't recollect, I would think that I didn't mention the 1980 situation to him. I may be wrong. In fairness, I probably didn't. I am trying to recollect it as best I can.

Q. When you say the taxpayer nominated him, who do you mean nominated him?

A. Well, if I put it in context, I was acting for Mr. and Mrs. Haughey and the four children. The Haughey family agreed that everything would be coordinated by Mr. Haughey. So it was Mr. Haughey identified the valuer, contacted the valuer, asked the valuer to contact me and I asked the valuer to do a further valuation.

Q. If the valuer would you agree with me that it would have been valuable to the valuer, or to a valuer to know that parts of the land appear to have been for sale at $\frac{1}{2}$ 35,000 an acre in 1980?

A. No.

Q. You don't think

A. No.

Q. You heard the evidence of the last witness that he would have regarded it as a critical factor?

MR. ALLEN: Chairman, with the greatest of respect.

Subject to what the transcript said, the last witness did not say that it would have been a critical factor.

Bear with me for a moment, this is quite important in

my respectful submission, you may not agree with me.

If he had said it, and if I had heard him say it, I would have asked him how on earth he could possibly stand up such a proposition.

A matter of considerable concern to my client, Sir, is the line of questioning which is being pursued by the legal team to the Tribunal in relation to this matter of what they now like to call a or choose to call a contract I am trying not to be adversarial about this of 1980. We have no knowledge as to whether or not and we have no notification as to whether or not the Valuation Office is going to be called or witnesses from the Valuation Office are going to be called who can clarify this matter, because if they were called and we have gone to the we have sought to establish the correctness of what Mr. Kenny understood the proper position to be, if they were called, they would say that such a document would never have been contemplated by them, would never have been taken into account by them and couldn't have been taken into account by them in arriving at a valuation for the purposes of providing the services that they provide the Revenue Commissioners.

Now, Mr. Healy's line, the line which Mr. Healy has been pursuing and as I said I don't wish to be adversarial, I fully accept this is not an adversarial

forum, but the line that Mr. Healy has been pursuing with Mr. Clayton and now, it would appear, with Mr. Kenny, is absolutely at odds with the only evidence which is thus far before the Tribunal, because if you look at the evidence, for example, which was given by Mr. Gallagher, which is not contradicted and not challenged by Mr. Haughey, who said he wasn't in a position to challenge it, Mr. Gallagher said that really what he was doing was seeking to identify a figure which would equate to 50% of the amount which he thought Mr. Haughey could settle with Allied Irish Banks for, and that it really didn't relate to the value of the land at all. That is the evidence which was part of the proceedings of this Tribunal. It wasn't challenged by counsel to the Tribunal. And when Mr. Gallagher was asked about it, when Mr. Haughey was asked about it by Mr. Coughlan I am subject to correction Mr. Haughey said that he couldn't contradict him. He wasn't sure whether that was the situation.

Now, I am anxious to know, Sir, and I don't want to I appreciate that you have a great deal of work to do and that you wish to get it done as expeditiously as possible, but I am anxious to know as to whether or not this matter, which has become one of considerable controversy, is going to be dealt with fully to the extent that a representative from the Valuation Office

will appear and will tell the Tribunal and tell the public to whom many, many references have been made over the last few days, in relation to this particular matter with figures like $\frac{1}{8}$ million bandied around, increases of 6,000 percent or 60,000 percent or whatever, this is a matter which is eminently capable of being clarified by the correct people.

CHAIRMAN: To deal as quickly as I can, Mr. Allen, with the matters you have raised. I do indeed think it likely, in view of the amount of evidence that has turned on this point, that evidence will be sought from an appropriate representative of the Valuation Office.

As regards the last witness, I do not think that anyone is suggesting that any particularly dogmatic or binding view was advanced by Mr. O'Donoghue, but he did express the view when it was put to him by Mr. Coughlan, that if he had been aware of prior dealings involving the lands, that he would have conveyed these to the Valuation Office and his response was absolutely. No one has suggested, Mr. Allen, and I think Mr. Healy was at pains on earlier days not to seek to suggest that in any way, the 1980 transaction, which on many lines of argument such as you have already in part advanced already, could have been theoretically distinguishable from the later gift is mandatory or binding in relation to it. It was only put by Mr. Healy and is only being

inquired into by the Tribunal in the context of whether, in the light of the earlier transaction and the parties involved in it, it should have been one of the factors that would have been referred to the Valuation Office with a view to assisting them in deciding on an appropriate updated valuation.

So, in the context of that, and the matter having formed one of the many that the Tribunal is inquiring into, I think it proper that Mr. Healy do make that inquiry of Mr. Kenny which he seems prepared to deal with. And I can assure you that if further evidence is required, and I have already indicated my own inclination as regards the Valuation Office, I will ensure that a fair and balanced picture is presented in public sittings before I attempt to draw any conclusions.

MR. ALLEN: Of course I fully accept that, Chairman. I am obliged to you. What brought me to my feet is that Mr. Healy said that the last witness had said that it would have been a critical piece of evidence. That is not what the witness said. That's the only that was what really prompted my rising to my feet, as I found it profits one to allow this Tribunal in the manner which it does without interruption and I am almost on the verge of undertaking that to say that I won't interrupt again this afternoon.

CHAIRMAN: I think we will proceed without too much trouble.

Q. MR. HEALY: I think, so that there will be no dispute about it, Mr. Kenny, what the last witness said is:

"If I had had prior dealings with the file" and this was in the context of Mr. Coughlan's question about the 1980 events "and had prior information regarding 1980 valuation issues, I would have probably referred them to the Valuation Office before issuing a certificate." "That's what I just wondered," is what Mr. Coughlan then said. "Is it something you would have considered? Well, I better throw it back to the Valuation Office to see if they know about it. Does this affect the value that we are dealing with here for the purposes of this case? Absolutely," said the witness, "because it's obviously the critical element in relation to the valuation of these lands." That's the point I wish to take up with you, that this is something that, in your view, you may have had a case to make, I fully accept that, on behalf of your client? But in your view, would you accept that it's a factor that you would have wanted to take into account?

A. No.

Q. I see. And that's your answer?

A. That's my answer.

Q. The fact that your client had made a contract for the

sale of this land in 1980 at $\frac{1}{2}$ 35,000 an acre is not a factor to be taken into account in valuing the land in 1989?

A. I'll tell you why I took that view, Mr. Healy.

Q. You did take it?

A. No, no, I can only

Q. I think you said is why I took it. Which point

A. Surely I am allowed to correct my own reaction to it.

Q. Yes.

A. I can only recollect that I would apply my normal professional standard to what I was looking at on the 15th March 1989. And my professional standard would tell me that the understanding of the Valuation Office unlike the previous witness, I am not a professional valuer would normally have no regard whatsoever to an aborted contract, an abandoned contract or an uncompleted contract nine years back. They would not be able to bring it into evidence in any court, in my view, in any forum, in any situation to justify reliance on it in looking at the situation on the 15th March 1989. I believe, as the Valuation Office and I repeat, I am not a professional valuer they look at five distinct issues when they are valuing the land no matter what. Now, I will make one adjustment to that because it's the principles that apply. It's not the first aborted contract, uncompleted contract or abandoned contract that I dealt

with. I dealt with this one no differently than I dealt with other ones. I want to make that abundantly clear. I would normally take a view of the abandonment within two years, everybody should know. Because two years seem a fair time of influx that could affect the value of land, particularly if it was higher as it was in this case. But nine years, no, and I wasn't even probably conscious, I don't know that I wasn't dealing with a contract, that I was dealing with an agreement, but I certainly would have been conscious that nine years would have been outside the ambit of my normal thinking. I think that's my reflection and my recollection of what I would have looked at.

Q. So are you saying then that you can't be sure that you didn't consider it and you believe that if you did consider it, the reason it wasn't given to the Revenue is that you believed it wasn't relevant?

A. I would think that's fair, yes.

MR. ALLEN: Sorry, Sir, this is not an interruption, this is a clarification. The Revenue had the valuation sorry, the contract I should say.

Q. MR. HEALY: Now, you have got this cutoff threshold in your own mind of two years, is that right?

A. Yeah, two years. I think that's what I would normally have thought of.

Q. Now, we have discussed the details of this contract

before. You had discussed the details of what I suppose we will call this purported contract before and I think that Mr. Christopher Clayton gave evidence, which is very similar to the evidence you are giving and also gave other evidence to the effect that this contract did not, in fact, ultimately reach its final potential cutoff stage until 1986, isn't that right?

A. I think, again, Mr. Healy, without wishing to disagree, you and I discussed this in my evidence pre-Christmas.

I think we all know that it had cutoff somewhere in '82 because of the receivership.

Q. We don't all agree. I certainly am inclined to agree with you, Mr. Kenny, but that is not the view of the Revenue Commissioners, but if you take the contract on its face, and remember that I am inquiring into the contract. I am not seeking to set it up as a valid contract at all. Many of the points alluded to by Mr. Allen a moment ago in his submission, are indeed perfectly valid points. Was this a reasonable contract at all? Was it a genuine contract? Was there any reality in this contract? Was there any reality in the price? Or in the way in which not the price, as Mr. Allen suggests, because I have to respectfully point out it's wrong, it's the deposit that was calculated by reference to Mr. Haughey's need for money at the time. But that is what I am trying to inquire into.

But assume for the moment that on its face, the contract was a genuine contract and that is how the Revenue were, after all, treating it. It was a contract that kicked in ultimately, I think, sometime in the end of 1985 or '86. January 1986. So that would mean it was a contract which was no more than two years old at the time, isn't that right?

A. Not in my view, Mr. Healy. I may be wrong. I believe that

Q. Can I just clarify my question to you?

A. You can of course.

Q. Do you agree with me that between the date of the valuation which was December 1988 and the 1st January of 1986, there is three years?

A. Between the last potential

Q. No, but is that correct first? Lets just clarify so that we are not under any misapprehension as to the points I am making. 1987, 1988, two years, in fact?

A. I'd say two years.

Q. There are two years?

A. Yeah.

Q. So we are talking about a two-year period?

A. From the closing the potential last closing date.

Q. Yes.

A. Yes.

Q. Now, so that I am asking you a question which I suggest

in the light of the point you made to me a moment ago is a reasonable one, that there was two years between the ultimate potential closing date on the contract and the date of the valuation given by Messrs. O'Farrell Cleere?

A. I think, Mr. Healy, what I will have to answer to that is the date that the price was fixed of $\text{£}1,125,000$ was the 29th January 1980. As you appreciate from previous evidence I have given, whatever the Revenue view is, and I do not even wish to oppose or argue that, my view was that on the date of the receivership, which was 1982, that agreement, I would probably never call it a contract to be honest that agreement had died. So I was looking at a minimum period of 7 years probably. And that's why I was taking my view.

Q. Fair enough. Then we'll just go through some of the dates again so that you will have an opportunity to comment on the position.

As of the date the agreement was made, which is in 1980, we were talking about $\text{£}35,000$ an acre.

A. Yes, for 35 acres I think.

Q. Yes. For 35 acres. I agree that the acreage goes up and down depending on which point in time we are talking about. I am not suggesting that $\text{£}35,000$ was the acreage price to be applied, just a factor to be taken into account assuming this was a genuine contract.

A. Mm-hmm.

Q. In 1989 we had a valuation of 4 to 5,000 an acre?

A. I think without being contentious, it was kind of 4,900 and something.

Q. Call it 5,000 an acre.

A. Yes.

Q. And in 1990, I don't know whether any lands here were actually sold, but adjoining land was apparently sold for 600,000 an acre?

A. In 1990?

Q. In 2000, I beg your pardon.

A. Eleven years again on.

Q. Yes, of course. And we'll try to go away from percentage increases because the figures seem to confuse me, but the difference between 1980 and 1990 is that the 1990 price was one-seventh, am I right, of the 1980 price?

A. If you extrapolate your thinking to 227 acres, yes.

Q. And the 2000 price was 120 times

A. I don't know how many acres were involved.

Q. I appreciate that, but the acreage price. I am not suggesting

A. Again, if you reverse your thinking to 227 acres, that's true.

Q. What I am suggesting to you, Mr. Kenny, is that it would require some science to convince the average man in the street that those figures, taken together over a

period of 20 years, make sense?

A. Well, all I can say, Mr. Healy, is, because I am not a valuer and I certainly would love to own development land, there is some development land and if you take extrapolation averages, 70 times is modest. That's the combination, I think, of both factors up and down. I think I would suggest to you and again I am wishing to in no way be confrontational or otherwise this is a very impure science that we involve ourselves in because it's about willing sellers and willing buyers.

Q. At the time that you were dealing with the valuation I want to pass away from that issue, and to ask you just one or two other questions about it.

At the time that you were dealing with the Capital Acquisitions Tax on this transaction, you say that you also dealt with the potential Capital Gains Tax and I think from another witness we have heard how these can be set-off against one another.

I take it that because Capital Gains Tax was involved, Mr. Haughey's Capital Gains Tax affairs in the Revenue Commissioners were in play, can I put it that way?

A. Correct.

Q. And this is something that I hadn't thought of when I was dealing with the Revenue witnesses and we may need to come back to. Were you dealing with the same

individuals in relation to Capital Acquisitions Tax and Capital Gains Tax in 1989?

A. In 1989 I submitted the Capital Acquisitions Tax returns, as best I can remember, to Ms. Iris O'Donovan, I would imagine. I may be wrong, I would have addressed them to Capital Taxes Branch, Capital Acquisitions Tax because that's the standard. I rarely address them to the individual. It was which would not be abnormal, it was about one or two years later then the Capital Gains Tax would arise in the Chief Inspector of Taxes office and I dealt with Mr. Clayton, I think, on that.

Q. And when you were dealing with Mr. Clayton in relation to the Capital Gains Tax aspect, you would obviously have had to explain the entire transaction?

A. I had to explain to Mr. Clayton that the valuation was $\frac{1}{2}$ 1.2 million and that was an accepted valuation.

Q. And that it arose in the context of an assessment to Capital Acquisitions Tax?

A. I think I actually confirmed to and again I don't want to misrepresent, but I think I confirmed to the Inspector of Taxes as distinct from the Capital Taxes Branch, back now with the conventional Income Tax and Capital Gains Tax Administration, that Capital Acquisitions Tax returns had been made and gift tax paid. I think I would have confirmed that.

Q. And that was around 1991 you would think?

A. I would have thought it was probably early '92.

Q. Do you recall that in 1992 you were dealing with Income Tax returns?

A. Around I dealt with everything. That's why I think it's early 1992. I think it's the 29th January 1992.

Q. I am sure you will correct me if I am wrong. The little bit of Income Tax Law I have learned doing this work is that the Income Tax returns involved Capital Gains Tax returns. Is it in that context it would have arisen?

A. It would have been an omnibus return.

Q. I see. So that at that time at least, both files would have been in play to some degree if the individual dealing with the affairs of Mr. Haughey decided to bring all of the information he needed together?

A. I think that would be correct, yes.

Q. Now, again, I just want to ask you one other matter, Mr. Kenny, and you certainly have had no notice of this, because it only arose in the context of something that occurred the other day, but I don't believe you will have any difficulty whatsoever in dealing with it.

You may recall that when we discussed Mr. Haughey's tax affairs before, I was anxious to establish and indeed you have made this point in your opening evidence here today, anxious to establish to what extent you, either

of your own motion or at Mr. Haughey's direction,
approached Mr. Desmond Traynor, the late Mr. Traynor,
and I think you said you had no contact with him in
relation to Mr. Haughey

A. No dealings whatsoever with him.

Q. You never sought access to him and Mr. Haughey never
suggested that you contact him?

A. No.

Q. Was it ever suggested to you by Mr. Haughey that
Mr. Pdraig Collery was someone you had to contact
after 1994, which would have been, I think,
Mr. Traynor's death?

A. The only time I ever heard about Mr. Collery was, I
think, as a result of the Ansbacher inquiry.

Q. I understand.

A. Or Justice McCracken's Tribunal, I am not sure which.
I never laid eyes on the man and I probably wouldn't
recognise him other than to recognise the picture.

Q. Now, during the period in which you dealt with
Mr. Haughey's affairs, I take it you were aware that
Mr. Traynor was an adviser to him?

A. Oh, I was aware that Mr. Traynor always existed, yes.

Q. And we discussed the dynamic of your relationship
before, and while I think you may have indicated that
as time wore on you became more confident in your
dealings, with a person who was after all a very
powerful man, it didn't am I right in thinking that

it didn't get to the point where you would insist on suggesting that Mr. Traynor was the only person you could deal with to find out about Mr. Haughey's affairs?

A. No.

Q. Thank you very much, Mr. Kenny.

CHAIRMAN: Mr. Allen, I think you'll be going last, so I'll ask Mr. Connolly?

MR. CONNOLLY: I have one or two questions I should ask before Mr. Allen goes last. One or two questions, Mr. Kenny.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. CONNOLLY:

Q. First of all, in relation to Eimear Mulhearn. Revenue inquiries as such wouldn't have been appropriate because she was in self-assessment category, she was dealing with an ongoing gift and assessments were raised on her self-assessment, isn't that right?

A. From the 1st September 1989, Mr. Connolly, it would be the obligation of Eimear Mulhearn to make returns without request, for gift tax.

Q. And the assessment would have been based on that self-assessment?

A. Unless it was reviewed and necessitated audit or otherwise, yes.

Q. Now, the term "market value" has a technical meaning in

the Revenue world. It has a statutory definition but there is a considerable body of case law what is meant by the temple market value, isn't that correct?

A. Yes.

Q. And not only is there a legal meaning, but there are criteria applied by the Valuation Office as to what they consider to be market value and consider not to be market value in appropriate assessments which they have to consider, isn't that the position?

A. That's my clear understanding.

Q. And one of the items which they specifically exclude is a situation which arises where there is a special purchaser, that's somebody who says I want that particular piece of land or that particular chattel, whatever the price may be, because it's very special to my requirements, I am prepared to pay a premium value for that?

A. In answering you, Mr. Connolly, I would again say I am not an expert valuer but I am aware because I have dealt with Capital Acquisitions Tax and Capital Gains as long as they have existed, that a special purchaser or an auction situation is not indicative of normal market value.

Q. I appreciate you are not a valuer, but you would be an experienced tax adviser and negotiator on behalf of persons who have certain tax problems to be sorted out in your dealings with the Revenue and in that respect,

you would have some knowledge of what is acceptable to the Revenue and what is not acceptable to the Revenue.

I will put my question in that context.

A. I would like to think so.

Q. And can I suggest that in the event that you came to negotiate with the Revenue as to what was the appropriate market value of the relevant lands acquired by the Haughey family in 1989, any suggestion that the lands should be valued from the Revenue's point of view, based on this 1980 Gallagher contract as we'll call it, would have been dismissed out-of-hand completely by you on behalf of the family as being an irrelevant and immaterial consideration?

A. There are two bits, Mr. Connolly, if I may. I didn't negotiate on this contract at all

Q. No

A. because I think that's a valuer's business.

Q. I am positing a hypothetical situation where you are in the shoes of an expert in the situation and I'm putting in the situation of an objective expert rather than somebody subjectively explaining what they did or didn't do in a situation. Put yourself in the position of a subjective expert, put yourself in the position of negotiator on behalf of the Haughey family dealing with the Revenue, if the Revenue for a moment had said, hold on a minute, the real value of this property should be based on the Gallagher contract, you

would have dismissed it completely out-of-hand as immaterial?

A. I would have said it's too distanced in the past to be relevant.

Q. And if you were in a situation to consider it at all, you would have considered it as an irrelevant matter to be sent forward to, say, O'Farrell Cleere in the event you were asked that in 1989?

MR. HEALY: If I could just say this, Sir. I don't quite understand this line of questioning, in that the last witness who was an official of the Revenue Commissioners has given contrary evidence to what has been put by Mr. Connolly to this witness. It may be valuable to hear, and indeed I am interested to hear what Mr. Kenny has to say about it. It seems to fly in the face of what the last witness said to Mr. Coughlan when I think he conceded quite fairly that this was an absolutely critical matter to be brought to the attention of an individual, whether that witness knew anything about it or not.

CHAIRMAN: In fairness, Mr. Healy, there may have been some differences in individual Revenue witnesses. Mr. Connolly is entitled to make the inquiry.

MR. CONNOLLY: And Mr. Clayton very forcefully put forward what I am now putting to this witness.

CHAIRMAN: Proceed.

Q. MR. CONNOLLY: So what I am suggesting to you, that the reason that they did this was not considered a relevant matter to be put by you or by anybody else on the tax advice side of Mr. Haughey's side as a relevant factor to be considered by the valuer was because it was immaterial?

A. It was yeah, I am not sure if immaterial is the appropriate word, but not appropriate to any current market value that would be applied on the 15th March 1989.

Q. So whether or not this information was passed on to O'Farrell Cleere or not, there was nothing wrong with it being withheld because it was, I suggest, irrelevant?

A. I would even say, Mr. Connolly, it wasn't consciously or knowingly withheld. And I am going back a long time. If I consciously addressed it at the time, I would not have passed it on because I would have thought it was of no importance in arriving at a market value on the 15th March 1989.

Q. Thanks very much, Mr. Kenny.

CHAIRMAN: Mr. Allen.

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

CHAIRMAN: Thank you very much for your attendance,

Mr. Kenny. You are, of course, now excused.

MR. HEALY: Those are the available witness in relation to this matter, and I think in view of the fact that there is still some more work to be done both in relation to Mr. Haughey's relationship with the Revenue Commissioners and Mr. Lowry's, it will be sometime early next week before we reconvene, likely to be Tuesday.

CHAIRMAN: An announcement to the usual concerned persons will, in very rapid time, will confirm a restarting date next week. Thanks for your assistance, Mr. Kenny.

A. Thank you, Chairman.

THE WITNESS THEN WITHDREW.

THE TRIBUNAL THEN ADJOURNED UNTIL FURTHER NOTICE.