

THE TRIBUNAL RESUMED ON WEDNESDAY, 15TH JUNE 2005,

AS FOLLOWS:

MS. O'BRIEN: May it please you, sir, prior to calling the first witness this morning, there is just one matter arising out of yesterday's Opening Statement that the Tribunal wishes to clarify. And it will be recalled that at the conclusion of the Opening Statement, I indicated, arising out of the material and events that had been outlined in the course of that Opening Statement, the four matters that the Tribunal intended to inquire into in the course of these public sittings. And the third matter that I referred to were the facts surrounding negotiations between Mr. Pairceir on the one hand and Mr. Dunne and Mr. Noel Fox on the other hand, and which led to Mr. Pairceir's agreement to accept a sum of  $\text{€}16$  million in full and final settlement of the assessment for  $\text{€}38.8$  million. And in particular, I indicated that the Tribunal would wish to inquire into whether the settlement proposed by Mr. Pairceir on behalf of the Revenue Commissioners and which, from the Revenue Commissioners' viewpoint, involved a loss of  $\text{€}22.2$  million in tax was prompted or influenced directly or indirectly by the earlier request made by Mr. Haughey or any other intervention that may have been made to Mr. Haughey made by Mr. Haughey.

The matter which I want to clarify, sir, is that the Tribunal will itself be inquiring into whether the loss to the Revenue Commissioners at that time would have been in

the region of  $\text{€}22.2$  million. I want to make it clear by way of clarification that such a loss would have arisen only if the assessment,  $\text{€}38.8$  million, was a correct assessment; and that, in turn, depends on whether the asset value on which that assessment was based, which was a figure of  $\text{€}120$  million, was itself a correct valuation. And in that regard I also want to make it clear that there are documents within the Revenue Commissioners' files dating from the relevant time which were canvassing lower figures for the valuation of  $\text{€}120$  million, and lower for the tax assessed of  $\text{€}38.8$  million. But I also wish to make it clear that all of those documents have been circulated by the Tribunal.

CHAIRMAN: Very good. I'll note those matters, Ms. O'Brien, and they can be reverted to at the appropriate stage.

MS. O'BRIEN: The first witness this morning, sir, is Dr. Don Thornhill.

DR. DON THORNHILL, HAVING BEEN SWORN, WAS EXAMINED BY

MS. O'BRIEN AS FOLLOWS:

CHAIRMAN: Thanks for your attendance, Dr. Thornhill please sit down.

I take it, Dr. Thornhill, you are one and the same person as the individual who is probably better known in more recent years for a number of top educational public service positions; that's after your Revenue days.

A. That's correct, Chairman. I have been Secretary General of

the Department of Education and Science, and until relatively recently, Chairman of the Higher Education Authority.

CHAIRMAN: Thank you.

Q. MS. O'BRIEN: Morning, Dr. Thornhill; thank you very much.

Dr. Thornhill, what I propose doing, subject to your agreement, is to initially open to you the memorandum of intended evidence which you kindly furnished the Tribunal, to ask you to confirm formally that the contents of that memorandum are correct. I should say that if there are any matters that you wish to clarify or amplify in any way as I am going through it, please feel free to stop me and to do so.

Having done that, what I would propose doing is referring to some of the documents that have been circulated by the Tribunal and are in the Tribunal's document book. And tell me, do you have a copy of your memorandum of intended evidence with you in the witness box?

A. I have a copy of the memorandum of intended evidence. I don't have a copy of the Tribunal book.

Q. We can arrange to hand you up a copy of the document book.

Now, in your memorandum you initially dealt with background information. You informed the Tribunal that you were appointed as Assistant Secretary of the Capital Taxes Branch in the Revenue in mid-1985 following an interdepartmental competition held by the top-level appointments committee. Your immediate previous posting

was in the Department of Finance. To the best of your recollection, you were the first appointee to the post of Assistant Secretary in the Capital Taxes, successor to the former Estate Duty Office, who did not have a legal training and qualification. Your predecessors had, you understand, been the final internal source of legal advice and decision-making in relation to individual cases, and hence, were involved to a greater extent than you were in case work. You saw it as your role to focus on the improvement of the management systems in the branch, on increasing efficiency, and on tax policy at the macro legislative level. In this regard, self assessment for Capital Acquisitions Tax was introduced, firstly on a voluntary basis and subsequently in legislation, during your time as Assistant Secretary in the Branch. The efficiency of the assessment and collection of the Residential Property Tax was improved, and legislation was prepared and enacted to make the payment of stamp duty a statutory obligation. All these developments led to a considerable increase in Revenue yield.

You took up a Fellowship from the Fulbright programme in 1987. You spent eight months, from May to December, as a guest scholar in the Brookings Institution studying taxation policy, and on your return to the Revenue in late 1987, early 1988, as part of a redistribution of duties within the Revenue, you were given additional responsibility for the Value Added Tax legislation and

administration division.

This was a very busy time, as preparations and negotiations were just busy area, as preparations and negotiations were just beginning to introduce the single market and to abolish fiscal frontiers within the European Union. You left the Office of the Revenue Commissioners in early '93 to join the then Department of Education. Is that correct?

A. That's correct, indeed, Ms. O'Brien. And indeed, in relation to my comments about my role in the Branch, I saw that, in fact, as a happy circumstance, because my sense, my view of the Branch and this, of course, is very much a personal opinion was that it was predominantly legally driven or it had been, and that was a very strong culture in the Branch, and that there were a number of very experienced and senior principal officers particularly in the Branch who had extensive legal training and experience. And the value added which saw I could give at the leadership level was not in the legal area, where they were extremely competent, but in terms of management systems and organisation, and indeed management leadership. And that was what I set out to do.

Q. Very good. You informed the Tribunal that against this background, your involvement in the Dunnes case was relatively unusual. It was not your practice to get involved in individual cases in a detailed way, but in this instance you did so at the specific request of the then Revenue Chairman, Mr. Seamus Pairceir?

A. That is correct.

Q. Then in relation to arrangements in Revenue for the handling of the case, you have informed the Tribunal as follows:

In the 1980s, there was very little interaction between individual divisions of the Revenue in relation to tax cases. You understand that the position has changed very significantly since then. You recall Mr. Pairceir saying during the early stages of your involvement in the Dunnes case that because the interaction between Capital Acquisitions Tax, Discretionary Trust Tax and Capital Gains Tax liabilities, it was necessary to adopt a "cross-cutting" approach to the handling of this case, and he saw it that's Mr. Pairceir saw it as appropriate that he should lead on this in view of the reporting relationships to the Board of the Revenue of the two Revenue divisions involved with the case.

So just to pause there for a moment, do I take it, therefore, that as far as Mr. Pairceir was concerned, he was the person who was making the decisions and directing the course that the Revenue took in relation to the Dunnes Trustees case?

A. Yes, he was, certainly, and I think I refer to this later in my statement.

Q. You do.

A. That there is in a sense an implicit assumption in the operation of the civil service that if senior officers are

involved in a case, they are the they have the I won't say the ultimate decision-making authority, but they are certainly the final word on the case or on the matter.

Q. You informed the Tribunal that the Office of the Chief Inspector of Taxes, which had responsibility for Capital Gains Tax assessment, reported directly to Mr. Pairceir via the Chief Inspector, whereas your direct reporting relationship was formally to Commissioner Liam Reason. You state that in practice, and to the extent that the need for your reporting to the Board arose during the period from 1985 to 1987, you tended to have more dealings with Mr. Pairceir than with Commissioner Reason, due to the preoccupation of Commissioner Reason with policy and legislation questions relating to income, capital gains and corporation tax. You have informed the Tribunal that Mr. Pairceir assembled a small group of officials drawn from the Office of the Chief Inspector and from Capital Taxes Branch to take an overview of the preparation of the valuation of the Dunnes Trust. Mr. Reid and you were members of the group. You welcomed this cross-cutting approach. The valuation document was prepared by Mr. Reid and his colleagues under your detailed direction, and you also made inputs into the document. Is that correct?

A. That's correct, Ms. O'Brien. And indeed I say, just to elaborate if I might, it might be helpful on my comment in relation to welcoming the cross-cutting approach.

My previous experience in the civil service, Chairman, had

been in the Departments of Finance and Foreign Affairs, departments which, where coordination and internal exchange of information is at a premium, in a sense, because these, in a sense, are important policy advisory departments to Government. So I was somewhat surprised when I arrived in Revenue to find that the individual divisions of Revenue operated to a great extent operationally, I won't say quite independently of one another, but were quite self-contained in comparison with divisions in government departments which are headed by a Minister. But that was a long tradition.

Now, I understand that the extensive reorganizations which have been carried out in the Revenue Commissioners since I left, which is quite some time ago, mean that that is no longer the case.

Q. Now, in relation to the settlement of Discretionary Trust Tax on the 16th March 1987, you have informed the Tribunal in relation to the valuation issue as follows:

You say that this is a matter of record. You did not have detailed instructions in advance of the hearing of the appeal lodged by the Trustees, except that Mr. Pairceir had asked you to telephone him and to keep him informed. You regarded that request as reasonable, as he was au fait with the valuation issues and had been involved in matters relating to the case with the agents acting for the trust.

You stated it is also a common working assumption in matters of public administration that the most senior



officer dealing with a case or an issue implicitly assumed final responsibility for it. And I think that's the point to which you have already referred and which you elaborated on.

You say that your recollection is that when negotiations headed by senior counsel on both sides resulted in a figure, you then telephoned Mr. Pairceir, who agreed to accept the valuation offered. You do not recall whether or not he asked you for your opinion, but you do recall considering that the outcome was reasonable, and you may have offered that view. Is that correct?

A. That is correct.

Q. And of course the figure you were ringing him with was the figure of  $\text{£}282$  million, on foot of the assessment which had been based on a figure of  $\text{£}100$  million?

A. Correct. And of course it's important, in this regard too, to have regard to the fact that the valuation discussion is around the gross values, Chairman, of the trust. But of course the tax yield is based on percentages of that. The annual tax is 1% of the difference, and that was a once-off charge of 3%.

Q. Now, in relation to Income Tax treatment, which the Tribunal also raised with you and we'll look at this more when we come to look at the documents you have informed the Tribunal that you have nothing to add to what is in your note of the 24th March, 1987. And I'll open that in due course.

You say that income tax issues were raised with you by Mr. Bowen and that you conveyed these to the relevant officers in Revenue. You would not have had authority, and indeed sufficient knowledge, to deal with those issues.

You would expect that you would also have mentioned the income tax issues to Mr. Pairceir, but you do not recall doing so. You do not have any recollection of further developments in relation to that issue. Is that correct?

A. That is correct, yes.

Q. Of course the reason that you wouldn't have had authority to deal with it is that income tax would have been under the control of the Chief Inspector's office and not the Capital Taxes Branch arising from, as you described it, the structure of the Revenue Commissioners when you were appointed?

A. Correct.

Q. I just ask you one thing in relation to that matter. The structure which you described, the various branches, which, as you indicated, were not entirely independent of each other, but nonetheless were relatively self-contained:

Would it have been your view, given your background and your interest in administrative matters, that that structure arose because the Revenue Commissioners organisation was itself somewhat independent and wasn't organised in the way that government departments were otherwise organised that were under the control of a Minister?

A. I think perhaps it's more complicated than that,

Ms. O'Brien. As I understand it, the Revenue lore was that

and this is at the level of light anecdote that when

the British Revenue constructed the Inland Revenue Office

in the UK, that this was a conscious decision made that

since only gentlemen were taxpayers, that mere clerks and

mere public functionaries should not have an overview of

the tax affairs of gentlemen.

But I think I don't know whether there is any substance

to that view or not. The fact of the matter, of course,

was that in a paper-based system, which is what we were

talking about still in the 1980s, because the extensive

computerisation, there was a natural case focus on the part

of Revenue officers, rather than taxpayer focus. And from

the time I joined the Revenue onwards, the developing

management philosophy of the Revenue was to move towards

the taxpayer focus, which of course would have led to much

more interaction.

The other issue of course, too, related to that was that

very detailed expertise had been built up in individual

sections of Revenue in relation to particular tax heads,

and the direct assessment system which was in place at the

time, whereby the Revenue computed the tax liabilities of

taxpayers, in a sense, also supported that particular

culture. The introduction of self-assessment, of course,

changed that dramatically.

Q. Yes. Now, in relation to the waiver of interest in 1987,

that was the agreement which appears to have been concluded on the 25th May 1987 between Mr. Pairceir and Mr. Fox, with the waiver of  $\frac{1}{2}$ €62,450 in interest. You have informed the Tribunal as follows.

You do not recall knowing about the waiver, which could be due to the fact that you went to Washington in May of 1987.

That was on your Fulbright Fellowship. You state that on grounds of economic analysis, cost of money, etc., you would not have agreed on an a priori policy grounds with waiving interest, although you would have conceded the desirability of providing for flexibility in individual cases. You say, however, that your views on this matter would not have been widely shared at the time in Revenue, and you refer to paragraph 16.4 of the fifth report on the Commission of Taxation which described Revenue practice in the 1980s on the pursuit of interest. Is that correct?

A. That's correct, Ms. O'Brien, yes.

Q. Then in relation to the assessment and payment of discretionary trust in later years that was the assessment and payment of the annual 1% Discretionary Trust Tax by the Dunnes Trustees you have informed the Tribunal that your involvement of the case was considerably more limited in subsequent years; the table of payments for 1988 to 1991 inclusive attached to your letter to the Tribunal of the 8th April shows that the revaluation of the trust did not arise until the 1990 valuation date.

Interest liabilities did arise for the 1988 and 1989

valuation dates. You recall that in 1990, your colleagues and you became concerned about the risks of slippage in relation to both payment of tax due and revaluation of the trust. You had conversations with members of the Board of the Revenue at that time, and notes of conversations are in the papers supplied by you.

At that time you became aware of Mr. Pairceir's involvement in the case on behalf of the taxpayer's side, but as far as you recall it, his role was in relation to expediting and facilitating communication. Your own sense of the case was that it was characterised by difficult communications with the taxpayers and agents during the 1986 and 1987 period rather than on substantive assessment issues. You also recall that your concern and that of colleagues about slippage led to a letter about the case issuing to all Trustees and not just to Mr. Bowen. And that's Mr. Reid's letter of the 5th April, 1990, and that Mr. Reid's letter expedited progress on the case. Is that correct?

A. That's correct, Ms. O'Brien.

Just one small point of clarification. The reference to "your letter", I think in the second line of that paragraph, was a reference refers to the fact that I had of course written my statement is taken from a letter that I had written to Mr. Sherlock of the Revenue, and I think that's just to clarify that point.

Q. Yes, of course. And then finally, in conclusion, you have stated that you hope that this statement is helpful. As

had been explained to members of the legal team, not only is it some considerable time since you dealt with these issues, but also, since 1993 you have been preoccupied with matters of education and research policy and have not had any substantive engagement with taxation issues. You are of course very conscious of your duty to be helpful to the Tribunal and to discharge your responsibilities in that regard to the best of your ability and recall.

And the Tribunal is appreciative of the assistance you have provided, Dr. Thornhill.

Now, as stated in your memorandum, Dr. Thornhill, you joined the Revenue Commissioners in 1985. And I think you had come from the Department of Finance; isn't that correct?

A. That's correct.

Q. And you were appointed Assistant Secretary in the Capital Taxes Branch as referred to in your memorandum; and as I understand it, the responsibilities of the Capital Taxes Branch were Capital Acquisitions Tax; Discretionary Trust Tax, which I think you saw as being a species of Capital Acquisitions Tax; stamp duties, I think Residential Property Tax when it was introduced; and I think in your memorandum you referred to aspects of assessments and legislation in relation to Value Added Tax, which may have been introduced, I think, after your return in late 1987.

A. That's correct. My VAT responsibilities were after my return in early 1988. In fact Discretionary Trust Tax is

very much part of the Capital Acquisitions Tax. It rests in that particular body of legislation.

Q. And just to distinguish between, if you could explain briefly the differences between Capital Acquisitions Tax and, say, Capital Gains Tax.

A. To explain the differences, operationally or conceptually?

Q. Conceptually, I think.

A. Capital Acquisitions Tax is a tax which is imposed on gifts and inheritance; Capital Gains Tax is a tax which is imposed on Capital Gains. In other words, if during the ownership of an asset by an individual, if between the date of purchase or the date of coming into possession of it and the date of sale or the date of disposal, there had been an appreciation in value, subject to the Capital Gains Tax laws which were in force, the capital gain may be realised, and that is taxable.

Q. So in the case of Capital Acquisitions Tax, I suppose the most common forms of it that we would all know of is if somebody inherited under a will, they may have a liability to Capital Acquisitions Tax if the inheritance is over the threshold level?

A. Precisely.

Q. Similarly, if in the course of their lifetime they're gifted an item of property, they may have an exposure to Capital Acquisitions Tax?

A. Precisely. And where Discretionary Trust Tax enters into it was that the provisions for imposing the charge to

Discretionary Trust Tax, and indeed the collection provisions and assessment provisions, rest within the framework of Capital Acquisitions Tax, and the technical or legal device that's used is that the liable person in this case it would be the trust is deemed to come into an inheritance.

Q. I see. So I'm right, am I not, that in relation to Discretionary Trust Tax, when it was introduced, there were really two forms of the taxpayer: there was the annual 1 percent charge, and then there was a one-off 3% in the event of the death of any of the settlors?

A. Precisely. And as I understand it, it's before my time, but the policy intention behind the introduction of this tax was to discourage the holding of assets in these trusts and rather because these trusts were perceived to be used as a means of avoiding inheritance tax.

Q. It was also a means also, discretionary trusts were a device, were they not, that were used to enable the accumulation of income within the trust which wouldn't be liable to tax?

A. That I was I am familiar with that *raison d'être* for them.

Q. You were then appointed in 1985, and as you said in your memorandum, Mr. Pairceir was Chairman at the time, and at that time the Revenue Commissioners, from the documents available to the Tribunal, had already had some dealings with the Dunnes Trustees in connection with the



Discretionary Trust Tax issue which we have already described, and the separate Capital Gains Tax assessment which was subsequently made.

Now, the position is in the Capital Tax Branch, you had no direct input into the Capital Gains Tax assessment, but you were the branch that was responsible for the valuation of the assets both for Discretionary Trust Tax purposes and for Capital Gains Tax purposes. Is that correct?

A. That's correct. The technical valuation exercise was something which was carried out by the Capital Taxes Branch.

Q. Even though it related to a tax liability that was not within your sphere of responsibility?

A. Indeed. You could say that the situation was somewhat analogous to the use by the Revenue generally, by different divisions of the Revenue, the use of the Valuation Office for the purpose of valuing real property.

Q. Yes. And I think in your memorandum, you also stated that Mr. Pairceir had asked you to join this cross-cutting working group that he established from both the Capital Taxes Branch and from the Chief Inspector's office to deal with the Dunnes Trust case?

A. The group, to my recollection, did not so much deal with the assessment issues as with the as it concerned itself with valuation. I was not involved in any of the discussions about the liability or otherwise of the trust to Capital Gains Tax, except insofar as those arose at the

margin of discussions about the valuation issues.

Q. Yes, I understand that. Would I be right in thinking, therefore, that as regards these instances of taxation, Mr. Pairceir was adopting the policy that you refer to as being the taxpayer-driven approach rather than the tax-assessment-driven approach?

A. I can't speak for Mr. Pairceir in relation to that. I think it was possibly at a lower level of sophistication; in other words, there was an important valuation job had to be carried out in relation to the assets in the trust, and Mr. Pairceir was making sure, as indeed senior officers do in organisations, that as I saw it that the job was being done properly.

Q. Can I just ask you, before you were appointed to the Capital Taxes Branch, to the Revenue Commissioners, you were in the Department of Finance; did you know anything about these potential liabilities of the Dunnes Trustees prior to joining the Revenue Commissioners?

A. I had worked in the, mainly in the economic policy side in the Department of Finance where I didn't know anything. I had spent a short period in the budget section in the Department of Finance before joining the Revenue, and I was dimly aware that there was an expectation of a significant blip in the Revenue yield from Capital Acquisitions Tax because of events which were occurring in relation to a taxpayer, a wealthy taxpayer. Now, where and at what time I established a connection between this vague awareness and

the identity of the case, I'm not quite sure.

Q. Yes. By "significant blip", do you mean a significant increase in the yield?

A. Yes, a significant increase. I think at that time the annual yield from Capital Acquisitions Tax was the order of 15 million a year, in which case, if, for example, if the Revenue had expected that a claim to what was called mainstream CAT would have arisen, of course that would have been a very significant increase in the yield.

Q. This would have arisen, of course, if the shares in the trust had vested, if the further deed hadn't been executed?

A. But equally so, Discretionary Trust Tax yield would have been against a baseline of 15 million. It would have been significant in percentage terms.

Q. Now, if I can just refer you to some of the documents in the document book, Dr. Thornhill, if you wouldn't mind. If I could take you to I suppose what is the starting point in relation to the Discretionary Trust Tax assessment. That's at Divider 2 in the book, and it's a letter dated the 25th February, 1985, which I appreciate would have been received before you joined the Department or the Branch, 25th February, 1985, from Mr. Bowen to Mr. John Quinlan. And it enclosed the return made by the Trustees for Discretionary Trust Tax purposes in respect of the death of the late Mr. Bernard Dunne. That was the 3% one-off tax.

"Dear Mr. Quinlan,

"I refer to your recent

"1. Dunne trust.

"The settlement was made on the 16 March 1964 by Mr. Ben Dunne and Mrs. Norah Dunne paying over  $\text{€}250,000$  each to the original Trustees. It is therefore our contention that liability to Discretionary Trust Tax at 3% only falls on the portion of the present trust fund attributable to the original funds contributed to the late Ben Dunne i.e. 50%."

And in fact that was a proposition that, not unreasonably, the Capital Taxes Branch agreed with?

A. Indeed, Ms. O'Brien, yes, indeed.

Q. "Secondly, the payment on account of  $\text{€}500,000$  was based on a valuation of  $\text{€}33.4$  million for the entire of the trust funds."

I think that was a payment on account that had been made sometime earlier?

A. I am not aware of the details in relation to that, but I do know that a payment of account had been made, or was made at some point.

Q. And it appears there that on the basis of the payment on account, and what is stated at paragraph 2, that the valuation that the Trustees were seeking to advance for the shares held in the trust fund was a sum of  $\text{€}33.4$  million?

A. That's stated, yes.

Q. It then deals with the shares in the Dunnes Holding Company. And it distinguishes between ordinary shares and preference shares, and on the left it shows the respective holdings of the various persons listed in that first

column. So the Trustees effectively held all of the ordinary shares, 99,000. They held 100 of the 1,000 preference shares, and the balance of the preference shares were held in varying amounts by five of the Dunnes siblings, and the late Mr. Bernard Dunne had apparently held 260 of them.

And then, fourthly, articles of Dunnes Holding Company, copy of the up-to-date memorandum and articles is attached.

"If I can be of further assistance in that matter, please let me know."

And the articles and memoranda would have been attached to assist the Revenue in its valuation exercise.

And then we have a copy of the return. I don't intend opening that, except perhaps the third page, which indicates that the return was being made on the basis of a market value of  $\frac{1}{2}$  16.66 million, which would have been half the value of the valuation being proposed in that letter by the Trustees?

A. That's my understanding.

Q. Now, you have indicated in your memorandum that I suppose the focus of your input and your participation in the group formed by Mr. Pairceir was addressed to the valuation exercise?

A. I think, yes, I think there is a logic to that, Ms. O'Brien, and indeed, Chairman, because the liability to Discretionary Trust Tax was not at any stage contested by the Trustees. So the matter that remained to be dealt with

was the evaluation issue.

Q. Now, if I can refer you to the document at 7, which appears to have been a meeting, a record of a meeting at the Chairman's office that's Mr. Pairceir's office on Friday the 17th January, 1986. And I think it was Mr. Reid, with whom you were working in the Capital Taxes Branch, who appears to have prepared this note. And just to assist you, Dr. Thornhill, there is a reconstituted copy of that in typed form on the following page.

"Meeting at Chairman's office Friday 17/1/86.

Present: Chairman, Mr. Pairceir; Dr. Thornhill;

Christopher Clayton; John Reid." Mr. Clayton, of course, was from the Chief Inspector's office.

It records: "Discussed question of using an external valuer and extent to which confidential information should be made available to him.

"Chairman not happy with opinion and decided that we should submit a paper to the outside valuer giving details of the method being used to value the shares and asking for his comments on the validity or otherwise of the method. We would not disclose any figures from the accounts in the paper. He" I take it that would mean Mr. Pairceir "also asked for a more detailed note on the rationale of the methodology as used by me" that would be by Mr. Reid.

So the focus of this particular meeting appears to have been the methodology that was being used by the Capital

Taxes Branch to the task of valuing the shares; is that

correct?

A. I don't have a recollection of this particular meeting, or indeed there are some aspects of this note which I'm which again, Chairman, I'm not altogether clear about. For example, I don't understand what the reference to "opinion" means here. But, however. There were a number what I can do perhaps, Chairman and Ms. O'Brien, is explain maybe that there were a number of meetings of this ad hoc group which addressed the which discussed valuation issues, and I saw those meetings as being valuable because they constituted, or they are a form of stress testing of the report or valuation document which Mr. Reid and myself were involved in preparing. And the document went through a number of iterations; I think you have seen those on the file.

Q. We'll refer to some of those.

A. So the issue of the an issue of an external valuer, or use of an external valuer, did arise, because we expected that the valuation would go to appeal, and we and the question, the point was made, well, would the Revenue case be strengthened by having an outside valuer?

And as a result of that, having discussed matters with Mr. Pairceir, I explored the possibility of using an external valuer from the industrial credit company, ICC Bank. The background, of course, was one of extraordinary sensitivity about confidentiality, which, as I understood

it, was in part, it was the normal Revenue concern about the confidentiality of any taxpayer; but there was also the very fresh memory of the kidnapping of Mr. Ben Dunne at that time. It was four years after his kidnapping. The security situation in the country was not as settled as it is today, and indeed I think it was later in '87 that Mr. John O'Grady was kidnapped.

So we were very circumspect about talking about this case, not openly outside Revenue, but indeed within Revenue.

Now, we did have a subsequent discussion with an official from the ICC

Q. That's correct, yes, we have seen that in the documents.

A. And later events, a decision was made not to employ an external valuer.

Q. Can you recall why that was?

A. Well, I remember having issues in my own mind following the discussion with the ICC person who, incidentally, by the way, was extremely impressive professionally but the question arose, or he made the suggestion of valuing individual stores. And certainly this raised a question in my mind as to how lengthy that process would be, how expensive it would be, and what would be the cost benefit to the Revenue yield in terms of going through that type of exercise?

And increasingly, as Mr. Reid and myself were working on this, we were increasing in confidence about the quality of the work which we were doing, partly as a result of the



stress testing which was going on, and we felt pretty confident about our work.

And there was also an issue and I think it's referred to in another note; I can't refer to it offhand that.

Mr. Pairceir talking to Mr. Bowen

Q. Yeah, I can refer you to that, in fact. If you go to Divider 11, it appears to have been referred to at a meeting on the 12th March. In fact I think we have circulated the text that appeared on page 5 under the heading "External Valuer."

You see it records: "Chairman said that he had rung

Mr. Bowen to tell him we were bringing in an expert.

Mr. Bowen raised objections to the idea of using an Irish expert and seemed particularly opposed to anyone from the ICC. The Chairman said that he would ask Mr. Reason to use his contacts with the British Revenue to inquire about obtaining the services of a British Revenue expert."

Do you see that?

A. I do indeed. And I don't recall it, but that particular conversation, or event, or that description here seems to me to be absolutely plausible. I have a sense that the issue of employing an external expert faded away, in a sense, in our discussions, as the momentum of the internal work proceeded.

Q. As you became more confident with the way in which you were approaching it and the work that you were doing?

A. Indeed, that's my sense; that's my sense.

This is, I have to say, after a gap of 18 years.

Q. Of course. So your initial concern that if the matter went to appeal, and you believed that it would proceed to an appeal, and that the Revenue position might be strengthened by evidence of an external valuer, you felt that as you were continuing down the road of this exercise, that your concerns in that regard were lesser?

A. That would be correct. And indeed our concerns in that respect were subsequently validated in a comment, in a letter which I'm sure you have seen, from senior counsel who was acting for the Revenue, Mr. Fennelly, who in a letter to the Revenue solicitor makes the point that the valuation paper did I have his letter here; I can.

read

Q. I don't think we need to refer to it. This is in relation to the settlement, is it?

A. That's correct, but he did say that the valuation paper which had been prepared within the Capital Taxes Branch had in effect precipitated a settlement because of the quality of the work, and he made some favourable comments on the quality of the paper.

Q. We can take it, therefore, that well, first of all, I suppose we should establish, the valuation paper that was ultimately prepared, the final revision was furnished to the Dunnes Trustees in the context of the appeal?

A. That's my understanding.

Q. And can I take it, therefore, what you are saying, that

there didn't appear to be very much that they disagreed about in that paper?

A. That we never got to the point of contesting the paper line by line with them. All I will say is that Mr. Fennelly's comment about the paper and his positive reflections on its quality are consistent with my memory that we felt that that was a paper which certainly put the other side, which moved the other side significantly from its original valuation of 33 million.

Q. And was one that you were happy to stand over?

A. Indeed.

Q. Can I just take now to Divider 9, which is a small extract from I think the first version of the paper on share valuation.

Now, the Tribunal hasn't circulated the entire of this paper because it involves consideration of very detailed analytical matters that I don't think would assist the Tribunal in its inquiries, and what has been circulated are just the initial pages of it and the conclusions. And can I just take you to that briefly to explain, really, what were the principal issues you were considering in the context of this valuation were.

You'll see the subheading on the first page is:

"Assignment.

"1. Valuation of shares in a private trading company in the retail sector for Discretionary Trust Tax (DTT) January 1987 and Capital Gains Tax March 1985."

So there were two different valuation dates, January 1984 and March 1985, and that was the starting point?

A. Correct.

Q. "2. Issued capital, 99,000  $\frac{1}{2}$  ordinary shares and 1,000 6% preference shares." They are the same shares that

Mr. Bowen had been referring to in his letter which we have just opened.

"3. Holding to be valued: 99,000  $\frac{1}{2}$  ordinary and 100 6% preference shares (remaining 900 preference shares are held by member of the family.)

"4. Under the Capital Acquisitions Tax Act (Section 15(1) the valuation of the share is "The price which, in the opinion of the Commissioners, such a property would fetch if sold on the open market on the date on which the property is to be valued in such manner and subject to such conditions as might reasonably be expected to obtain for the vendor the best price for the property."

No reduction may be made because of the hypothetical disposal of the complete shareholding on the same date.

"5. For Capital Gains Tax purposes, the market value of the shares is the price which the holding in question "might reasonably be expected to fetch on sale in the open market" (Section 49(1) of the Capital Gains Tax Act.)

Again, no reduction is allowed for the assumption that the entire holding is placed on the market at one and the same time.

"6. Any deductions." I think somebody in manuscript has

put in the word "other".

"For Discretionary Trust Tax purposes the holding is a controlled one. The control deemed to apply is equivalent to the control held by the owner of 50% plus 1 of the voting shares. Such a shareholder has control of the powers of voting on all ordinary resolutions which include increasing the capital, appointing directors, payment of dividends and disposal of the business. In effect he can do everything except liquidate, for which he needs a 75% shareholding. Accordingly a nominal discount of 5 to 10% seems appropriate."

Am I correct in thinking the point being made there is that under the Capital Acquisitions Tax valuation rules, the shareholder is deemed to have control?

A. That's my understanding. As I say, I am at some distance now, I am afraid, of the details of the Capital Acquisitions Tax legislation. That's my understanding.

Q. Of course. So there is a deemed control, except that the shareholder isn't deemed to have sufficient voting power to liquidate the company; and on that basis, you were proposing a nominal discount of 5 to 10%. That seems to be the gist of what the paper is saying.

A. And this was a paper that was prepared for discussion purposes, I think, which is made quite clear.

Q. Yes. Then in the Capital Gains Tax legislation there are no "deemed control" provisions. The holding must be valued as it stands. The articles of association state that "The

ordinary shares shall not entitle the holders to vote at any general meeting of the company except" and these are the exceptional cases where they are entitled to vote.

"1. Upon a resolution for increasing or reducing the capital of the company.

"Or 2, for winding-up the company.

"Or 3, for varying or abrogating the rights or privileges attaching to the ordinary shares."

Then it goes on to state: "It is not at all clear how restricted are the voting rights of the ordinary shareholders or how a court would interpret the articles.

What is clear is that they have a strong negative control.

Any decisions adversely affecting the profit-earning capacity of the company could be subject to a veto by the ordinary shareholders. If, however, we assume that they have very little effective voting power, we must allow some discount for the voting restrictions. The best approach here is to estimate separately the value of the voting rights. Market transactions in quoted shares suggest a value of approximately 15% of the net worth of the company as representing the voting rights."

And you give an example then, and you say: "Transaction that you gave as an example valued the voting rights at 10.55% of the net worth of the company. For this case you envisage a discount of 10% for the Capital Gains Tax valuation as reasonable."

And that was to account for the lack of what you described

as effective control attaching to the voting power of the ordinary shares.

Then if we just go over the page, and you'll see that the Tribunal has numbered this page 26; that's simply to indicate how lengthy this document was, there were large tracts in the centre of the document which had been left out.

"Conclusion:

"Taking the suggested range of 8.5 million to  $1\frac{1}{2}$ 10 million for maintainable profits and 15 and 16.5 for price/earnings ratios result in the following valuations of the following orders of magnitude."

And you deal separately Discretionary Trust Tax and Capital Gains Tax, and in each instance you have also made a discount by reference to the lack of control. And I'll just deal with those in turn.

"1. Discretionary Trust Tax.

"A) 8.5 by 15."

This is assuming an 8.5 maintainable profits and a 15 price/earnings ratio, but they were the two uncertainties. That gave you a value of 127.5 million. You discounted that by 5% to get to 120 million, and then applying the higher figure for maintainable profits, it gave you a value of 135 million, which again you applied a discount to of 5%, which gave you 128 million. Yes, I should actually indicate that the figure for 9 in "maintainable profits" was a middle figure; it was between 8.5 and 10 million,

which you had indicated at the top of that paragraph.

So the range of valuation there for Discretionary Trust Tax purposes that you were proposing in this draft was

120 million to 128 million, and in each instance you had applied a discount of 5% by reference to the fact that the control provisions would not extend to a liquidation of the company. Isn't that correct?

A. Yes. The explanation for the 5% deduction I think is given, as you have pointed out in the earlier part of the paper.

Q. The valuation date there was January 1984 for the Discretionary Trust Tax purpose; isn't that right? That just comes

A. I need to reread the paper.

Q. It just comes from the very top of the first paragraph.

A. Yes, that's right, that's correct, yeah.

Q. And then in the case of Capital Gains Tax, you have the same computation, and you arrived at a figure of.

126 million, or a range from 126 million to 140 million; do you see that?

A. I do indeed.

Q. But in that instance you have applied a discount of 15%?

A. Mm-hmm.

Q. And that is to account for, I take it, the lack of control attaching to the ordinary shares?

A. That's my understanding, yes.

Q. Well, if we go back, there is a reference there to



paragraph 7, and that's the paragraph that I had opened in relation to the lack of control, the control provisions regarding Capital Gains Tax. So you had discounted that by 50% to reflect the lack of control attaching to the ordinary shares that you were valuing within the trust.

A. Mm-hmm.

Q. Now, if I can just ask you to go to the next divider, and there is another revision of the paper on valuation, dated the 12th March. That's just the first page. There was no change, I think in, the bulk of the paper; but if I can take you on to the second page in the extract in the Tribunal's book, which is in fact page 29, you will see that you have the same initial valuations, at 127.5, 135 Discretionary Trust Tax. Capital Gains Tax 148.5 and 165, but you haven't applied in this valuation paper the discounts for lack of control in those figures?

A. That seems to be the case, yes.

Q. And over the next two to three pages, you appear to have addressed the differences in relation to control, deemed control, the discount that should be allowed. And if I can just take you to the very last second-last page, your conclusion.

"47. Subject to counsel's opinion" I think perhaps it was counsel's opinion that was being referred to earlier in that note we were looking at "and further discussion, the position appears to have been as follows:

"1. Discretionary Trust Tax.

"(A) If the control deemed by the C.A.T. Act is 75% control, the only deduction from the full market value of the company would be a maximum of  $\frac{1}{2} \times 900$  in respect of the 900 preference shares not held by the trust."

Do you see that?

A. I do indeed.

Q. That would be just the nominal value of those 900 preference shares at  $\frac{1}{2} \times 1$  each, which would give you  $\frac{1}{2} \times 900$ .

"(B). If the control is between 50% and 75%, an additional deduction of 5% of the full market value of the company should be made to allow for inability to liquidate or to carry a special resolution."

And that was the 5% that you had allowed in the valuation in the previous report.

A. I think they were working hypotheses, Ms. O'Brien, which we set out.

Q. Absolutely.

A. As my understanding is that opinion had been sought from counsel, and those questions but had not been obtained at that point.

Q. Yes.

And then "2. Capital Gains Tax.

"(A) If the hypothetical purchaser of the total holding is able to enfranchise the ordinary shares, he will have full control, and the only deduction to be made will be as set out in 1 (A) above."

I think what you mean there is that if he is able to buy in

or acquire full voting power over the company, that the only deduction that should be made would be the  $\frac{1}{2} \times 900$  for the nominal value of the 900 preference shares not held within the trust.

A. Correct.

Q. You say: "B: If the purchaser is able to initiate and effect a winding-up of the holding company, he will be entitled to receive the entire assets of the holding company less  $\frac{1}{2} \times 900$  for the other preference shares.

Accordingly, the deductions from the full market value will be  $\frac{1}{2} \times 900$  plus the costs of liquidating the holding company."

And that was your second hypothesis in relation to the valuation for Capital Gains Tax purposes.

"(C) if the purchaser is unable to achieve enfranchisement or winding-up, then a substantial deduction will have to be made. Precedent cases already quoted suggest a discount of up to 18%. Any discount in excess of 15% appears (subject to further research) to be bringing us into uncharted territory."

And they were your hypotheses at that time in relation to the discount that might have to be made to reflect the lack of control in the shares held in the trust in terms of valuing those shares for Capital Gains Tax purposes; is that correct?

A. Certainly this is what is in the paper, and that reflects my understanding. I think there was an element here of what's the word what we were trying to do was to

establish clarity in what was what were a series of

hypothetical situations.

Q. And presumably deciding what approach you would actually adopt in a valuation paper for the purposes of valuing the shares for Capital Gains Tax purposes?

A. Yes, indeed.

Q. Now, in fact you never actually got to the stage of producing a paper to value the shares for Capital Gains Tax purposes; isn't that right?

A. My having gone through the papers which were supplied to me earlier by the Tribunal, we seem to have gone ahead and I haven't done further research beyond the papers which were provided to me by the Tribunal we seem to have gone ahead with preparing a paper for Discretionary Trust Tax purposes, and the assumption I am making is that that paper was used as a benchmark or reference point for the Capital Gains Tax assessment.

Q. Well, of course the appeal that finally went to the Appeal Commissioners was based solely on liability; isn't that right?

A. Sorry, I should have said, perhaps, maybe the reference for the Capital Gains Tax was the outcome, was the outcome in relation to the appeal on the Discretionary Trust Tax.

Q. I see. We can have a look at that when we come to those documents.

A. We'll come to that.

Q. If I can just ask you to look to Divider 15, which is a

note that you made on the 3rd September 1986.

You say: "I discussed this case today with the Chairman."

With Mr. Pairceir. "He indicated that I should now proceed

administratively with routine aspects of the case (issue of

reminders etc.) He said that he would also speak to

Mr. Bowen and inform him of our intention to proceed with

the case as far as the Discretionary Trust Tax aspects

were concerned, this would mean the immediate issue of an

assessment in respect of the tax liability which arose with

effect from 25 January, 1985. He would contact me when he

had spoken to Mr. Bowen, issue of the assessment would wait

until then. He told me that he had also informed the

Minister for Finance of his intention to proceed

'administratively' as the last round of negotiations had

not resulted in progress."

That was a note that you made on the 3rd September, 1986.

Now, can I just ask you one or two matters arising out of

that note.

You say that your discussion was with Mr. Pairceir. And

presumably it was in or around the date on which you made

the note which records it; would that be correct?

A. I have no recollection of either a discussion or indeed

writing this note, but I accept the note as it is. In

fact, the note says that the discussion took place on the

day that the note was written.

Q. You say there: "He indicated that I should now proceed

administratively with routine aspects of the case."

Now, can I just ask you there, you itemise issue of reminders. What would those reminders have related to?

A. I don't, in detail; I am afraid, Ms. O'Brien, I can't help you there, but I suspect we may have been asking for up-to-date financial data. We may have been simply I suspect probably we were looking for we may have been reminding them of their need, of the need to settle. I can only and I am sure the file could, the full Revenue files could refresh us on that, but I can only speculate, which might not be very useful.

Q. I suppose what I'm trying to get at there, and what you appear to record, is that it was Mr. Pairceir who was indicating to you that you should now proceed administratively?

A. Mm-hmm, that's correct.

Q. "He said that he would also speak to Mr. Bowen and inform of our intention to proceed with the case. As far as the DTT aspects were concerned, this would mean the immediate issue of an assessment in respect of the tax liability which arose with effect from the 25 January, 1985. He would contact me when he had spoken to Mr. Bowen. Issue of assessment would wait until then."

So it appears that what he was saying to you was that he was going to tell Mr. Bowen that an assessment for Discretionary Trust Tax was going to be raised?

A. Yes, and reading this now, I would interpret that as being an indication of simply a courtesy on his part, that in

other words, that he was letting Bowen, Mr. Bowen know in advance that the formal assessment documents would be issuing.

Q. He was indicating to you that you could postpone issuing the assessment until he had so informed Mr. Bowen.

CHAIRMAN: In reference, Dr. Thornhill, to Mr. Pairceir having informed the Minister for Finance, perhaps had a certain rapport with your recollection from your days in the Department of Finance, that this was viewed as a very large and substantial potential windfall for the State?

A. I am afraid, Chairman, I can't really help you on that.

The Minister I do know that I think it was a former Minister for Finance, Mr. Dukes I think I read this in Ms. O'Brien's statement yesterday, or last night, of her statement yesterday, that at one point or other Mr. Bowen had contacted Mr. Dukes, who was then the Minister for Finance, about the case. That's not unusual, for taxpayers who have a sense of concern to contact the Minister. There was a standard procedure for dealing with those things in the Revenue, or there were procedures for dealing with inquiries by Ministers, and those Ministers were told what was happening insofar as they needed to know.

CHAIRMAN: But really all that I was seeking to elicit was that perhaps, as per your note, for the Chairman to have actually been notifying the Minister, was indicative of it being as a very significant taxpayer account in the context of national finance?

A. I think that's quite a reasonable way of looking at it.

It's possible and here I am speculating that in their discussions with the Minister for Finance, Mr. Bowen might well have raised economic policy issues as well, in a sense of the impact of the burden of taxation on the trading ability of the company and the consequences for employment, etc.

CHAIRMAN: I see. Thank you.

A. But those are that's that is speculation on my part.

Q. MS. O'BRIEN: Dr. Thornhill, just there in answering the Chairman's question, you referred to standard procedures within the Revenue Commissioners for dealing with contact from Ministers; could you indicate what those procedures were?

A. If an inquiry came from a Minister, and it was generally it would most often be the Minister for Finance, because I suppose the public would identify the Minister for Finance as the Minister for taxation the Minister's office would make an inquiry from the Chairman's Office in the Revenue. The Chairman's Office in the Revenue would in turn make an inquiry of the relative line section. An account of the position in regard to the case would be supplied to the Chairman's Office, because at that point the Revenue would take the view that the Minister was, in a sense, in the position of an agent for the taxpayer; in other words, the burden of disclosure maybe I should rephrase that that the burden of confidentiality on the part of the



Revenue was, in part, relieved by the fact that the Minister had approached the Revenue in relation to the particular case. A reply would be sent, and the Revenue reply would generally be sent to the taxpayer.

Q. Direct to the taxpayer, rather than to the Minister?

A. By the Minister.

Q. I see. So the reply would go to the Minister, and generally in your experience, presumably from your time in Finance also, the reply would be sent by the Minister for Finance to the taxpayer?

A. I would not have been familiar with that from my time in Finance, because that matter matters like that would have been dealt with by the Minister's private office. And I was not involved with that.

Q. And the inquiry from the Minister to the Chairman would come through their respective private offices?

A. That, to my knowledge and this is going back quite some time now that was the situation. And incidentally, I mentioned the Minister for Finance in this respect; the same courtesy would have been given to any member of the Oireachtas.

Q. Yes, of course.

A. Including members of the Opposition.

Q. But in your experience, the time you were there, the bulk of these inquiries came through the Minister for Finance?

A. One would expect that. That would be reasonable.

Q. I'm not suggesting it wouldn't be. I am just asking you to

confirm that that was your

A. Certainly whether it was the bulk or not is another matter, but certainly a very significant volume would have come from the Office of the Minister for Finance.

Q. Now, can I just refer you briefly to the assessment that was raised then; it's at Divider 17. And it's the assessment in relation to the 3% Discretionary Trust Tax which arose on the death of Bernard Dunne. We actually looked at this question in the course of the Opening Statement.

And I take it this is a fairly standard assessment that would issue from the Capital Taxes Branch in the standard form?

A. Correct.

Q. And this assessment was based on a valuation of  $\text{€}100$  million for the shares held by the trust. And the tax was being applied to 50% of that valuation, at  $\text{€}50$  million, and I take it that was by reference to the contention which appears to have been accepted, not unreasonably, by the Revenue Commissioners, that the initial funds that were put into the trust came equally from the late Bernard Dunne and the late Norah Dunne.

A. That is correct, Ms. O'Brien, yes.

Q. So it would follow that the tax due in respect of the late Bernard Dunne's death should be based on 50% of the then value of the shares held in the trust. And that assessment allowed for the advance payment of  $\text{€}500,000$ . And I think

the total figure was  $\frac{1}{2}$  million, and I think there was also an interest element of  $\frac{1}{2}$ 150,000. I'm not going to open it, and in fact we haven't circulated it, but there was also an assessment at or around the same time for the 1% annual charge; isn't that right?

A. I can't confirm or otherwise that, I am afraid. There probably would have been, because the 1 percent charge was not levied in the year of the liability for the 3 percent under the legislation but would have been in subsequent years. So what you say seems to me to be plausible.

Q. Certainly when it came to the stage of the settlement, all of these liabilities were dealt with in the global settlement that was concluded?

A. That's correct.

Q. Now, that valuation, or that assessment, was based on a valuation for Discretionary Trust Tax purposes of  $\frac{1}{2}$ 100 million, as opposed to, I think, the range of around 127 million, which had been in the previous valuation papers?

A. Correct.

Q. Now, you have a final version. Just to understand how you arrived at that figure of 100 million, can I refer you to a portion of what I think, because it states on it, was the final version of the valuation paper prepared, dated the 2nd March of 1987, and that's at Divider 24 in the Tribunal's book. In fact, a lot of the material has been taken out because it simply repeats what was in the very first draft. If you just go over to the page, to your

valuation and conclusion. It's on page what was page 30 and 31 of the report.

You say "value of 100% holding."

Paragraph 49. "Taking the suggested range of  $\frac{1}{2}$ 8.5 million to  $\frac{1}{2}$ 10 million for maintainable profits and 11 to 13 for price/earnings ratios result in valuations of the following orders of magnitude.

"Discretionary Trust Tax. 93.5 million."

That's based on a price/earnings ratio of 11; and B) based on a price/earnings ratio of 13, and maintainable profits of 9 as opposed to 8.5, the valuation you arrived at was  $\frac{1}{2}$ 117 million.

A. What we are talking about here are ranges, in effect

Q. Yes, of course.

A. and the price/earnings ratio, of course, is a very conjectural well, both the maintainable profits, but it's a hazardous business forecasting P/E ratios into the future, but in a sense how I would now, looking back at this document, what in summarising what we were saying there was that it seemed to be a reasonable range to, or to postulate or posit a valuation of between 93 million to 117 million for the trust.

Now, I think one should be careful here about spurious precision in relation to these numbers.

Q. Of course.

A. Then we went on to use a technique, a different technique of Net Present Value to apply that as a consistency check.

Q. I see that. And in conclusion, taking account of all the factors discussed, the following value was suggested for settlement purposes, and that was  $\frac{1}{2}$ 100 million?

A. Yes.

Q. And that was for Discretionary Trust Tax purposes?

A. Correct.

Q. And that figure appears to have fallen within the range as you say, you can't look at this as being a precision exercise; what you are looking at is a range of valuations.

The price/earnings ratio and the maintainable profits themselves are assumptions that you are making, and as you indicated, you can't be absolutely certain about those, or in fact you can't have any great degree of certainty. You are looking at it, and you are weighing up a number of factors in arriving at those figures. Would that be correct?

A. We were in precisely the same position as an investor deciding to invest in a company; we were looking for how much to pay for that. We were looking at the future with all the uncertainties that attached to that.

Q. Right. And on that basis, and taking into account all of those assumptions that were made, and as you said, the iterative process that you had had at the cross-cutting meetings with the other officials and with Mr. Pairceir, you arrived at a valuation of  $\frac{1}{2}$ 100 million for Discretionary Trust Tax purposes?

A. And indeed, as I recall it, the stress testing or the

iterative process would have certainly taken place at those meetings. There would also have been continuing discussions between Mr. Reid and myself, and perhaps others, about the soundness of our assumptions.

Q. Yes. That figure of 100 million, that was on the basis of a valuation date of January 1, 1984; is that correct? That figure of a hundred million, did it also include, I presume it did, a 5% discount for the control matters that you had referred to in your earlier papers?

A. I need to refer to the paper to say yea or nay to that. I suspect it seems to have been, looking at the earlier papers, we seem to have accepted that discount factor consistently, so it's possible that it did.

Q. And when you raised that assessment, because I know it wasn't raised in your name, but I suppose you, as being the most senior official dealing with the matter in the Capital Taxes Branch, would have to be satisfied that it was a realistic assessment. You were happy with the assessment that was issued?

A. Yes, I think that's very important. The Revenue would need to be very assured in any case, indeed, of its ground, but particularly in a case that was or we'll say there are two dimensions to this. First of all, the Revenue has a duty, which is now reflected in the Revenue Charter of Taxpayers' Rights, to make every reasonable effort to tax to try to collect tax that is due, but only tax that is due.

The second point, of course, is that if we were to take a very what's the word maximalist approach to the valuation, and to put in a valuation which could be readily contestable by a taxpayer, then going to appeal, the Revenue were going to find itself on the wrong foot and would find might find it difficult to argue its case successfully.

And there is a point, and I'm sure you can correct me, or other Revenue people can, that the appeal provisions at that time certainly, to the best of my recollection, were weighed against the Revenue to some extent, in that if the Appeal Commissioners gave a determination on fact in other words, in this instance the valuation of the trust, the Revenue was not able to appeal that any further.

Q. I see.

A. The Revenue could appeal points of law, but that's my recollection. And that perhaps is something that can be checked.

Q. I'd be right in thinking that that would make you even more anxious to ensure that you were on firm ground in the valuation that you opted for and on the basis of which you raised the assessment.

A. In other words, that we could apply a test of reasonableness and objectivity to everything that was put forward.

CHAIRMAN: But in summary, in dealing with matters that were not an exact science, you feel that a degree of

expertise of yourself and colleagues was put into this, some allowance made for fairness to the taxpayer and a figure that you felt you could stand over was arrived at in the assessment?

A. That's correct, Chairman. And indeed, in fairness to the taxpayer, we were also conscious of a need to be fair to the Exchequer and to the general body of taxpayers, and an unreasonable valuation could of course put the interests of the Exchequer at risk.

MS. O'BRIEN: Could I just ask you about one document, Dr. Thornhill. It's at Divider 18; it's a handwritten note. I'm not concerned could you tell me whether that is your note?

A. Certainly I recognise my handwriting.

Q. It is your note?

A. Yes.

Q. Can I just refer it to you, because again, it's just a discussion that you had with the Chairman on the 23rd October of 1986; that would have been after you raised the assessment. And it may not relate directly to the Discretionary Trust Tax assessment, but there is just one matter I want to draw your attention to.

I think you say: "I discussed the case this afternoon with the Chairman. He informed me that 'The boys are due to meet on 3 November.' I understood this to mean that the principals in the case were due to meet the Minister on that date. He" that's Mr. Pairceir "also said that



he had told the Minister that there was nothing that he (the Minister) could do about the case and that he (the Chairman) had already waited 'too long indefensibly long' in dealing with the case. He asked me to defer taking action on the DTT case until after the 3 November."

And I know that the bulk of that note relates to the Capital Gains Tax matter, but there is a direction to you there, just to defer taking action on the Discretionary Trust Tax case until after the 3rd November.

A. I don't know if one can make the assumption that the bulk of that note refers to the Capital Gains Tax. I am afraid at this distance I can't I don't know in fact what I understood him to mean at this stage when he asked me to defer taking action on the DTT case, because as you say, the DTT assessment had already been issued. Perhaps there might be was there a liability already arising from the death of Mrs. Norah Dunne?

Q. No, I don't think so. In fact I don't think Mrs. Dunne died until 1986. So in fact an assessment hadn't yet been raised in respect of her death.

A. And this note is the year is not dated

Q. It's 1986. 23rd October, 1986.

Just in the order in which it appeared in the files would suggest that it was 1986, even though the date isn't on it.

And in fact I think there had been a suggestion of a meeting between the Trustees and the Minister at the beginning of November of 1986, and it's in the next

document.

A. Yes, I see that document.

Q. Now, the Trustees, we know, appealed the assessment to Discretionary Trust Tax, and that was listed for hearing by the Appeal Commissioners in, I think, the on the 16th March of 1987. And I think you have dealt with that in your memorandum of intended evidence, and if I could just refer you back to that again before we look at the documents.

You said that you did not have detailed instructions in advance of the hearing

A. Sorry, Ms. O'Brien, space is restricted here, so... I have the document, yes, thank you.

Q. You have it?

A. I have it, yes, thank you.

Q. It's at page 3 of your memorandum.

And dealing with the valuation issue, you say: "This is a matter of record. I did not have detailed instructions in advance of the hearing of the appeal lodged by the Trustees, except that Mr. Pairceir had asked me to telephone him and keep him informed. I regarded that request as reasonable, as he was au fait with the valuation issues and had been involved in matters relating to the case with the agents acting for the trust. It is also a common working assumption in matters of public administration that the most senior officer dealing with a case or an issue implicitly assumes final responsibility

for it. My recollection is that when negotiations led by senior counsel on both sides resulted in a figure," you then telephoned Mr. Pairceir, who agreed to accept the valuation offered. "I do not recall whether or not he asked me for my opinion, but I do recall considering that the outcome was reasonable, and I may have offered that view."

Now, if we just look at the terms of settlement themselves, you will find them at Divider 25. That's a typed version that was forwarded by the Trustees' solicitors on the same date.

And how it appears that this was approached is that you agreed a valuation of  $\frac{1}{2}$ 82 million, agreed a valuation for the assets of  $\frac{1}{2}$ 82 million, and there were also very careful and detailed provisions providing for the payment of interest.

A. That's correct.

Q. And do I take it that the provisions in relation to the payment of interest would have been initially perhaps worked out by counsel? Would that be correct?

A. That's the precise detail I am afraid I don't have a very good recollection, but I think that probably was the case, and that Mr. Reid and myself would then have advised Mr. Fennelly on our side of what or we would have certainly confirmed the position with him.

Q. Would I take it that the negotiations were quite lengthy between senior counsel on both sides?

A. They certainly they certainly lasted for more than an hour, I think. I have a very dim memory I can remember episodes that morning, but I don't have a recollection of the full series of events.

And some of the episodes I can recall are trivial; for example, I can recall myself walking up a stairs to make a phone call to Mr. Pairceir, but I don't remember the actual phone call.

Q. But you do recall that Mr. Pairceir had told you to keep him informed?

A. I do indeed.

Q. And you do recall that you didn't have any detailed instructions when you went to attend the appeal on the 16th March?

A. I do recall that.

Q. And I think it's implicit from your memorandum that you also recalled that you had no authority to settle this without reverting to Mr. Pairceir?

A. Indeed. I have a very clear recollection of that. Because I do recall explaining to Mr. Fennelly that I needed to make a phone call.

Q. So it was Mr. Pairceir's decision that this case settle on the  $\text{€}1282$  million valuation?

A. He was the senior officer, and I have explained the culture of the public administration.

Q. Of course. I can understand that entirely.

Now, in the course of that settlement negotiation, you have

referred to the fact that Mr. Bowen made an approach to you. Can you tell me what you recall of that approach?

A. There is a note on file of that conversation, and I have no recollection additional to that note.

Q. Right. I'll refer you to the note, then, Dr. Thornhill.

It's at Divider 28

A. In fact, maybe I should clarify my remark. I have no actual recollection of that conversation, but I do recall I had seen the note, and I do recall that there was an issue.

Q. I'll just refer you to your note, then. It's a typed note, and it's dated the 24th March 1987. Actually that's the date on which you signed it. Do you see that, the 24th March?

A. I do indeed.

Q. Would I be correct in thinking that you probably dictated this at an earlier date than the 24th?

A. Possibly not. Generally there was a pretty quick turnaround, in my office, of notes, so the 17th March was a public holiday. I don't know what day of the week it was. So the 24th was a week later. I have no recollection, I am afraid, of sequence of events that happened.

Q. Would it have been your practice to keep a handwritten note from which you would have dictated the typed note?

A. My practice in these matters varies. Nowadays, as we all do, we go straight to the computer, but I just don't know.

I can't recall, Ms. O'Brien.

Q. That's fair enough.

A. But I'm certainly quite happy with what is written here in my name.

Q. You say: "During the negotiations on the 16th March, Mr. Bowen inquired as to the likely income tax treatment of any income passed up to the trust in order to pay Discretionary Trust Tax liabilities. Initially he sought an assurance that any such income would not be subject to income tax (payable by the Trustees). He also mentioned that, when similar circumstances had arisen in respect of payment of wealth tax, the trust income had not been subjected to income tax.

"2. Following consultation with my colleagues (including Mr. Sean O'Cathain, Senior Inspector of Taxes) I told Mr. Bowen that I was unable to give him my assurances on this issue it related to another area of Revenue. I did say that the Revenue would be reasonable and that we had noted what he had said in respect of the wealth tax.

"3. Later (20 March), Mr. O'Cathain telephoned me to say that no income tax returns had been made in respect of the trust. He also confirmed what Mr. Bowen had said about the income tax treatment during the wealth tax era. He also thought that an instruction had been issued that a similar concession should not" and you underline "not" "be made in respect of the 3% Discretionary Trust Tax."

Now, the approach that was made to you, Dr. Thornhill, and

I appreciate that you have no detailed recollection of this at all, do you think that was made while negotiations were continuing with counsel, or after the matter of the DTT had been concluded?

A. My attempts at reconstructing this in my mind and I hope, Chairman, you can bear with me, in a sense that this was, after the negotiations had been completed, Mr. Bowen may have mentioned sorry, may have that Mr. Bowen mentioned this issue to me. What I am not at all clear about is whether Mr. O'Cathain, for example, was there on the day or not, or whether content of my paragraph 2 is based on a subsequent telephone conversation with him.

Q. I see.

A. And whether I gave that reply to Mr. Bowen on the day or at a later time.

Q. Well, have you had an opportunity to look at Mr. O'Cathain's note? That might assist you, and I can refer you to that, because it's at page 26.

A. Of?

Q. Oh, of the book, of the book. Document 26; it's behind Divider 26 in the book. I think this might assist you, Dr. Thornhill.

MS. O'BRIEN: In fact, perhaps, sir, Dr. Thornhill could have an opportunity to read this over lunch. It may assist his recollection.

CHAIRMAN: In any event, Dr. Thornhill, it's probably more

helpful to you to have an opportunity to read that at a little more leisure, and we'll take up the balance of your evidence at two o'clock.

A. Chairman, I'm in your hands.

CHAIRMAN: We'll do that.

THE TRIBUNAL ADJOURNED FOR LUNCH

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF DR. THORNHILL

BY MS. O'BRIEN:

Q. MS. O'BRIEN: Thank you, Dr. Thornhill.

Now, I think you have had an opportunity over lunch to have a look at the note which I drew your attention to in the morning, and that's at Divider 26 of the Tribunal book; it's a note made by Mr. O'Cathain of the Chief Inspector's office. I think we can arrange to have a copy of that put on the screen.

I think it records that on the 16/3/87, "Bowen had inquired from D. Thornhill if the wealth tax concession which was allowed to the trust would also be allowed when they got money from the company to pay the approximate  $\frac{1}{2}$  million C.A.T. trust tax" that's the Discretionary Trust Tax he is referring to, isn't it?

A. It is.

Q. "I said I did not know of concession referred to and that I did not understand how the problem would arise.

Dr. Thornhill did not know how the trust would get the money, but it would presumably be way of dividend. The



trust is only charged at 25%, and in the case of dividends which have already suffered tax at that rate" then it goes on; it's difficult to make it out. I think we'll have to ask Mr. O'Cathain himself what that says. I think it's "Recipients of distribution are treated as receiving the income subject to the credit."

He then says, records: "He then told them that the people dealing with trusts were not present and that while no undertakings could be given, Revenue would act reasonably."

Does that note assist you at all as to when you might have had your conversation with Mr. O'Cathain, or your consultation with Mr. O'Cathain?

A. I think that note is very helpful.

Ms. O'Brien, could I beg your forbearance, and just the divided number, for my note, I think it would be useful to

Q. It's at 28.

A. It would be useful to juxtapose them together. I think that note is helpful, and my construction, in a sense, then this is a construction I am making, rather than a recollection is that Mr. Bowen inquired of me, made an inquiry of me. It would appear that I telephoned

Mr. O'Cathain on the day, and following that, I see here:

"Following consultations with my colleagues, I told

Mr. Bowen I was unable to give him my assurances. I did say the Revenue would be reasonable". And I notice

Mr. O'Cathain uses similar words in his note.

Then the second part of my note, paragraph 3 seems to be

more or less in line with Mr. O'Cathain's second note of the 20/3. He confirmed what Mr. Bowen had said about the income tax treatment during the wealth tax era. And Mr. O'Cathain's note makes a reference to concessionally, to a concession agreed at the time of the payment of wealth tax.

Q. This is the lower part of Mr. O'Cathain's note. That's when that records that "On the 20th March 1987, Mr. O'Cathain rang Mr. O'Siochain."

And it records: "Section 13 Finance Act 1976 introduced a 20% surcharge on undistributed income of trusts. In calculating the undistributed income, it was concessionally agreed to allow the payment of wealth tax as a charge against the income of that year".

And there is a reference there to the file. I think it then says: "Assuming that dividends are paid, there should be no surcharge on the trust if all are paid out in Capital Taxes Branch taxes. ACT would have to be paid by the company paying to the trust, but it has no other income! Maybe they fear a surcharge on the dividend income if capital tax is not allowed as a charge against it." There is another word there "of the trust has other income for the year."

That seems to be the end of that note. And it's your view, reconstructing what occurred from your own note of the 24th and from Mr. O'Cathain's note of the 16th and the 20th, that the first two paragraphs of your typed note relate to

events which occurred on the 16th and that the third

paragraph relates to events subsequent?

A. That's correct.

Q. Now, if we just look at what occurred then on the 16th.

It's your belief now, on reconstructing it, that after

Mr. Bowen made this approach to you, that you contacted

Mr. O'Cathain?

A. That seems to be the most plausible explanation of the

two notes are more or less in line with one another, yeah.

Q. And he would have been the obvious person for you to get in

touch with, he or Mr. Clayton, because they were

responsible on the income tax side?

A. On the Capital Gains Tax side.

Q. Yes, on the Capital Gains Tax side. And also income tax?

A. Income tax, yes.

Q. Because this is what they were inquiring about, was income

tax?

A. Income tax, but they were also perhaps and I am saying

this as pure conjecture I contacted Mr. O'Cathain

because he was also familiar, of course, from having been a

member of the cross-cutting group or having attended

some of these meetings, at any rate he was somebody with

whom I could have a conversation about the could have a

quick conversation about the issues with, because he would

have been familiar with the background.

Q. Yes, he would have come from a position of knowledge, and

knowledge also in relation to the DTT matter?

A. Mm-hmm.

Q. And then following your discussion with him, you told Mr. Bowen that you were unable to give your assurance on this issue, as it related to another area of Revenue.

Can I just pause there, because when you said that "the following consultation with my colleagues", what you have said is including Mr. O'Cathain. That suggests to me, I don't know if you'd agree with me, that you may have consulted other colleagues apart from Mr. O'Cathain.

A. I think I may have I think a likely sequence is that when Mr. Bowen mentioned this matter to me, I would have mentioned it to Mr. Reid. We would both probably have agreed that, without any great discussion, that this was a matter which in which the views of the Inspectorate should be sought, so and I probably would have spoken, if I did speak to Mr. O'Cathain, which I appear to have done, from his first note, his first memo is that I then would have told them probably what Mr. O'Cathain had said to me.

So I think that, I suspect, is what I meant by that, following consultation with my colleagues.

Q. You record then in the note that you did say that the Revenue will be reasonable and that you had noted what he had said in respect of the wealth tax.

A. Well, the assurance that the Revenue would be reasonable is something that I would have always thought a taxpayer would have accepted as a given. But nonetheless, in the context

of this case, it was something that I felt was worth saying: The Revenue would always be reasonable, and that what we had noted what he had said in respect of the wealth tax, there, in a sense, I was that "we" was a reference to the body corporate, and it was my it would have been my duty to convey Bowen's Mr. Bowen's comment or question to the relevant people within Revenue, which of course is what I had done.

Q. Are you quite clear, Dr. Thornhill, that you didn't give Mr. Bowen any assurance yourself that there would be no further liability for income tax on monies in the hands of the Trustees to fund payments of Discretionary Trust Tax?

A. Absolutely, absolutely.

Q. Just so that people will understand what we are discussing at the moment, what we are discussing is income tax that would have been payable by the Trustees; isn't that right?

A. That's my understanding. In fact, I didn't engage myself in this particular issue at all.

Q. I appreciate that.

A. Other than that particular conversation.

Q. I appreciate that, but just so that people will understand, what you were negotiating was the payment of Discretionary Trust Tax; isn't that right?

A. That is correct, Ms. O'Brien.

Q. And the Trustees were going to have a liability to pay that tax in respect of this settlement, and also in subsequent years?

A. That's correct.

Q. And that was going to be quite a considerable liability?

A. Mm-hmm.

Q. I think in this year it was going to be in the region of perhaps  $\frac{1}{2}$  million, because of the two deaths, and in other years it would be 1%. In fact, I think in the other years it was around  $\frac{1}{2}$  820,000, isn't that right, there or thereabouts?

A. Based on a we are looking at 1% of 82 million, that's correct, yes.

Q. There or thereabouts. So the Trustees had to get that money from somewhere, because they didn't have the money themselves to pay that?

A. Mm-hmm.

Q. And that money was going to have to be provided to the Trustees; isn't that right?

A. That's correct.

Q. And the only way that could be provided was from Dunnes Stores money?

A. Yes, that's correct.

Q. What was being discussed here, am I correct, is that if the Trustees received a dividend from the company, in order to pay this tax, whether that dividend would be liable to income tax?

A. That's my understanding. My understanding, and as I say, I didn't develop any deep understanding of this issue because I had other matters to deal with, but the trust was the

absolute owners of the private company which was positioned below the trust. The Trustees would not have the means to pay the Discretionary Trust Tax unless that private company were to issue a dividend, and what Mr. Bowen was raising was a concern about the position under income tax legislation of any such dividend payments.

Q. And as to whether they would have liability for income tax on those dividend payments?

A. Mmm.

Q. And as far as you are concerned, what was the answer that you gave?

A. The answer that I gave was the answer that it was not within my area of responsibility and competence to give him a substantive answer on that question.

Q. Can I just ask you about a document at 30A, if you wouldn't mind looking at it.

A. 30?

Q. 30A.

A. I see it here, yes.

Q. I think that's a note that was prepared by Mr. O'Cathain.

And there were two entries in it. One for the 13th April of '87, call from John Reid: "Their tax has not yet been paid. Ben Dunne has arranged a meeting with the Chairman for the 27th. John Reid wants to know what liability would be thrown up by the 82 million value of the" and then below that, do you see that, the 14th April, 1987, "Call from John Reid.

"I think that Dr. Thornhill" is that correct "wants a note on the dividend to trustee position." Do you think that's a reference to you?

A. I am just trying to decipher Mr. O'Cathain's writing here. It could be.

Q. Could it be "Spillane"? Was there a D. Spillane in the Revenue at the time?

A. The name doesn't ring a bell with me at the time.

Q. It looks as if it was you that was looking for a note on it.

A. The context here seems to be that the Chairman and I don't recall the details of this the Chairman had arranged a meeting with Mr. Dunne, and so Mr. Reid was involved, was coordinating the preparation of a brief for the Chairman.

Q. Yes, but this, it looks to me as if they are two different events, aren't they, one on the 13th and one on the 14th?

A. It's certainly recorded as such.

Q. Would you agree with me that it looks like that the dividend income tax on dividend issue was still alive as of the 14th April?

A. It certainly seems to be the case, yes.

Q. I know that you went on your Fulbright Fellowship at the beginning of May.

A. Mm-hmm.

Q. But can you assist the Tribunal at all as to whether you have any knowledge as to when this issue which had been



raised with you was ultimately resolved?

A. I am afraid, Chairman, in that respect, I can't. It the only explanation I can put on these notes here from Mr. O'Cathain was that Mr. Reid and myself were involved in preparing briefing for the Chairman and going back to, in a sense, the discussion we had earlier about coordination, that in a sense we were putting together information from both our own division and the chief Inspectorate.

Now, I don't know if there is any briefing note on the file that would support that hypothesis. But certainly I don't recall ever being involved or engaged substantively on this particular issue.

Q. Can I ask you this: After you left the Revenue and you were appointed as Secretary General in the Department of Education, do you recall at any stage whether you were contacted by Mr. Tadhg O'Connell, or by anybody else in the Revenue, to ask you about this issue?

A. I am trying to recall. I have a vague recollection Mr. O'Connell is not somebody I know. I have a vague recollection at some point or other of a telephone conversation with Mr. I think it may have been Mr. Cathal MacDomhnaill, but what the substance of that telephone conversation was, what it was about and what the context was, I am afraid I can't assist you. It may have been what were the dates sorry, if I can ask a question, what were the dates of the McCracken Tribunal?

Q. 1997. The early part of 1997.

A. Well, in that case, I probably would have been either in the Department of Education and Science or in the Higher Education Authority at that time. Sorry, I would have been in the Department of Education and Science, in fact. I may have had a very brief conversation with Mr. MacDomhnaill about some issue that was arising.

Q. And this was an issue in relation to the Dunnes tax matters, was it?

A. I think so. But if I can recall it, what Mr. MacDomhnaill was, in a sense, may have been asking me to confirm his understanding of the situation. But I am really stretching my recollection, I must confess here.

Q. Well, your understanding of what situation, Dr. Thornhill?

A. I don't know, is the answer.

Q. But you know it was to do with the Dunnes Trust tax affairs?

A. To know the word "knowing" places far too much emphasis on it. I think I would need assistance, either through a document or the evidence of somebody else, to help me with that.

Q. Insofar as you have a recollection of the phone call, your recollection is that it had something to do with the matters that we are now discussing; is that so?

A. I'm not I have difficulty in this, because the nature of my official business was that I took many telephone calls on many topics during a working day.

Q. I can understand that, of course.

A. And I certainly I don't have any to the best of my knowledge, I don't have any notes, and I probably would not have taken any notes of a telephone conversation about a matter which was outside the education policy.

Q. Now, can I ask you about now, after the settlement on the 16th March, we know that Mr. Reid, who was reporting directly to you, I think, wrote to Mr. Bowen to set out the actual tax due on foot of the settlement, because he had very carefully worked out the valuation, the interest payable and various other interest provisions; isn't that right?

A. That's correct.

Q. And Mr. Reid wrote to Mr. Bowen on the 20th March 1987; that's at Divider 27. I am not going to read the whole letter out, because I went through the entire of it yesterday in the Opening Statement. But if I just bring you to the last two paragraphs.

He says: "The total now due in respect of 1(A), (B) and 2 (A) is £2,744,125, which is to be paid within 21 days of the 16th March 1987 to prevent further interest accruing."

He says then: "The total due in respect of 1 (C) and 2 (B), i.e. valuation date 5 April 1987, is £820,000."

So it's the £2,744,125 had to be paid by that date or it would attract further interest, and that was on foot of the terms of the of the settlement that had been concluded on the 16th March.

Now, Mr. Bowen responded to Mr. Reid. Can I just pause

there for a moment, because I take it that Mr. Bowen would have consulted with you before or Mr. Reid would have consulted with you before he wrote that letter.

A. He probably would have, but it was my management style to, in a sense, agree the general lines of direction with people. But certainly the it's quite probable, given the importance of this case and my involvement in it, that he would have, and I do to add to that, I do recall that Mr. Bowen had some issues subsequently with me

Q. That's what I am going to refer to you.

A. Well, I won't anticipate your question.

Q. In any event, if you move on now to Divider 29, I'll show you we'll look at the letter which Mr. Bowen sent to Mr. Reid in response, the 24th March 1987.

"Thank you for your letter of 20 March setting out details of the tax and interest in the above matter.

"In relation to the late Norah Dunne, under paragraph 2(a), I noticed that interest is calculated to run from 9 March 1986 to the 16 March 1987, in effect from the date of death right up to the date of agreement. While I would accept that this is in accordance with the agreement of the 16 March, I think it is perhaps a little bit unfair that interest runs from the precise date of death, and I was wondering if consideration could be given to a reasonable time-frame within which to complete the return and make a payment in such circumstances."

Is that what you were referring to?

A. It was. And there was a reply, I think, to from Mr. Reid. But at some point or other, in going through the papers, there is also correspondence between Mr. Bowen and myself in which I again restate, emphasise the point that Mr. Reid had made in his correspondence.

Q. So you were in full agreement and fully behind Mr. Reid in the contents of his response to Mr. Bowen?

A. Indeed.

Q. And we can just look at that. It's over the page. 26th March 1987.

"Dear Mr. Bowen.

"I refer to your letter of 24 March 1987.

"The claim for inheritance tax in connection with the death of the late Norah Dunne was first notified to the Trustees on the 7th May 1986, and a further request to lodge a return was made in a letter dated 8 September 1986. In another letter, dated 7 January 1987, the outstanding claims were detailed and the position as to interest charges was set out in full.

"The statutory position is that interest is payable from the valuation date unless tax is paid within three months of that date. As regards the tax and interest due in connection with the death of the late Norah Dunne, the Revenue Commissioners did not consider it appropriate to depart from the statutory position which, as you point out, now forms part of the agreement of 16 March 1987."

And you would have been in complete agreement

A. I would.

Q. with that statement by Mr. Reid?

A. I would.

Q. But not alone did the statutory provisions provide for the payment of interest, but that that was now part of the agreement that had been concluded and the settlement reached on the 16th March. And I take it that that would have been your attitude to all aspects of the settlement that had been concluded on the 16th March?

A. Indeed. Purely both from an operational point of view, the settlement of 16th March was a very important benchmark point in terms of addressing this case, and it was one which we were very anxious to we were anxious to preserve the integrity of that settlement.

Q. And that would have been your view, that that was a line in the sand, so to speak, that you had raised your assessment; you had had a lengthy, I think, exchange with the Dunnes Trustees even prior to finalising your valuation. They had appealed it to the Appeal Commissioners, which they were perfectly entitled to do, and the matter was negotiated then on the 16th March?

A. Indeed, I think you have summed that up very well.

Q. You weren't here, you weren't in the Revenue Commissioners on the 25th May of 1987 when this money was finally paid?

A. That's correct.

Q. And you weren't aware, presumably, or were you aware when you returned of the agreement that Mr. Pairceir had

concluded with Mr. Fox on that date?

A. I don't recall being aware of that.

Q. But as far as you were concerned, it's not something that you would have agreed with?

A. Going back to my recollection, I may have been told about it on my return. That, I don't recall. In terms of my position, it's not something I would have agreed with.

Mr. Reid and myself had been involved in extensive correspondence or not extensive, but we had been involved in contact with Mr. Bowen on that. Having said that, I was conscious that my view on the payment of interest, and indeed which coincided with a longstanding practice in the Capital Taxes Branch, was not a view that was generally held in Revenue at the time, you know, for reasons which can be explained at length. Indeed, this was documented in the report of the fifth Commission on Taxation or the fifth report, I should say, of the Commission on Taxation and there may have been factors which would have entered into that decision, such as, for example, getting closure on the case, avoiding further delays, because there do seem to have been operational delays in securing payment.

Q. This is the details of Mr. Reid's dealings with Mr. Bowen?

A. That's correct.

Q. Throughout April.

A. So those factors may have influenced the situation; I don't know.

Q. Can I just refer you to those, because as I said, they were Mr. Reid's dealings, but I take it Mr. Reid would have been reporting to you about them?

A. Can you refer me to those, please?

Q. Yes. Can you go to Divider 31. This is actually a number of documents that have been included in the book together. But if you go to the fourth-last page of those documents, you will find a memo of Mr. Reid's dated 14th April, 1987, in April, to his dealings with Mr. Bowen from the previous 6th April.

A. I do recall Mr. Reid telling me about these.

Q. And this was I'll just take you briefly through it. 6th April 1987.

"21 days after the 16 March 1987, I rang Bowen and asked him when payment would be made, as today was the last day. He sounded somewhat surprised and said he thought that tomorrow (7 April 1987) was the last day. He said that payment had been approved at a board meeting last week, that he had drawn down the cheque and was sending it on to Dublin for signature he hoped to have it delivered to me tomorrow.

"Tuesday, 7 April 1987 no cheque.

"Wednesday, 8 April 1987. I rang Bowen again he has gone to Dublin by train this morning from Cork train arrives 11am. I rang Dublin office at 12.00 noon he is not expected until 1.30pm, so I left a message for him to ring me. I rang again at 5.15pm he had just arrived.



He said that he had signed the cheque and sent it to Dublin for a second signature by Mr. Ben Dunne. He promised to find out what the position was and to ring me back.

"Thursday, 9 April 1987. No contact.

"Friday, 10 April 1987. I rang Dublin office, but Bowen had returned to Cork by train that morning. I rang Cork office at 2.30pm Bowen not available. He rang back at 4.15pm and again said that he had signed the cheque but that Mr. Ben Dunne had to examine it thoroughly before signing it. He said that Mr. Dunne is going away tomorrow (Saturday) and would be away for a week. He said again that he would check out the position and ring me back.

Monday, 13 April 1987. I rang Bowen 10.30am not available. He rang back at 3.45pm and said that he had no positive news for me. Mr. Dunne had gone away, and I quote, "with the cheque in his back pocket" and would not be back for two weeks. He also said that the "Ball was now in our court, to do something about it."

Wasn't Mr. Bowen effectively at that stage washing his hands of it and effectively saying to the Revenue Commissioners, "You better do what you can do to secure payment of this on foot of the settlement of the 16th"?

A. Certainly the background here is one of it reflects the anxiety that Mr. Reid had, which I would have shared, and I think I would have had regular conversations with him about this; that there should not be any further drift in the finalisation of the tax position on this case.

Q. You had your agreement, and you now wanted your money?

A. That's right.

Q. It had gone on long enough?

A. Precisely.

Q. Were these the operational difficulties to which you were referring when I was discussing with you a moment ago the agreement to waive the continuing interest?

A. In referring to operational difficulties, I was referring to those, but also to, I suppose, a feature of this case which I had noticed, which was that there were leads and lags in this case; there were times when it was very difficult to advance discussions with the Trustees. For example, if we go back to the valuation issue, the Trustees prepared a paper. They didn't show any disposition to negotiate. The Revenue prepared a paper, which took quite a bit of time and quite a lot of resources. So the background here was that we were anxious to have smooth there is an opportunity cost, obviously, for the Revenue in a difficult case, or in a case which takes which requires a lot of attention. So we felt that following the agreement of 16 March that is, using your words, there was now a line in the sand; there was a framework for settlement, and that should now be done quickly, and to remove delays, to remove opportunities for irritation in the relationship between the taxpayers and the Revenue.

Q. And it was because of that history of I think you would

describe it as "slippage" that you wanted the matter pinned down and nailed down, and you wanted the payment to be made?

A. Yes.

Q. The reference that you made earlier to your own thinking on interest being somewhat at variance with the thinking of the time within the Revenue Commissioners, would I be correct in thinking, myself, that what you were referring to there was provisions for the imposition of interest on the late payment of taxes?

A. Well, my view was that if tax was due and not paid on the due date, well, then, the Exchequer was incurring a cost; and that if tax was paid late, the opening position of the Exchequer should be that the interest should be charged.

Now, there was a view in the Revenue at the time, which was very much influenced by the realities of the tax assessment system in place, that the basis for assessment of interest was in many cases doubtful, and that the Revenue priority was to quantify the tax that was due, and if, following quantification of the tax that was due, which might have been some time after the due date, then that the Revenue would be disposed to waiving or abating interest if there was a rapid move towards settlement on the part of the taxpayer.

So that's what I meant by, rather than taking a purist position about about charging every penny of interest.

But it certainly, to my mind, was not if I gave the

impression that there was a view in the Revenue which was cavalier towards interest, that was certainly not the case.

I wouldn't wish to convey that impression.

Q. But that view that you were describing as being prevalent within the Revenue Commissioners, it is an understandable view; that view did not relate to interest which a taxpayer had agreed to pay, I take it?

A. The taxpayer's agreement to pay it certainly would be an additional factor which would weigh against abatement.

Unless, of course, there were other circumstances.

Q. Where would you draw the line in terms of abatement yourself?

A. On the facts of a case.

Q. To your knowledge, and in your view, would the facts of this case have suggested to you that the interest should have been abated?

A. Should, or should not?

Q. Should.

A. On the facts known to me and the considerations that were known to me, I would not have been disposed to waiving the interest.

Q. I think you have made that point clear in your memo as well.

I know, Dr. Thornhill, that the Capital Taxes Branch was not involved directly in the raising of the assessment to Capital Gains Tax; that was a matter that was dealt with by the Chief Inspector's office, and Mr. Clayton, I think, and

Mr. O'Cathain were involved in that matter. The assessment to Capital Gains Tax was raised, I think, after the assessment to Discretionary Trust Tax, I think it was in November of 1996. And we know the assessment to Capital Gains Tax was raised on the basis of a valuation of  $\text{£}120$  million, and I think in Mr. Clayton's letter to Oliver Freaneys of the 24th November 1986, he explained the basis on which the charge to Capital Gains Tax had been assessed. And could I just refer you to that. It's at Divider 22.

You see that?

A. Yes, I do, yes.

Q. He says: "It is a Revenue view that disposals of the 99,000 ordinary shares and 100 preference shares,  $\text{£}1$  each, occurred in March 1985, and the chargeable gains accrued on those disposals in accordance with the provisions of the Capital Gains Tax act 1975. The amount of those chargeable gains depends largely on the market value of these shares at 6/4/1974 and at 14/3/85, and it is the Revenue view that those values were  $\text{£}5.5$  million and  $\text{£}120$  million respectively. Having regard to the relevant indexation relief multiplier (4.140) and to possible expenses, an assessment in the amount of  $\text{£}97$  million, chargeable at the rate of 40% (tax  $\text{£}38.8$  million), appears appropriate."

It just then goes on to indicate that the District Inspector would arrange to raise the assessment.

So, the baseline valuation, then, that Mr. Clayton was taking, in computing the Capital Gains Tax liability in the

assessment that was to be raised, was  $\frac{1}{2}$ 120 million. Now, do you recall at that time discussion within the cross-cutting group as to the level of valuation that should be adopted for the purposes of the Capital Gains Tax assessment?

A. The earlier drafts of the valuation paper which you brought me through earlier do talk about the valuations for Capital Gains Tax purposes, but my recollection is, as momentum developed on the Discretionary Trust Tax side, that the that events on the Capital Gains Tax side disappeared, certainly from my horizon.

Q. They took a back seat, from your point of view?

A. They didn't take a back seat; they were not issues that I was responsible for dealing with. And, as I say, I was no longer involved with them on margin to the extent that I had been at the earlier stage, during the earlier stages of preparation of the valuation paper.

Q. I suppose what I'm trying to get at is, do you recall at this stage this was November of 1986 it was some months yet before the Discretionary Trust Tax appeal discussion of this figure of 120 million?

A. Do I recall?

Q. Yes, do you recall discussion of the figure of 120 million?

A. There were if we refer back to our discussion this morning, your examination of me this morning, figures were being produced as part of this iterative process and stress testing process, and there was certainly, if I recall from

your examination this morning, there was a figure of 120 million in the papers at that point. Sorry, at one of those points.

Q. Yes, there was a figure of well, there was a range, as we said, between 126 million and 140 million; that was in the I think in fact the values didn't change. I think the top values remain the same between the two versions of the paper, and the final version of the paper, in March of 1987, was directed solely to the value for Discretionary Trust Tax purposes. It was the same in both of them. And

CHAIRMAN: I think Discretionary Trust Tax was 120 to 128, and the CGT was 126 to 140, is my note.

Q. MS. O'BRIEN: 126 to 140. That was the range that was under discussion. And what I am trying to explore with you is, do you recall a similar process or an iterative process or a stress taking process that arrived at the figure of 120 million?

A. I don't. My recollection of events was that once the valuation process had been embarked on and the refinements had been made to, let's call it, the core valuation paper, that in an operational sense, both divisions of Revenue then went ahead about their business. But certainly on the capital taxes side, we went about our business in terms of issuing the assessment, dealing with the appeal, and then attempting to collect the tax.

Q. Just to point out to you, the range in this report that you

were considering for Discretionary Trust Tax purposes was between 120 and 128 million, and I think in the end, when you refined it in the final version, you had come down to a range where the mid-point was around 100 million; but the point I am making to you is there doesn't appear to have been a similar process in relation to Capital Gains Tax.

A. That, I am afraid, I can't help you with that.

Q. Perhaps Mr. Clayton or Mr. O'Cathain can assist the Tribunal with that.

A. Perhaps.

Q. Just in relation to valuation, there is one other matter I just want to establish with you. We saw in the very first letter that we referred to that the Dunnes Trustees were furnishing the Revenue Commissioners with copies of the memorandum and articles of association. I am correct, am I not, that in the course of the valuation process, the Revenue was furnished with significant information by the Dunnes Trustees in relation to the profits and the accounts of the Dunnes enterprise?

A. You are correct in that I think unaudited consolidated accounts for example, or audited accounts for early years and unaudited consolidated accounts were given to the Revenue.

Q. It was on the basis of that material that you were then able to proceed with your exercise of valuing the shares?

A. That material was necessary because of the core of the evaluation method was the need for the Revenue to have an



ability to forecast, in a reasonable way, future

maintainable profits.

Q. Yes. So your figure for future maintainable profits was

based on concrete information furnished to you by the

Trustees in relation to the past performance of the group?

A. That's my memory.

Q. I know that you were on your Fulbright Fellowship then

until the end of 1987, and then you returned, and you were

back within the Capital Taxes Branch in 1988?

A. And I also had very substantial addition to my

responsibilities; an addition, in fact, which became much

larger than any of us had anticipated at the time, because

about that time the European Commission introduced

proposals to abolish fiscal frontiers within the European

Union, or European Communities, as they were then, and so I

became involved I spent I think probably a third of my

time involved in Brussels at that stage as part of a group

which was planning this, what were quite significant

changes in the arrangements for the administration and

collection of VAT.

Q. Now, in your memorandum, you referred to your dealings with

the Dunnes Trustees and their representatives to secure

payment of the Discretionary Trust Tax in subsequent years;

that's from 1988 up to 1991. And in your memorandum you

had indicated the concern of yourself and your colleagues

with regard to the slippage which had arisen in both the

payment of the Discretionary Trust Tax that is, as it

arose and also in connection with the revaluation of the trust assets for Discretionary Trust Tax purposes. And I think that would have been in 1990.

A. I do recall that.

Q. And I think very helpfully appended to your memorandum, you prepared a table for the assistance of the Tribunal. And I'd like to refer you to that table now, if you wouldn't mind.

A. We can thank Mr. Sherlock, our colleagues in the Revenue, for that table.

Q. We'll extend our thanks to them.

I think we should be able to put a copy of that table on the overhead projector.

Q. Now, it's headed "Dunnes Discretionary Trust Tax Payments"; it's years 1988 to 1991 inclusive.

And there are various columns there. There is the tax year, the tax, interest, the total, the date of payment, the amount, and the total paid. And there are entries where appropriate for each of those for the years 1988, '89, '90, and 1991. Isn't that correct?

A. That's correct.

Q. And if we just take, firstly, the year 1988: Now, we can see in the second column that the tax for that year was  $\text{£}820,000$ . Isn't that right?

A. Mm-hmm.

Q. That's based on the agreement valuation of  $\text{£}82$  million that had been agreed back in 1987, the previous year?

A. That's correct.

Q. Now, if we just jump to the fifth column, we can see there that that was paid on the 4th July 1988.

A. Correct or a sum of 800,000 was paid.

Q. i.e. 800,000 was paid on that date. And if we move below to the next payment, the next entry, you can see that the balance plus the interest which had accrued wasn't paid until nearly two years later, the 30th April, 1990. So that the interest of i.e. 6,000 arose because of the delay in that payment. And that's under the "Interest" column.

Then if we go to the next year, 1989, again the tax due was the same, and again if we go to the date of payment, we see that the date of payment for 1989 was also the 30th April, 1990; isn't that correct?

A. That's correct.

Q. And the tax in fact would have been due on the 5th April in 1989. So it was over twelve months in arrears. So the interest, then, which is shown in the third column, of i.e. 123,000, also arose; is that so?

A. That's correct.

Q. Making the total due and paid i.e. 943,000?

A. Mm-hmm.

Q. And then 1990, and this appears to have been the year when the trust, value of the trust was revalued. The tax appears to have been i.e. 2,200,000. So can I take it from that if that was 1%, the trust was revalued to 220 million as of 1990?

A. I think that's a reasonable assumption to make.

Q. Am I correct in thinking that that was an agreed revaluation? It's not a matter that went to the Appeal Commissioners again?

A. No, I think there was a very significant difference in terms the transactions were much less complex or much less fraught on the second time around than they were the first time.

Q. And the date of payment and the amounts are in the fifth and sixth columns. We can see that on the 13th November, 1990,  $\text{£}1\frac{1}{2}750,000$  was paid; isn't that correct?

A. That's correct.

Q. On the 12th July, 1991, another  $\text{£}1\frac{1}{2}750,000$  was paid; isn't that correct?

A. That's correct.

Q. And on the 30th September 1991, the balance of  $\text{£}1\frac{1}{2}700,000$  was paid?

A. That's my understanding. I am familiar with these details, but this table is derived from Revenue records.

Q. There is no reason to believe that it isn't correct?

A. I would expect it's correct. I believe it's correct, sorry.

Q. So the bulk of the tax, which would have been due on the 5th April 1990, was paid more than 15 months after the due date. Now, there doesn't appear to have been interest paid in respect of the Discretionary Trust Tax due for that year. And I think there is a comment here in the table,

perhaps you can confirm whether it's correct, that the provisions of the interest amnesty were applied in respect of these payments. And it says: "See Section 120 of the Finance Act 1991", and "See memo signed by P. Bourke dated 1st October 1991 supplied in part 4 of a file with reference number."

A. I wasn't aware that the Trustees in respect of that payment had been able to avail of an interest amnesty, but there was an interest amnesty enacted for Capital Acquisitions Tax enacted it would appear to have been in the early nineties.

Q. In the early nineties?

A. Yes.

Q. And that was availed of by the Trustees in regard to the payments that would have arisen in relation to the late payments of 2.2 million?

A. It was a statutory scheme for abating interest. And in fact, in a general sense, it led to a very significant increase in the Capital Acquisitions Tax yield. It followed on an amnesty, quite a famous amnesty, I think which had applied to the direct what we call the direct assessment tax, income tax, Capital Gains Tax, corporation tax, which had been enforced in an earlier year.

Q. Yes. But that was introduced in 1991, and it was intended to apply to Capital Acquisitions Tax that hadn't been paid; but the Trustees were able to avail of it, it appears, in respect of interest for the previous year.

A. That appears to be what happened. The purpose of that amnesty was to flush out was to provide an incentive to those taxpayers who had not settled their affairs with the Revenue. In fact it was quite successful, as far as I recall.

Q. The intention would have been, presumably, to flush out taxpayers who had taken the benefit of a transfer of assets or an inheritance and hadn't declared those and paid Capital Acquisitions Tax on them?

A. Or in some way or another had not settled their affairs with the Revenue.

Q. But in relation to Capital Acquisitions Tax?

A. That, I think, is subject to checking. I haven't checked the statutory reference, but that is what I think it probably is.

Q. And then in 1991, again, it's 2.2 million. And it was paid on the 30th September 1991. Isn't that correct?

A. That's what the note records.

Q. Now, I think you did have dealings with the Trustees and persons on behalf of the Trustees in relation to these late payments and in relation to the revaluation of the trust; isn't that correct?

A. I certainly was aware of the delays in agreeing a revaluation of the trust. And Mr. Reid, and I think maybe Mr. Scott may have been involved, a Mr. Scott may have been involved. We were all concerned about it, and we took the approach of writing to all the Trustees rather than to

Mr. Bowen, who had been the conduit for our communications, because there were secondary accountability provisions in amendments which had been introduced in the Capital Acquisitions Tax legislation in the late eighties. They may have been existed previously, but certainly we were very conscious of them once legislation had been introduced for self-assessment of Capital Acquisitions Tax, and these would have made Trustees secondarily accountable in the event of default.

Q. So they would have been personally accountable?

A. Mm-hmm.

Q. Not just in the capacity as Trustees, and that's why you had refer to them as secondarily accountable. From there on, you felt that you were under an obligation not just to communicate with Mr. Bowen, but to notify all of the Trustees?

A. And a backdrop to this was a continuing concern to what you referred to earlier, or which I may have referred to earlier as slippage, and the slippage generally makes settlement more difficult.

Q. On the basis that the longer things are left, the more difficult it is then to rein in the taxpayer?

A. Yeah. Positions become entrenched. The interest clock is running, of course.

Q. Now, if I can just refer you to the copies of the correspondence in the documents which the Tribunal has extracted from the files in relation to this. And firstly

if I could refer you to the document behind Divider 66.

And this is your own typed memo. It's dated the 12th February, 1990.

I think the '89 tax was outstanding as of the date of this note.

A. Sorry, I just need to check this table.

Q. I think so. I think it wasn't paid until the 30th April, 1990.

A. Sorry, I cannot find that table of payments.

Q. I think you can take it that there was, Dr. Thornhill

A. That's fine, thank you.

Q. And also a small balance was still due from the 1988

A. Yes, I have the table, thank you.

Q. It says "Commissioner Casells telephoned me this morning.

Commissioner MacDomhnaill has spoken to him about contacts that had been made with him on behalf of the Trustees about the annual Discretionary Trust charge.

"I gave a brief history of the case to Commissioner Casells, including a short account of my most recent discussion with Commissioner MacDomhnaill, during which the Commissioner had stated that we should pursue any tax that was due. I explained that following that conversation, I had instructed Mr. Reid to write to the Trustees alerting them to the implications of non-compliance. Commissioner Casells noted this information and said that he would contact me again once he had spoken to Commissioner MacDomhnaill.



"Commissioner Casells telephoned me some 15 minutes later.

He said that he had discussed the case with Commissioner MacDomhnaill. Mr. Noel Fox (a trustee) would get in touch with me. I mentioned that I was concerned that any further delays in this case would lead to a situation where two years' tax would become due. The Commissioner indicated that he shared my concern. He also added that he did not see why concessions on interest should be made to the Trustees."

Can I just ask you there, Commissioner MacDomhnaill had spoken to Commissioner Casells, apparently, about contacts that had been made with Commissioner MacDomhnaill on behalf of the Trustees about the annual Discretionary Trust charge. Did you know anything about those contacts, or by whom they were made?

A. I don't think I do. I think the form of words that the late Commissioner Casells might have used in speaking to me was that somebody had been in touch with Commissioner MacDomhnaill. He would have said, "People have been in touch with Commissioner MacDomhnaill", probably.

Q. Why would they be in touch with Commissioner MacDomhnaill about Discretionary Trust Tax, which, if you like, was your bailiwick?

A. I reported to the Board and I reported to Commissioner Casells. It was my experience that quite often if an agent or if a solicitor or an accountant had dealings with one member of the board over a number of years, and a new issue

arose, that that individual might contact the person whom he knew or she knew.

Q. At that time, February of 1990, you had had you had been, presumably, in contact with the Trustees about this, about the accumulating arrears situation?

A. I don't think I was personally, but Mr. Reid had been in touch, or Mr. Scott, one or the other, had been in touch, or perhaps maybe Mr. Burke had arrived in the section at that stage, but certainly he was receiving regular reports from my colleagues about the position. It was and again I come back to the point that our overarching concern was to avoid slippage in this case.

Q. Yes. Although it may not have been you who was in contact with the Trustees, do you know who it was, either on behalf of the Trustees or amongst the Trustees, with whom Mr. Reid or Mr. Scott might have been in contact?

A. Well, there is a letter from Mr. Reid on the file addressed to Mr. Bowen, and that, I presume, would have been the first conduit, the first point of contact.

Q. Right.

A. But what is interesting is certainly my recollection is that sometime around that period, Mr. Fox entered the case for the first time.

Q. Can you tell me in what way he entered the case, as far as you were concerned?

A. I have recollections, but I can't place any great flesh on them, that Mr. Fox had a meeting with Mr. Bourke and myself

about the tax position in general. He had a particular point to make, which was that he understood, in a conceptual sense, taxes on profits. He understood taxes on transactions such as VAT or taxes on expenditure, but that he didn't see I think he used a phrase, there didn't seem to be value to the taxpayer as a result of the Discretionary Trust Tax. And there may have been some very, very initial discussions or tentative talk about what the implications for the Trustees would be if they made appointments out of the trust.

Q. Right. But Mr. Fox presumably would have known exactly what the provisions of the Discretionary Trust Tax legislation was?

A. I don't know if he knew them exactly. Certainly my impression of dealing with tax advisers was that there was one very large cohort of tax advisers who specialised in income tax, corporation tax and CGT affairs, and there was another cohort that specialised in Capital Acquisitions Tax affairs, and there was very little crossover between the two.

Q. And in your meetings or dealings with Mr. Fox, did you have any dealings with him, or did you discuss the arrears and the slippage situation as well?

A. I don't recall. The conversations I had with Mr. Fox, I think, were quite a high level. And at one stage I recall he asked us would we meet Mrs. Margaret Heffernan, which we said we would, and that meeting I think was essentially a

briefing; as far as I can recall, it was a briefing meeting.

Q. A briefing meeting in relation to what?

A. The tax liabilities that existed in terms of the legal basis for the tax. In other words, I recall our explaining to her that there was a trust. She knew there was a trust, of course, but what the taxation implications of there being a trust were. And I think we may have mentioned the possibility of making appointments out of the trust.

Q. And what the tax implications of those would have been as well?

A. We didn't quantify any of this, but we used a term, "mainstream C.A.T.", generally, and I am sure we would have said to her that if appointments were made out of the trust, they would have been exposed to mainstream C.A.T.

Q. What would you have meant by "mainstream C.A.T."?

A. In other words, there would have been the normal taxes on gifts, on inheritances taken by individuals.

Q. In those days I think at 40%; would that be right?

A. I think the top rate when I joined it was originally 55%. The top rate was reduced to 45%, and it's since, of course, been reduced considerably.

Q. If I can just take you to the next document, then, that's the 14th March 1990. Again your own note. It's dated the 14th March 1990. It's headed "Bowen Case".

"I discussed the case today with Commissioner Casells. He said that he had spoken to Mr. Pairceir and urged him to

advance the case as a matter of urgency.

"He also said that if we had not heard from Mr. Pairceir by 21 March, we should proceed with action to pursue the tax outstanding."

Do you see that?

A. I do.

Q. Now, that seems to suggest that Mr. Casells had made contact with Mr. Pairceir; would you agree with me?

A. Or he may have been in touch with Mr. Pairceir about a range of issues. I was in touch with Mr. Pairceir about issues relating to VAT. Mr. Pairceir was acting as a consultant for the IDA at that point, Industrial Development Authority, and there were new issues of VAT taxation arising in relation to companies in the Financial Services Centre, and I'd had a number of discussions with Mr. Pairceir about those. These were discussions not about individual taxpayers, but about issues of tax treatment.

Q. General tax policy?

A. Tax treatment.

And I, at some point or other, I became aware, because Mr. Pairceir told me, that he was acting on behalf of the trust, or he was acting for I think he may have said the phrase "the Dunnes". And so I presume, when I wrote that note of 14th March, I already knew that, because I don't make any mention in the note about the fact.

Q. No you don't. I was going to ask you about that. But you believe you would have known, prior to that date, that

Mr. Pairceir was acting for "The Dunnes", as you recall it?

A. It seems that seems to be the case. And certainly I was aware at some point or other.

And in fact, going back to the issue of slippage here, there was some mild relief that I felt, that I noted his involvement, because I felt that at least we could communicate to somebody who had an understanding of what the pressures on the Revenue side were.

Q. And somebody would be accessible to you as well, presumably?

A. I don't recall that his involvement was terribly substantial. I think he was a conduit for the transmission of documents.

Q. You say that your recollection is that Mr. Pairceir told you at some stage and you are assuming that it was prior to that date, because the note, certainly the way you phrased it, seems to suggest that it came as no surprise to you that Commissioner Casells had made contact with Mr. Pairceir but do you recall Mr. Pairceir and the circumstances in which he informed you that he was acting for, as you recall it, the Dunnes?

A. I don't recall, but I had several conversations with Mr. Pairceir. Mr. Pairceir had had, I suspect and this is something that he can obviously confirm I think he probably would have had a range of contacts with the Revenue. He was a member of the steering group which was chaired by the then Secretary General of the Taoiseach's

Department on the Irish Financial Services Centre, so and he was working, as I say, for the IDA at that stage, so he would have had reasons to contact a number of people in different parts of Revenue.

Q. Do you know was he in contact with the Revenue on behalf of any other taxpayer other than the Dunnes?

A. I don't I am trying to recall my contacts with him. My I can only speak for my own contacts.

Q. Yes, of course.

A. In relation to VAT issues, to the best of my recollection, my only contact with him was about general issues of VAT treatment. Now, in specific cases, or specific companies may have arisen in that context, although I don't think so.

Q. Now, in the note, you record that "Commissioner Casells said that he had not heard from Mr. Pairceir. We should proceed with action to pursue the tax outstanding".

Now, tell me, what action would he have been referring to there?

A. Well, I don't think Commissioner Casells' management style was one where, in a sense, he would, in a sense I didn't report to him on detail about what I was doing. I agreed general lines of action and policy with him, but I think it was, certainly if one follows the sequence of papers in the file, it was on the 9th April, following that conversation, which is some days after the 21 st March, that Mr. Reid then went and wrote to all the Mr. Reid then wrote to all the Trustees.

Q. And this was a letter in relation to the arrears, the part arrears for '88 and the entire of the arrears for '89?

A. Mm-hmm.

Q. And that's the letter of the 5th April, 1990. And it's at Divider 68.

A. Yes.

Q. He says: "As the appropriate return has not been lodged and payment of the tax due has not been made, I am directed by the Revenue Commissioners to enclose herewith

"1. An assessment of tax and interest in the amount of  $\text{€}943,000$  due in respect of the valuation date 5 April 1989, based on a value of  $\text{€}82$  million for the shares held by the trust.

"2. An assessment of additional tax and interest in the amount of  $\text{€}26,000$  due in respect of the valuation date 5 April 1988, also based on a valuation of  $\text{€}82$  million for the shares held by the trust (the return lodged stated that the value of the shares was  $\text{€}80$  million).

"As regards the market value of the shares in the trust, I would be grateful if you could indicate whether in accordance with the provisions of Section 107 Finance Act Act 1986, you wish to treat the value agreed for 5 April 1987 as the market value for 5 April 1988 and 5 April 1989.

"Despite repeated reminders, the tax due has been outstanding for a considerable amount of time. Unless a substantive reply to this letter is received by 27 April 1990, the Commissioners will commence legal proceedings.



"1. To compel delivery of the return and payment of the tax and interest due.

"2. To recover the appropriate penalty.

"A similar letter is being sent to each Trustee of the above-named trust."

So that letter certainly seems to make it clear that it was open to the Revenue Commissioners at that time to issue proceedings to compel the delivery of the return and the payment of the tax and interest and to recover an appropriate penalty.

A. Yes, and on the 27th April, then sorry, I am racing ahead of you a cheque was received.

Q. 27th April: "Dear Mr. Fitzpatrick, thank you for your fax of 25 April last. We confirm that we sent by courier a cheque in the sum of 969,000 on the 25th April. We regret that the assessment forms are not enclosed with the cheque. We now enclose form C85 and IT35. We apologise for the inconvenience."

Yes?

A. Yes.

Q. And that was in response to the letter where it was made clear that otherwise, proceedings were going to issue. And it was only then that the tax for '89 and the balance of the tax for '88 was paid?

A. Correct.

Q. Now, the next document I want to refer you to is at Divider 70, 30th May, 1990. It's a letter from you to

Mr. Pairceir.

"Personal and confidential.

"Dear Mr. Pairceir.

"Bowen case.

"Further to our discussion about information requirements, we would need consolidated (preferably audited) accounts for the three most recent years preceding the valuation date.

"In addition, it would be helpful if we could be provided with

"A: Directors valuation of immovables

"B. Breakdown and turnover of profit for individual years as between the main areas of turnover: food, drapery, etc.

"Yours sincerely."

That's clearly a request to Mr. Pairceir in the context of the exercise you were undertaking to revalue the shares, and you were indicating to him what it would be helpful to you to receive in order to advance that exercise?

Now in that you refer to "Further to our discussion about information requirements." Do you see that there?

A. Yes.

Q. Do you recall those discussions, Dr. Thornhill?

A. I have a general recollection, Ms. O'Brien, of Mr. Pairceir or somebody saying to me that the Trustees were very or the agents were not very clear about what was required. So now, I may not have been particularly impressed by that, but nonetheless we made it our business to leave them in no

doubt as to what was required, and to use Mr. Pairceir's engagement in this as a means of making the information requirements known to them.

Q. They had already furnished you with all of these items of information

A. I am not clear

Q. at an earlier date for the 1986 assessment?

A. For the 1986 assessment, they had, yes.

Q. I mean, this wasn't anything new to the Trustees or to their agents?

A. Well, there could have been new personnel involved.

Q. Yes, there could have, of course.

Do you recall whether you met Mr. Pairceir to discuss this with him, or was this something that you think you might have talked about over the telephone?

A. I am afraid I can't help you there. I did have, certainly I had both phone calls and meetings with Mr. Pairceir, but they would have been mainly about VAT administration and practice issues.

Q. Now, if I just take you to the next document, the 13th June. Again it's another letter to Mr. Pairceir.

"I attach, as discussed, a copy of the valuation paper which was given to the agents in 1987.

"Yours sincerely, Don Thornhill."

This would have been the final valuation paper that was prepared for the purposes of the appeal to the Appeal Commissioners and which in the ordinary course was

exchanged; this was something the Dunnes and their representatives would have already have been furnished with. Do I take it, therefore, that Mr. Pairceir must have asked you to do this?

A. I assume so.

Q. And again you refer to a discussion. Do you have any recollection of that discussion?

A. I don't, except for the general point that I was anxious to remove any possibility there might be on the taxpayer's side about what the Revenue's information requirements were.

Q. Do you recall around this time when you were concerned about slippage, both in terms of payment and you were concerned about slippage both in terms of revaluation, whether your contacts with Mr. Pairceir were frequent?

A. I don't, I am afraid. Except my only the only recollection I have is one of, as I say, mild relief that there was somebody involved on the other side who would be up to speed very quickly.

Q. So you did see him as being somebody that you could regularly contact in relation to matters that arose in the course of your dealings with the Dunnes Trustees?

A. I think I had a sense that I think I have a recollection I think certainly I think I had a sense, and Mr. Pairceir may well have told me, that he was not going to get involved in the substance of the issue; that his role was one of facilitating communication between both

sides.

Q. Well, what would you have understood him to mean by not getting involved in the substance of the issue?

A. In other words, for example, debating valuation issues.

Q. Debating valuation issues?

A. In other words, should we take a P/E of 7, should we take a P/E of 12? The type of discussions that would arise between Revenue and an agent if an attempt was being made to agree a valuation.

Q. Right, so he wasn't going to represent the Dunnes interests in any negotiation with you?

A. That's my understanding.

Q. Now, the next letter I want to you look at is a letter of the 5th July, 1990. And this was sent to Oliver Freaney, and I think, as you said, to each of the Trustees:

Mr. Fox, Mr. Bernard Uniacke, Mr. Edward Montgomery, and Mr. Frank Bowen.

"Dear Mr. Freaney.

"Inheritance tax is now outstanding in respect of the inheritance deemed to have been taken by the above mentioned Discretionary Trust on the 5 April 1990.

"A valuation of the Dunnes Stores Holding Company as of the 5 April 1990 will be necessary. In addition, it would be helpful if we could be provided with

"A. Consolidated preferably audited accounts.

B. Directors valuation of immovables.

C. Breakdown in turnover, etc.

D. Accounts preferably audited.

"A similar letter is being sent to each Trustee of the above-named trust."

That's really the same material which you had earlier indicated to Mr. Pairceir would have been necessary.

A. Indeed.

Q. And then there is a letter of the 20th September, 1990, to Mr. Fox, and in fact to each of the Trustees, continuing your practice of notifying each of them.

"I am directed by the Revenue Commissioners to refer to the claim for inheritance which was outstanding in respect of the inheritance taken by the above-named trust on the 5 April 1990. Under Section 104(e) of the Finance Act 1985, the Trustees are obliged to deliver a return and assess and pay the tax within 3 months of that date.

"Despite the fact that reminders issued on the 5 July 1990 and 20 August 1990, no payment has been received. The delay in finishing returns and paying tax, and indeed the complete absence of any information relating to valuation date of 5 April 1990, has become a cause for serious concern. Accordingly, I must request

"1. Delivery of returns.

"2. Payment of tax interest and

"3. Delivery of all information within 30 days of today's date.

"I must also draw your attention to the penalty provisions of Section 108 Finance Act 1986 and Section 83 Capital

Acquisitions Tax Act 1976 as amended by a provision of the Finance Act 1989 and to the fact that each accountable party will be separately liable to a penalty if such penalty were to be imposed."

So clearly there had been no response to the earlier letters, and there doesn't appear to have been a response to the information that you conveyed to Mr. Pairceir, either.

A. There doesn't appear to have been. And that letter seems that letter was obviously part, again, of the process where we felt that we might be able to expedite dealings on the case if we contacted each one of the Trustees individually.

Q. The 5th November 1990, you received the information from Mr. Bowen.

"I refer to previous correspondence and discussions that influence the following:

Self assessment returns 5 April 1990

Consolidated accounts - cheque  $\dot{\imath}_{\dot{\imath}}\frac{1}{2}750,000$ . We will remit the balance prior to the 31 December, 1990."

That was, I think, the first moiety in the payment of the 1990 Discretionary Trust Tax that was due on the 5 April last. And in fact, I don't think you did receive the further  $\dot{\imath}_{\dot{\imath}}\frac{1}{2}750,000$  on the 31st December 1990. It appears to have been slipped into 1991.

A. There were three payments, in fact. One made in July 1991 and one made in September 1991, yeah.

Q. Now, can I ask you, in relation to these dealings, apart from the documents that I have referred you to which record contact between yourself and Mr. Pairceir, do you recall any other contact that you had with him in or around this time in relation to the Dunnes interests or the Dunnes, as he described them to you?

A. I don't.

Q. There is just one final document that I want to refer you to, Dr. Thornhill; it's at Divider 90. And it's a memo of Mr. Reid addressed to Mr. Tadhg O'Connell. And as I understand it, it was prepared in the context of inquiries that Mr. O'Connell was making regarding the income tax issue, the one that we were discussing earlier this afternoon. And it's headed "Re BND settlement.

"1. With reference to the final paragraph of the letter dated 3 February from Deloitte & Touche, I can say categorically that I have no recollection of giving such an undertaking.

"2. I have examined the relevant contemporary papers, and I enclose a copy of a handwritten memo of the 15 April 1987 which I received from Mr. O'Cathain and which I then typed and sent to Seamus Pairceir, Chairman.

"3. My recollection of the events surrounding this memo is hazy. I have an indistinct memory of the Assistant Secretary in capital taxes at the time, Dr. Thornhill telling me that S. Pairceir was concerned about some income tax problem, and presumably that was the reason I contacted



Sean O'Cathain.

"4. I think that I have a further memory of Dr. Thornhill telling me that Seamus Pairceir had agreed something for my information, but as I already stated, I did not convey that to anyone."

Now, I wonder, does that assist your recollection at all, Dr. Thornhill, in relation to events surrounding the discussion of income tax liability?

A. I think, if I take the first three paragraphs, I think what I think one can probably associate the first three paragraphs here with a discussion we had earlier where Mr. O'Cathain receives two requests, I think, from Mr. Reid, or notes that he received two requests from Mr. Reid for information by way of preparation for a meeting which the Chairman was going to have with Mr. Dunne.

So the phrase "I do recall Thornhill telling me that S. Pairceir was concerned about some income tax problem" could be a reference to the same thing; in other words, that both Mr. Reid and I particularly myself; I speak for myself here would have been anxious that Mr. Pairceir would be fully briefed for a meeting. That would be the normal reflex action of a civil servant.

Paragraph 4, I am completely at a loss. I don't know what Mr. Reid is referring to.

Q. If, as you say, the concern may have been that Mr. Pairceir should be fully briefed for a meeting that he was intending

to have with Mr. Dunne, and that that concern extended to an income tax problem, would it be reasonable to conclude from that that it would have been your understanding that Mr. Pairceir intended to discuss an income tax or the income tax issue with Mr. Dunne?

A. I don't know if one could reasonably infer that. I think I would have been I can only speak for myself here normally, when somebody asks me for a briefing for a meeting, and particularly if I was the senior person involved, I would endeavour to ensure that the person who had asked for the briefing was briefed on all the relevant aspects.

Q. So you would have considered very probably that the income tax matter that had been raised with you on the 16th May was a matter or a topic that would arise in the course of Mr. Pairceir's meetings with Mr. Dunne?

A. I can only assume that that was the case.

Q. Otherwise there really wouldn't be much point in briefing him, would there?

A. No.

Q. And just one matter in relation

A. But I have to say sorry, Ms. O'Brien, sorry, Chairman I have to say here that I am entering into the land of attempting to be, through conjecture, to be helpful to the Tribunal.

Q. I appreciate that.

As far as you are concerned, did you ever give Mr. Bowen an

answer to the assurance that he had looked for from you on the 16th March?

A. Never. And I was not involved in a substantive way on that issue.

Q. To your knowledge, did anyone else ever give him an answer?

A. I was not concerned I was not concerned about the issue. It was beyond my purview in operational sense.

Q. I know you weren't concerned, but I am just asking you, to your knowledge, did anyone else give him an answer?

A. No recollection. Sorry, I have no knowledge whether yea or nay.

Q. Thank you, Dr. Thornhill.

A. Thank you very much.

CHAIRMAN: Dr. Thornhill, it may be that a couple of other counsel may have a couple of questions for you.

I think, taking the normal sequence that we observed, I think it will be Mr. O' Neill and Mr. Nesbitt, and Mr. Connolly at the end.

THE WITNESS WAS EXAMINED BY MR. O'NEILL AS FOLLOWS:

Q. MR. O'NEILL: Good afternoon, Dr. Thornhill. My name is Hugh O'Neill, and I appear on behalf of the Trustees of the 1964 settlement, just to put my questioning in context.

You have said, Dr. Thornhill, that it was quite appropriate for Mr. Pairceir to put together a team from the various divisions of within the Revenue, to deal with the tax, or potential tax liabilities of the Dunnes, of the Dunnes Trustees; isn't that correct?

A. Well, my maybe I should clarify that, because this team that dealt with that did not deal with the full range of tax issues. It dealt with the valuation issue, which was the issue which was common to the tax liabilities.

Q. Had a knock-on effect on all

A. Certainly this cross-cutting team did not go on to discuss the whys and wherefores of the Capital Gains Tax liability.

We did know, for example, that there was a question mark about it; whereas in the case of the DTT tax liability, that had been accepted from the word "go" by the Trustees.

Q. Indeed. And if there was a liability, and there was clearly a liability for Discretionary Trust Tax, if there was also a liability for Capital Gains Tax, the starting point was the valuation of the asset in question?

A. That's correct.

Q. And having regard to the potential size of the tax bill, be it for Discretionary Trust Tax or Capital Gains Tax, and also having regard to the sensitivities to which you have referred in other words, the security issues in the context of Mr. Dunne's previous kidnapping that it was quite appropriate that this would be dealt with at a high level within the Revenue Commissioners?

A. I would share your interpretation of that.

Q. And also that it was quite appropriate that the person to head up the team, so to speak, would be one of the Revenue Commissioners themselves?

A. Yes.

Q. And indeed in this case the Chairman of the Revenue Commissioners?

A. Indeed, I think the salient point here is that the Office of the Chief Inspector reported directly to the Chairman during that period.

Q. As you have indicated, your primary function, and indeed the function of this team put together, was to deal with valuation; isn't that right?

A. That's right. That's correct.

Q. And if I can just ask you to turn I am going to quickly go through some of these documents, and Ms. O'Brien has brought you through some of them already, so I'm obviously not going to dwell on them. But if I could ask you to turn to Tab Number 9

A. Sorry, excuse me while I reorganise my papers here.

Tab number 9, yes.

Q. This is a position paper, a discussion paper in relation to the approach to valuation. And what you are valuing, and we have been brought through it earlier, in the case of the asset held by the Dunnes Trustees, was the ordinary shareholding, and 100 preference shares out of 1000, and the ordinary shares were unusual in that they didn't carry the voting rights that one would expect to find with ordinary shares?

A. Correct.

Q. And at page 3 of that note, at Tab 9, you have set out the only rights that the holders of the ordinary shares in

other words, the Trustees have in relation to any say in the management of the company, and that is the only times they can vote, are first, upon a resolution for increasing or reducing the capital of the company; secondly, for winding-up of the company; and thirdly, for any varying or abrogating the rights or privileges attached to the ordinary shares. Very limited rights, obviously, and quite unusual, probably, in the context of rights normally attaching to ordinary shares.

A. Indeed.

Q. And at page 26, and we haven't been furnished with any more extracts from this particular document, at page 26, you have presumably, in the pages up to 26, dealt with the issue in relation to discount, having drawn the distinction between the approach in the context of Discretionary Trust Tax and Capital Gains Tax.

In the case of Discretionary Trust Tax, according to the taxation provisions, the holder is deemed to have control; isn't that right?

A. That's correct, yes.

Q. And in the case of Capital Gains Tax, there is no such deeming; you must look at the particular situation?

A. Correct.

Q. And what you had to do in this case, in the context of looking at a valuation, or looking at a discount, because there wasn't absolute rights vested in the ordinary shareholders, was to see, having regard to the very limited

voting rights that the ordinary shareholders enjoyed, what would a potential purchaser, what discount would a potential purchaser expect because he did not have those rights; isn't that right?

A. Mm-hmm.

Q. And in your first discussion paper or position paper, at page 26, you seem to have come to a conclusion that should be a 15% discount; is that right?

A. That's right.

Q. And the valuations that you arrived at from time to time, and the basis upon which they were arrived at, seem to have been fine-tuned, so to speak, as your investigations continued?

A. Certainly as our work I think it was work rather than investigations.

Q. Sorry, work?

A. Yes.

Q. And if you turn to Tab 11, we have a revision of your document of the 12th March 1986.

A. Tab 11?

Q. Sorry, Tab 10, excuse me.

You have a revision of the 12th March 1986. Do you have that?

A. I do, yes.

Q. And if you jump to the back of that, page 33, you deal first with the Discretionary Trust Tax, and I'll skip from that.

You then deal with the Capital Gains Tax and the three possible scenarios in the context of valuing the ordinary shares. And the first was that the hypothetical purchaser, this would be the hypothetical purchaser from the Trustees, would be able to enfranchise the ordinary shares. In other words, he'd somehow or other be able to get rid of the voting restrictions?

A. Yes.

Q. And that seems to have died a death. That was never a reality, was it?

A. Well, this, of course, there was no these were these hypotheses, these are hypotheses; they are not based on reality. But what we had to do was try and construct a situation which a court or the Appeal Commissioners might envisage if the shares were to go on the market because the legislation requires a market valuation.

Q. I know it's a hypothetical situation, but even in that hypothetical situation, you couldn't point to any provision which would enable the Trustees effectively get rid of the voting restrictions on them?

A. There was some discussion, whether it was oral or whether it was whether it's documented, about a possibility where the ordinary shareholders could conceivably go to the High Court and argue that they were being oppressed by the preference shareholders. Now, I don't know whether that where that discussion ended.

Q. In the context that we see subsequently, and we'll come to



these documents in due course, that there was a discount, according to the Revenue and I know you weren't involved in actually drawing up the assessments, but the documentation does appear a discount, a discount of 10%. It would suggest that this scenario, scenario A that we see here, was

A. Was dismissed.

Q. Was dismissed?

A. It would suggest that.

Q. The second scenario then was "If the purchaser is able to initiate in effect a winding of the holding company he will be entitled to receive the entire of the assets of the holding company less  $\frac{1}{2}$ 900 for the other preference shareholders. Accordingly, the deductions from the full market value will be  $\frac{1}{2}$ 900 plus the costs of the liquidating the holding company."

That was another approach or hypothesis that you considered. But again, and of course it is in a hypothetical situation, even in a hypothetical situation, there could be no reality to that, because if the company had been wound up, the company would have been obliged to pay Capital Gains Tax on the disposal to the liquidator; isn't that right?

A. The other point, too, is that, just to reinforce your point, is that in the event of that happening, the probability would have been that the sum that the whole was more valuable than the parts. In other words, if the

company were liquidated and broken up, it would effectively involve the sale of the individual stores; and the market value of the Dunnes Group to a great extent resided in the corporate entity rather than in the individual stores.

Q. But even aside from that, if one were simply to get rid of the holding company and set up a new structure, perhaps a new holding company without any shareholding or restrictions on voting. To get to that stage, in the first instance, in the winding-up, the company would have been liable for CGT?

A. Well, I never was an expert on CGT, and I never had involvement in it, so I take your word for it.

Q. And further, I mean, the other sting in the tail is that the shareholder, i.e. the Trustees themselves, would have been liable to CGT, so there would have been double CGT.

CGT at 40% on the disposal by the company to the liquidator, and the 60% then coming into the hands of the shareholder, i.e. the trustee, would itself be liable to 40%?

A. I am not equipped to give an answer on CGT answers. I am sorry.

Q. If that is correct, it is not in the context of a valuation; it's not a realistic basis for saying that in fact the shareholder, by virtue of this ability to wind up the company, has a greater value than one would otherwise give it?

A. I am not able to comment on your argument.

Q. Now, if I can ask you to turn to Divider number 11, and I'm bringing you through these in chronological order at the moment, at page 5, there is a reference to the external value, and you have talked about that.

And that notes Mr. Bowen's objections to the idea of using an Irish expert and he seemed particularly opposed to anyone from the ICC. That opposition was presumably in the context of the sensitivities and the security issues; would that be your understanding?

A. It may have been that, and there may have been a commercial dimension to it as well, Chairman. I don't know.

Q. But it wasn't interpreted as being an attempt by the Trustees to deprive the Revenue of any outside expertise that they may need to avail of?

A. It doesn't appear, Mr. O' Neill, to have been taken in at that light, because there was a continuation of a discussion about using external expertise.

Q. If you turn to Tab 13, which is an internal meeting within the Revenue which you attended, with Mr. O'Cathain, Mr. Reid, Mr. Clayton and Mr. Pairceir, and in that, if you turn to the back of that and the typed note is probably easier; the second-last page of tab 13.

And "the philosophy" the last paragraph on that page "the philosophy of CGT tax gain on change of ownership, if no change of ownership, no tax question here. Was there a change of ownership? If not, the Revenue as seen to" somewhat unreadable word "unjustifiably trying to create

a charge to tax," presumably. Does that accord with your recollection of what was discussed at that meeting, or one of the issues discussed at that meeting?

A. I have no recollection of that meeting. Clearly I was there, but as I say, again, as I explained, Chairman, I am not I had no involvement in Capital Gains Tax matters other than through the preparation of the valuation.

Q. The Revenue Charter that you have referred to dictates that apart from the Revenue being reasonable, reasonable to both the taxpayer and the general public, no doubt, it's also got an obligation not to seek to raise assessments in respect of taxes which, in the view of the Revenue, are not chargeable; isn't that right?

A. It does. I don't have it in front of me, but certainly that's a very good operating principle.

Q. And similarly, not to seek to recover or to raise assessments in amounts more than the Revenue believe is reliably or realistically liable to tax?

A. This is also a very good operating principle.

Q. Now, on that in this document, the second page, or the last page, towards the end of that document, you have reference to the attitude of the Trustees.

A. Mm-hmm.

Q. And you say: "They" the Trustees, in other words "will argue that"?

"I" I think that should be "no disposal" rather than "to disposal.

"No disposal except 3 by 33 preference."

In other words, you'd recollect that there was an appointment of the preference shares to individual members of the Dunne family; you recollect that?

A. I do, I recollect that.

Q. And there was no tax issues in relation to that; tax was payable in respect of that obvious appointment; isn't that right?

A. I don't know. I wasn't au fait with Capital Gains Tax, with the transactions on the Capital Gains Tax side.

Q. "And if defeated, disposal of" I think it should be "ordinary shares" "on their own, and 2, therefore very large discounting to be applied."

So what was being recognised in within the Revenue was that whatever discounting you may have thought would be appropriate, you were likely to be faced with a greater or a case for a greater discount on the part of the Trustees?

A. Certainly the interpretation you are making here is reasonable. As I say, these weren't matters that concerned me immediately. I think you know, the note is written by somebody else, so what you

Q. It's a note of a meeting at which you attended, and I appreciate it's nearly 20 years ago.

A. Mm-hmm.

Q. You may not have a recollection. But you were involved in the valuation, and the valuation involved not only the open market value of the entity, but also the actual value of

the particular asset in the hands of the Trustees, and in that regard an issue in relation to discount, the appropriate level of discount?

A. I am trying to piece things together now retrospectively, but I think what would have happened and I think I mentioned this earlier, Chairman, in my evidence, in my questioning from Ms. O'Brien is that as the momentum increased on this exercise, the valuation issues which Mr. Reid and myself became primarily concerned with were those that related to the DTT charge, and that the in a sense, on the Capital Gains Tax side of the organisation of the Revenue, they were also, at this stage, very au fait with valuation issues, with the valuation issues connected with this case. The question of discounts that would have been appropriate would, I suspect and I am talking here now about recollections based over a long period of time would, I suspect, have been a matter for judgement and advice on that side of the house.

Q. But it was something, the issue of discounts was something which you had dealt with in your earlier position papers?

A. At the earlier stages, correct.

Q. And the starting point, in any event, was the open market value of the particular asset without any discount; isn't that right?

A. That is the if we go back

Q. That is the approach that you have adopted in the position papers?

A. Yes.

Q. And then, depending on the type of tax, you apply an appropriate discount?

A. Correct.

Q. So any valuation that's reached in respect of Discretionary Trust Tax is going to have an impact also on Capital Gains Tax?

A. It's going to be very material, certainly.

Q. Now, can I bring you forward to the hearing of the appeal against the assessment to Discretionary Trust Tax.

A. Certainly.

Q. And I think that's Tab 25. Do you have that?

A. Yes.

Q. And you have told the Tribunal that again, we are going back many, many years that your recollection, as I understand your evidence, is that the senior counsel for the Revenue and the senior counsel for the Trustees had discussions which lasted an hour or so, or at least an hour?

A. I did.

Q. Whatever, for some length of time, in any event?

A. Yes.

Q. Presumably the senior counsel on behalf of the Revenue must have been given some guidelines by the Revenue as to what they hoped to achieve at the end of the day?

A. He would indeed. And the way he would have been given that, I think, was through meetings. We did have a

briefing meeting beforehand at least one, if not two; there may have been more than one with the senior counsel involved, and indeed with the legal team. The senior the same senior counsel was also consulted, I think, in relation to issues which were arising in the context of the preparation of the briefing paper. And his advice was sought, but I do recall at one briefing meeting of senior counsel that he was very au fait with the contents of our paper, and asked us a number of specific questions.

Q. And I think you have said, and indeed you said he complimented your team on the amount of work that had been put into this paper.

Now, if you turn to Tab 24, turn back just one tab, there is what appears to be, or what's described as a final version of edited paper for I'm not quite sure what it says. It's dated March of 1987. And the extracts that we have been given show, at page 31, a Discretionary Trust Tax of 100 million. And can we take it that that's likely to have been the figure that your senior, or the Revenue's senior counsel, was told, "Look, this is the valuation figure that we're pushing for"?

A. Whether he we would have spoken to him in those terms or not, I don't know. I think he would have known our position from reading the paper and discussing it with us.

Q. And presumably during the course of his discussions with his opposite number, with Mr. Maguire, senior counsel, he would have from time to time reverted to you for



clarification of issues or for further instructions?

A. I'm sure he did. I have no precise memory of that.

Q. And while you have said that you, and indeed made clear to Mr. Fennelly, that you did not have any authority to conclude a deal without going back to the Chairman of the Revenue Commissioners, presumably you would have had some guidelines as to where you could go?

A. I didn't have any guidelines. I had to make a judgement call myself when the senior counsel reported to me what the outcome of the discussions was. And I said, "I think I can make a telephone call on that basis." I seem to remember saying something to that effect to him, and certainly I did I must have considered that I was in a position to make a telephone call.

Q. Can we take it that if the negotiations followed the normal type of negotiations that go on between parties, that the Revenue would have started higher than 82 and the Trustees would have started lower than 82?

A. My recollection was that we were not was that the Revenue team, I mean the Revenue officials, were not involved in the head-to-head discussions. The head-to-head discussions took place

Q. I appreciate that. But can we take it that it went somewhat along the lines that Mr. Fennelly comes back to you and says the Trustees are prepared to agree a valuation for Discretionary Trust Tax purposes of X million in other words, something short of 82 million and you then

go back with again, subject, of course, to the overriding condition that all of this is subject to approval that

A. I can't help I am afraid I can't help you with any recollections on that. I am sorry.

Q. Do you have any recollection of figures being put to you, presumably by Mr. Fennelly, of a figure, a valuation figure which, in your view, was too low?

A. I don't, I am afraid. I don't have I don't have a very good recollection of events on that day. Sorry.

Q. All right. Can we the two counsel ultimately arrive at a figure of 82 million. That presumably was a figure that you were happy to or prepared to recommend to Mr. Pairceir?

A. Certainly it was a figure, Chairman, that I was prepared to convey to Mr. Pairceir. And I remember being I think I said in my statement, and I think I remember being reasonably content, or I can't remember what the phrase I used was; I thought the outcome was reasonable.

Q. And indeed, as you have fairly said, the valuation of companies, in particular companies such as this company, is not an exact science?

A. And there was also the fact which I think, again, Chairman, in my evidence to Ms. O'Brien, I explained that if Revenue if a case went to appeal, and if the outcome was unsatisfactory from a valuation point of view for Revenue, Revenue could be quite constrained in taking it a further

stage because of the structure of the legislation. Revenue was not able to appeal on grounds, as far as I can recall, on issues of fact, or was constrained by the legislation from doing so.

Q. And this valuation of 82 million was clearly going to have an impact on valuation for Capital Gains Tax purposes; isn't that right? I appreciate the settlement is all without prejudice to any liability to Capital Gains Tax.

A. That issue did not arise in the discussions.

Q. I fully accept that. But as emerges from the subsequent documentation in the booklet prepared by the Tribunal, it's quite clear that this 82 million valuation had a significant relevance from the point of view of a Capital Gains Tax?

A. Again, I can't help you on that, because I was not involved in the preparation of the assessment for Capital Gains Tax.

Q. Well, as a matter of common sense, it is a valuation of a figure that must have a relevance to CGT; isn't that right?

A. To the extent that it was accepted by both sides, it obviously is an important benchmark in the process.

Q. And undoubtedly, as I pointed out, the settlement here says that all of the above, i.e. the issues in relation to the Discretionary Trust Tax, are without prejudice to any liability for Capital Gains Tax. That's the very last page of the settlement, Divide Number 25.

A. Indeed, it does, it says that, yes.

Q. But I think you'd accept that it would be difficult from

the Revenue's point of view, acting in accordance with the Charter, acting reasonably, to suggest a valuation far removed from the 82 million in the context of Capital Gains Tax?

A. I am sorry, Chairman, I am at a loss in relation to this. And perhaps maybe I could have some guidance. I am being asked to offer an opinion in relation to a matter which I was not involved with operationally.

CHAIRMAN: I have your point pretty clearly.

And it perhaps can be taken up with other witnesses, Mr. O'Neill. It seems to me it obviously carries some force.

Q. MR. O'NEILL: Now, can I ask you to turn to Divide Number 30B, or 30A. It's the end of Tab 30.

A. 30B?

Q. 30B. Well, 30A.

Sorry, if you go to Tab 30 and go to the final page of that, please. Do you have that?

A. I do indeed.

Q. That's a typed version of the handwritten document. If you go back the previous page of that, which is the manuscript version.

Can you say who prepared that note? Did you prepare that note?

A. I didn't, no. I think this note I think I have been through this with Ms. O'Brien.

Q. You have, but I don't think we identified the author of

this note; or if we did, I missed it.

A. I think, but obviously he can confirm this or otherwise, I think the author of the note may be Mr. O'Cathain.

Q. And staying with the manuscript note, and the second conversation which appears to have taken place between Mr. O'Cathain, if he is the author, and Mr. Reid, it says "D" it seems to be "Thill", which we think is a reference to you?

A. It would seem to be the case.

Q. "Wants a note on the dividends to Trustees position."

And that would seem to be consistent with the request or the discussion, and I'll come back to this in due course, the discussion that you had with Mr. Bowen in relation to the tax on income tax on distributions.

A. I have tried to piece that together in my examination with Ms. O'Brien, and this note I think should be read in the context I have been looking at so many notes now this afternoon, I am afraid that my memory is flagging. But there was a note in which Mr. Reid makes a reference to preparing a note for Mr. Pairceir by way of preparation for a meeting with Mr. Dunne, and in the context of that note, the Capital Taxes Branch would have been doing you know, what officials would do in a situation like this. They would have been asking another division for material, in relation to an issue which was arising in that division, for the purpose of briefing the Chairman.

Q. I am simply putting this in context, that the name there,

which we think is probably you, I'm just trying to establish that it is more than likely you, because you would have, at that stage, been interested in obtaining a note on dividends to Trustees in the context of the inquiry made by Mr. Bowen?

A. I would have been interested in obtaining that information for the purposes of briefing the Chairman.

Q. Or, indeed, for the purpose of getting back to Mr. Bowen?

A. But I would not have seen myself as the person to deal with Mr. Bowen in relation to that issue.

Q. Even though the approach had been made to you on the

16th

A. It was reasonable for Mr. Bowen to deal with to mention that matter with me, to me on that date, because I was the senior Revenue person present. But I was not the functionally responsible I was not head of the functionally responsible division of Revenue.

CHAIRMAN: I wonder, Mr. O'Neill, if you have a while to go yet, and perhaps

MR. O'NEILL: I have.

CHAIRMAN: I think it's probably a little unfair on Dr. Thornhill. I'm sorry we haven't managed to finish your evidence today, Dr. Thornhill. We certainly will tomorrow.

A. I am afraid I have explained to the Tribunal legal team that I have an important international engagement involving government of another country tomorrow; I have to leave the country tomorrow. I am happy to continue to give I am

in the hands of the Tribunal, but I am happy to continue to try to assist you.

CHAIRMAN: I think we might go a maximum of another 15 minutes, Mr. O'Neill; and if things haven't finalised then, we may just have to consider taking it piecemeal at a latter stage.

MR. O'NEILL: So be it, sir.

Q. Now, if you can look at that note that I'm referring you to, and perhaps if you turn over the page and refer to the typed version of the note; it's easier to read.

The very last sentence on that page, the very last paragraph is the statement: "Based on the 82 million value in 1984, our claim for CGT would now be  $\frac{1}{2}$ 23.6 million", and the words "as over" appear, but I'm not sure that doesn't seem to make sense; I am not sure if you look at the original, the last two words may not be of any particular significance. But the significance is that the Revenue, at this stage, are stating that on the basis of the  $\frac{1}{2}$ 82 million value, the CGT tax bill, if CGT is payable, is 23.6 million; isn't that right?

A. Sorry, again, Mr. O'Neill, this is a note prepared by Mr. O'Cathain, who did not report to me at any stage, and I was not materially involved in the CGT assessment issue.

Q. All right. If you take that at its face value, and that is Mr. O'Cathain's view, and perhaps Mr. Reid's view, or one or other of them; if that is so, does it not suggest to you that maintaining an assessment for 38.8 million was not in

accordance with the Revenue's charter?

A. I am afraid, Mr. O'Neill, this is an observation which is being made by Mr. O'Cathain on a matter which I was not functionally responsible for. This may have been a file note; I don't know what it is. I cannot really comment on an operation on the process of a valuation which went on in another division of the Revenue in relation to a matter which they were responsible for.

Q. If you would just take it with the qualifications that this assessment by Mr. O'Cathain is correct and I appreciate you can not automatically accept that, because it's in another division; but if it is correct, does it not suggest to you that the Revenue should have reassessed raised a fresh assessment?

A. I am sorry, Mr. O'Neill, I don't understand the context of this.

Q. If the Revenue are of the view, and I know it's an "if", and if the evidence establishes that the Revenue were of the view that the liability to CGT, if there was a liability, was in an amount of 23.6 million, I am asking you, if that was a Revenue view, in your opinion, and having regard to the Revenue charter, was it proper for the Revenue to maintain their claim to tax of 38.8 million?

A. Sorry, Chairman, I am afraid I can't I cannot I don't feel comfortable, in a sense, in it's not that I don't feel comfortable; I don't think it's appropriate for me to answer that question. Just on a point of detail. I don't



think the Revenue Charter was in place at that time. But, however, that was a point of detail. But here is a file note made by an officer dealing with tax for which I was not functionally responsible, for which in respect of which I had minimal knowledge and certainly no advice, and to ask me to comment now on that statement is I think something that's certainly from my perspective, I'm not sure how helpful I can be to the Tribunal in making that comment.

Q. Dr. Thornhill, I'm not asking you to comment on the statement. I am asking you to express a view. If the evidence establishes that the view of the Revenue that the Capital Gains branch of the Revenue was that the tax assessable was 23.6 million, do you consider, if the Revenue Charter wasn't in place then, do you consider that it was reasonable for the Revenue to maintain a bill for 38.8 million?

A. Maybe I can help you, then, just in terms of offering an opinion; I don't know whether this is helpful to the Tribunal or not. If the office if the senior officer responsible in a situation like this was aware of information, and aware of circumstances which would lead to a lower valuation, and proceeded then with a higher valuation, well, then, that would not, on the face of it but I'm talking about completely hypothetical situation; I don't want to talk about the circumstances of this case in other words, going back to your point, if a Revenue

officer issues a valuation which she or he or, sorry, an assessment which she or he knows is likely to be significantly higher than the actual liability to tax, well, I don't think that's very good practice. But that's not I am not commenting, and I want my I am not commenting on what's taking place here.

Q. I fully appreciate that.

Can I put it again, it's a hypothetical situation. If such a situation had arisen within your Department, matters under your control, presumably if a situation such as that had arisen, you would have raised a fresh assessment?

A. I think the case here, until recently now we have been dealing largely with facts and with recollection. It was certainly our concern in the case of the DTT tax to make sure that the assessment was one which was reasonable.

CHAIRMAN: I think I'll have to take a view on it, if anything happens, Mr. O'Neill. I don't think there is any value to be gained. You can take it

MR. O'NEILL: I'm going to move from it in any event, sir.

Q. If you turn to Tab 31, can you and you may not be available to assist in this can you say first, did you prepare this document?

A. I don't know who prepared this document.

Q. It's not a document prepared by you, or do you know that?

A. Certainly the piece

Q. It deals with Capital Gains Tax?

A. Section 4, we are talking about Tab 31

Q. Tab 31, the contents.

A. Item 4 is certainly it deals with Capital Acquisitions Tax, I think; I don't think it deals with Capital Gains Tax. The Tab 4 was certainly prepared by Mr. Reid. And I suspect he would have prepared the paper in full, or it would have been prepared, perhaps, on a collegial team basis within the branch.

Q. I am told by the Tribunal in fact it was prepared by Mr. Reid.

Now I want to turn to a different issue, and that is the issue in relation to the interest on the Discretionary Trust Tax. And this is a matter upon which you have given evidence: the interest from the date of the settlement of the 16th March of 1987 up to the date of actual payment on the 25th May of 1987.

Can I first ask you to turn back to the settlement document itself, 16th March, Tab 25.

A. Yes.

Q. And under the heading "Bernard Dunne agreed valuation, 100% i.e. 1/282 million.

Value 50% inheritance 41 million.

Interest payable from" two dates mentioned; we don't need to go into them.

"In addition to the 3% Discretionary Trust Tax".

So there is tax and interest.

And it provides that "Both payments, i.e. the tax and interest, have to be paid within 21 days". Isn't that

right? That's what the "both" refers to, presumably.

A. Yes.

Q. And then "In the event of nonpayment within 21 days, interest to run". And then it deals with the annual tax, the 1% tax, 1% payable on 41 million. And underneath that, interest payable on this from particular dates.

And again, the next paragraph: "Both payments to be made within 21 days." Isn't that right?

A. That's correct.

Q. And again, what you are referring to there or, sorry, what is referred to there is both the 1% tax and the interest?

A. Correct.

Q. And then underneath that: "Further 1% discretionary tax payable for 1987 on same valuation of 41 million 50% shares."

Just to digress slightly, what was agreed as part of that settlement was the valuation for Discretionary Trust Tax purposes of 82 million inured for 1984, 1985, 1986 and 1987; isn't that right?

A. In respect of the 1% charge?

Q. In respect, no, the value of the trust.

A. Yes, so there is a tax charge of 3% in respect of 1984 and then the 1% charge thereafter, yes.

Q. 1%. And you'll see that the last line under "Bernard Dunne", the last paragraph: "Further 1 percent discretionary tax payable for 1987 on same valuation of 41 million."

So in other words, it went on to 1987, and of course spanned, in that regard, also the valuation date for Capital Gains Tax of March of 1985. And I know we weren't dealing with Capital Gains Tax.

A. I am conscious of that, yeah.

Q. Now, that further 1% Discretionary Trust Tax was not in fact payable until the 5th July of 1987; isn't that right?

It was payable sorry, it was payable on the 5th April of 1987?

A. Mm-hmm.

Q. But there was three months allowed to pay that without any interest being payable?

A. That's my recollection.

Q. Well, there was an obligation, but there was no penalty for not paying that tax before the 5th July of 1987?

A. I'll have to rely now on my imperfect memory, but I think, yes, if the tax was paid within three months of the valuation date, then the interest clock didn't run; but I think, if the tax was paid later, then I think the interest reverted back to the valuation date.

Q. And if we then turn to the and we have a similar situation in relation to Norah Dunne. Again, the payments of the liability in respect of the Discretionary Trust Tax and interest for the periods mentioned.

1% Discretionary Trust Tax payable for the year 1986 exempt, only one payment. And then finally, 1987, to make statutory return and payable in April '87 on a valuation of

41 million. And again, one had three months within which to pay that without penalty of interest.

If we can turn to the letter from the from Mr. Reid to Mr. Bowen on the 20th March of 1987, which he sets out the figures calculated by him in accordance with the terms of the settlement.

A. Which tab is this, Mr. O'Neill?

Q. Tab 27.

A. Yes.

Q. And what you see there in relation to Bernard Dunne is the 3% once-off Discretionary Trust Tax at A, B. The annual tax at 1 percent for 1986, 5 April 1986. And then the tax for the year 5 April 1987 at 410,000. And a similar exercise is done in relation to Norah Dunne.

A. Mm-hmm.

Q. Once-off Discretionary Trust Tax, and then at B, the tax becoming due on the 5th April 1987. And then Mr. Reid says: "The total now due in respect of 1(A) and (B) and 2(A) is 2.744 million, roughly, and those are the monies that are immediately due, and that 2.7 includes interest, as you will see, of 123,000 in respect of 1(A), 51 in respect of 1(B), and 199, nearly 200,000, in respect of 2(A). A total of 374, roughly.

And then the final paragraph, the total due in respect of 1C and 2B is 820,000. And that sum, that 820,000, is not is payable on the 5th April, but it's payable without penalty up until the 5th July of 1987. We can see, and

your attention has been drawn to the fact that the Revenue, Mr. Reid, seemed to be contacting Mr. Bowen on a daily basis once the 21 days expired. In the week following, he was phoning practically on a daily basis. At that stage, is it fair to say that the financial position of the company of the country was not as perhaps as secure as it is today?

A. Certainly. If one looks at the public finances, they were in a state of imbalance. But I think Mr. Reid was motivated, and indeed I would have been motivated in that instance by case management considerations. In other words, once the significant liability was due, one would be assiduous in pursuing that.

Q. And apart from case management, the object of the exercise as well being to fund the Exchequer?

A. Of course.

Q. And the sooner and quicker money could be got in for the Exchequer, the better for the balance of payments?

A. Certainly better for the Exchequer.

Q. Now, the payment that was made on the 25th May in fact included what was paid on the 25th May was  $\text{£}3,564,000$ .

A. Sorry, can you guide me to the tab?

Q. Tab 38.

A. Yes.

Q. Which is the total of, as one would expect, of the tax identified in the letter of the 20th March, less  $\text{£}125$ .

It's the 2,744,125 plus the 820,000. And that payment

involved, in a sense, a prepayment of the £820,000, and in that regard a saving to the Revenue, or a benefit to the Revenue, I should say, in that the Revenue are getting that £820,000 today rather than in July; isn't that right?

A. I am not sufficiently familiar now at this point with the actual collection provisions, but what you are saying is plausible. But subject to that caveat, I would agree with you, but I'd like to reflect on that.

Q. And let us assume or proceed on the hypothesis, just for the moment, and you can correct it if it's wrong, obviously that that is a correct pronouncement of the law. In those circumstances, that is a benefit to the Revenue of which, when you were giving your evidence earlier today, you were not aware; isn't that right? It's not something that occurred to you?

A. Put in those terms, I agree with you, yes.

Q. And clearly that is a factor to be taken into account or appropriately to be taken into account by whoever may be making a decision in respect of the attitude of the Revenue towards interest; isn't that right?

A. That's reasonable.

Q. And you have told the Tribunal of your personal view in respect of the collection of interest, which I think, quite fairly, you say doesn't necessarily accord with the view of the majority of people in the Revenue at that time, and doesn't seem to, or it seems to be more stringent, if I put it that way, than the practice of the Revenue as



identified in the report of the Taxation Commission?

A. My opening position certainly was, to use your words, stringent; but I was sufficiently experienced to know that the circumstances of each case can be different, and that in the interests of settlement, the Revenue had limited freedom in relation to abatement of interest.

Q. And clearly, and I don't think anyone questions it, that Mr. Pairceir had the authority to waive that interest; isn't that right?

A. He certainly had authority, yes.

Q. And as is identified in the extract from the Commission of Taxation Report it's behind your statement; interest is reported I'll just read one of the paragraphs, the Revenue's response to the Commission of Taxation: "Very many payments are paid late, but not so late as to become involved in the enforcement process. There are severe limitations in regard to the enforcement of interest arising on those late payments, as will be evident from the overloading of enforcement agencies which arises in connection with enforcement of tax. In practice, only a very small minority of cases are pursued for interest on late payment. Selection is by reference to the scale of the accumulated interest charges in individual cases."

So a decision by the Chairman of the Revenue Commissioners not to pursue interest in the context of, first, a significant amount of interest already being paid, nearly 400,000. Secondly, a prepayment of tax in the amount of

820,000. In those circumstances, in fact there was nothing unusual in any agreement on the part of the Chairman of the Revenue Commissioners not to seek the payment of that small interest in the overall context.

A. Not unusual, perhaps, I don't know, but certainly not unreasonable.

Q. Now, can I ask you to turn or can I turn your attention to the issue which we touched on briefly, and that was a discussion you had with Mr. Bowen in relation to interest, or income tax on distributions; in other words, the monies that were paid by Dunnes Stores to the Trustees to enable them to pay the Discretionary Trust Tax.

If one looks at Tabs 26 and 28, which I think are the relevant it's Tab 28 yes, it is 26 and 28. Tab 28 is your note. If you look at Tab 26 and the note of the phone call on the 20th March of 1987, and the second part of that, the reference to "Assuming that dividends are paid, there should be no surcharge on the trust. If all are paid out in capital taxes, advanced corporation tax would have to be paid by the company paying the trust, but it has no other income."

Surcharge was a tax on income of a trust which was not distributed; isn't that right?

A. I'm not familiar with the tax code in that area.

Q. It seems from this note that in fact what Mr. O'Cathain was talking about was surcharge tax, and not really wondering how this was going to arise in the context of the trust,

because the only interest the trust had was income sufficient to pay the Discretionary Trust Tax.

A. Whether technically and this is a question I can't answer whether income used to pay Discretionary Trust Tax would be regarded as undistributed, I don't know, but that's a technical that's a matter of law, I presume.

Q. But what Mr. O'Cathain seems to be saying there is that provided all the income that comes into the trust is paid out in paying the Discretionary Trust Tax, surcharge tax does not arise; isn't that right?

A. That seems to be what he is saying. As I say, I am not in a position to make an informed judgement on that.

Q. Is it possible that the Revenue and Mr. Bowen were at cross-purposes? The Revenue thought that Mr. Bowen was referring to surcharge tax, whereas Mr. Bowen was referring to income tax and thought the Revenue were referring to income tax?

A. Well, I wasn't a party involved in these discussions, other than at the initial point of contact, so I think what you say is quite possibly the case. But I am afraid that would be a matter to be pursued with other people.

CHAIRMAN: I think we'll have to wind it up, Mr. O'Neill.

MR. O'NEILL: I am finished now.

Q. Thank you, Dr. Thornhill.

CHAIRMAN: Very good.

Have you much to raise, Mr. Nesbitt?

MR. NESBITT: I'll be very short.

CHAIRMAN: And you, Mr. Connolly?

MR. CONNOLLY: I will be about ten minutes.

CHAIRMAN: Well ten minutes max, we'll try to conclude.

THE WITNESS WAS EXAMINED BY MR. NESBITT AS FOLLOWS:

Q. MR. NESBITT: Dr. Thornhill, I want to bring you back to the settlement that you have been asked to provide, and you have it at Divider 25, typed-up version.

Now, had you been to an Appeal Commissioners hearing before in relation to an issue of valuation?

A. I think I had it was my first time, I think, at a valuation hearing. I had sat in on a previous hearing of the Appeal Commissioners.

Q. So can I take it you would have been quite interested in what was going on and how it worked?

A. I think it's reasonable.

Q. And I understand from your evidence to my colleagues that you take the view that there had been a very substantial amount of workup done to get to where the Revenue believed was an appropriate position, and the issue was what they thought was the appropriate valuation of the company and all would flow from that. And as I understand it, you are saying that having brought in counsel to represent the Revenue, they'd been briefed, and you had formed the view that the counsel was well briefed on where the Revenue thought the valuation was.

Am I right in thinking that you accept that valuation of a company is not an exact science; there will always be

different views and arguments?

A. Absolutely. I think if one were to take another view, it would be have pretty difficult position to defend, yes.

Because it is in a sense, one is trying to contrive the situation here of investors investing in the marketplace, and investors do not have perfect foresight.

Q. Indeed. Last night there was a thing on the Channel Tunnel, which was probably a bad example of how it can go wrong.

But getting back to this case, so when you went to this Tribunal, you knew that the Trustees would be probably somewhere else in relation to valuation, and you anticipated either the hearing going ahead and the Appeal Commissioners working that out, or possibly settlement. As you were going into the hearing, did you think there would be discussions, and settlement might be possible?

A. We had no indication of that from the Trustees' side, to the best of my knowledge.

Q. Very good. So they were feeling quite strongly about where they were in relation to valuation?

A. We had had no communication with them other than the routine ones, of where we had supplied them with our paper, or the form other formal communication.

Q. When you got there, discussions did start up?

A. Mm-hmm.

Q. This took some time. There was coming and going before you felt it appropriate to ring anybody?

A. I can't recall the I can't recall the details here, but I do what I do know is that business was concluded by lunchtime.

Q. Indeed. And all right, let's put the detail to one side. But eventually Mr. Fennelly came to you and said he had reached a figure he was prepared to recommend to the Revenue?

A. Mm-hmm.

Q. And as I understand it, you felt that that was a reasonable outcome, and you were prepared to go to somebody to ask for authority to settle at that?

A. Or certainly to report that stage.

Q. Report that stage. And were there other people from the Revenue Commissioners with you who would have had views and experience in relation to the valuation issue?

A. Mr. Reid was with me, and there was another officer whose name escapes me just momentarily but who was also involved in also worked in the valuation section.

Q. And can we assume that they all would have had the same view as you: "This is a figure we can ring up and inquire about"?

A. I think that's a reasonable assumption.

Q. And I must suggest that's a pretty normal type of situation for an appeal about the valuation of a company that might settle?

A. I can't disagree with you.

Q. Now, did you ever feel ever that somebody attempted to

interfere in you doing your duty as a Revenue officer?

A. Not at all, not at all.

Q. And have you ever had any doubts that the figure that you were prepared to consider reasonable was other than reasonable?

A. It was certainly at the lower it was lower than the figure which was in our paper, but there would have been a number of practical considerations here. Early closure, rather than lengthy further proceedings, was obviously in the Revenue interest, both in terms of not just getting the money in early, but also in terms of the opportunity cost to the Revenue. This was a very demanding case in terms of time.

There was also the issue that if we had had there was the uncertainty about the outcome at the Appeal

Commissioners, and if, for example, the outcome was less favourable than the 82 million, and unless there was some issue of law arose, the Revenue ran the risk of having to accept a lower valuation.

Q. The same pressures that are on everybody trying to do a settlement. The Trustees would have been concerned it could be higher, and you were concerned it could have been lower, or something else might have happened to make it the wrong place to be if you didn't think that that was the right figure

A. I think parties are generally in that position. There is a material difference between the Trustees and the Revenue.

In this instance I think they could have appealed, but I am subject to correction on that, they could have appealed the valuation.

Q. The most remarkable thing about this settlement was that it was unremarkable in terms of what one might have expected to happen on the day, with two parties trying to reach a figure for the value of a company?

A. That's a very eloquent way of saying it, yes.

Q. Well, do you agree?

A. I do.

Q. Now you mentioned another thing, and that was that Mrs. Heffernan, for whom I am acting, attended at a meeting that you were present, which she was seeking to be informed as to how trust tax was working in relation to the trusts that everybody knew that existed.

A. That's right. That was so many many years I won't say "many" that was some years later.

Q. That was in the 1990s.

A. In the 1990s.

Q. I assume that was an unremarkable meeting; you explained how it worked, and she listened?

A. There was absolutely no negotiation took place or no exchange of substantive positions at that meeting.

Q. So, again, the normal course of things in people attending to their tax affairs and the Revenue doing the right thing?

A. It was a workman-like meeting.

Q. The final thing I want to ask is this: I was just



listening to you say what the Revenue is striving to do in relation to recovering tax. I mean, tax is an entire creature of statute. If the law doesn't say you can tax it, you can't. And as I understand, the Revenue are very clear about that. They won't look to get tax off people that the law doesn't say they should take; it's as simple as that?

A. It's an organisation whose status and actions are based on law.

Q. So you are ready to listen to the taxpayer's point of view, but you also defend where you think the right place is?

A. Yes, indeed.

Q. Where you felt in any of your dealings with the tax due, Discretionary Trust Tax, "Forget about Capital Gains Tax; we'll ask them to look after themselves", but as far as you are concerned, with Discretionary Trust Tax, have you ever felt that anything untoward occurred in relation to your involvement and the people you worked with?

A. No.

Q. Thank you very much.

THE WITNESS WAS EXAMINED BY MR. CONNOLLY AS FOLLOWS:

Q. MR. CONNOLLY: Just one or two matters, Dr. Thornhill, on behalf of the Revenue Commissioners.

You mentioned earlier in your testimony, when being questioned by Ms. O'Brien, this cross-cutting procedure, as you described it, which was introduced by the then Chairman, Mr. Pairceir.

Could I just set the scene for a moment. Back then, there was very little except formal contact between what I'll call the two sides of the house in the Revenue. On the one side, you had income tax and Capital Gains Tax, which was regarded as another form of income tax; and on other side of the house, you had what was the old Estate Duty section of the Revenue, which now dealt with C.A.T. But apart from formal communications, there wasn't a great deal of communication between both sides?

A. Not a great deal. There was some formal exchange of information. Say, for example, I think the Tax Inspector would have regularly inspected wills and Inland Revenue affidavits with a view to pursuing possible income tax liabilities. But there was certainly very little discussion on what I might call high-level operational issues.

Q. So while it was commendable for Mr. Pairceir to introduce this practice in relation to this set of perceived wealthy taxpayers, it had every reason to be commended across the board for future good housekeeping inside the Revenue?

A. Indeed. And at the risk of abstracting too much and too rapidly, I think the movement within the Revenue now to taxpayer-based method of organisation is in line with that.

Q. Now, there is an expression that's used in some statutes, and "care and management." That is referred to under various Revenue statutes as the vested element of discretion that's given to the Revenue Commissioners,

either to waive or abate tax or interest liabilities. And that's an essential tool in terms of negotiations with a taxpayer who may not be able to pay now, but may be able to do so over a period of time. It's essential that, from Inspector upwards, there is a vested element of discretion; is that correct?

A. That's correct.

Q. And I think, obviously, as the amount gets higher and the level of responsibility becomes more onerous, these decisions have to be made higher up the line, rather than at Inspector level?

A. Well, certainly that was the case. I didn't have operational familiarity with the Inspectorate, but certainly that was the case on the Capital Acquisitions Tax side.

Q. Well, in relation to a sensitive file such as what we'll call generally the Dunnes file, this was a matter that had to be dealt with, if not by the Chairman, certainly someone who would be regularly in touch with the Chairman?

A. Certainly, yes, I agree. The Chairman here was in a position of being the superior officer of the he was the member of the board to whom the Chief Inspectors Office reported.

Q. There was no written protocol in the Revenue as to when interest was to be pursued or not to be pursued; it was a matter of individual judgement on a case by case basis. Is that how it worked?

A. I hadn't seen a written protocol.

Q. I know you have your own views about the pursuit of interest and so on, and you have expressed them earlier to one of my colleagues here. But one of the matters that would have arisen for consideration in the possible pursuit of interest would have been the consideration of other factors, such as the collectability of taxes under other headings that now would come under the focus of one person rather than being dealt with in a narrow focus, if you like, on a tax-per-tax basis?

A. Yes.

Q. So following the cross-cutting protocol, we would now have an overall view being applied by the Revenue generally, whereas this might be something of a saving to the taxpayer under one heading, that would be a quid pro quo on the basis of an accelerated payment or settlement under some other tax heading?

A. Yes, I think that's the logic of the having been in the Revenue when this change was taking place, but that seems what you said is eminently sensible.

MS. O'BRIEN: Sir, there are just two short matters, if possible, if I could raise with Dr. Thornhill on this occasion.

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

Q. MS. O'BRIEN: Just firstly, Dr. Thornhill, you were indicating that you and Mr. Reid and another official from your branch attended at the Appeal Commissioners in March

of 1987. Do you recall who was in attendance on behalf of the Trustees, apart from their counsel and legal representatives?

A. Mr. Bowen certainly was there. I don't recall who else.

Q. Did you know a Mr. Liam Horgan?

A. I didn't, no.

Q. You didn't. Do you recall how many were there of the Trustees?

A. Of the Trustees, I don't know, but there was a substantial number of people there on that side.

Q. And would there have been more than four or five, or are we talking in the region of ten?

A. Oh I think probably somewhere around the four to five range.

Q. Right.

Just one other thing I want to ask you. You referred to the fact that the Revenue furnished the Dunnes Trustees with their position paper on valuation in advance of the hearing before the Appeal Commissioners. Do I take it that that was part of a process of an exchange of papers between the Revenue and the Dunnes Trustees?

A. I think that's reasonable, it's reasonable to assume that.

The Trustees had earlier given the Revenue the basis for their valuation.

Q. What I'm saying is, did they give you a paper setting out their valuation?

A. They had, quite some time previously. They had produced a

short paper supporting the valuation of 33 point odd million.

Q. 33 point odd million. But they did not give you any more formal paper in advance of the hearing before the Appeal Commissioners?

A. Not to my memory.

Q. Okay. Thank you very much.

CHAIRMAN: Thank you very much for staying for that rather marathon session, Dr. Thornhill. It does at least save the trouble of having to bring you back. I am obliged for your assistance today, and you are of course free to take up your commitment tomorrow.

I apologise to Mr. Clayton, whom I recognise from previous sittings here, and to any other witness who may have been inconvenienced, but we'll take up the next witness at 11 o'clock tomorrow morning.

Thank you very much.

THE TRIBUNAL ADJOURNED UNTIL THE FOLLOWING DAY, THURSDAY, 16TH JUNE, 2005 AT 11AM.