

The TRIBUNAL RESUMED ON THE 23RD JUNE, 2005 AS FOLLOWS:

MS. O'BRIEN: Mr. Tadhg O'Connell, please.

TADHG O'CONNELL, HAVING BEEN SWORN, WAS EXAMINED BY

MS. O'BRIEN AS FOLLOWS:

Q. MS. O'BRIEN: Good morning, Mr. O'Connell.

Mr. O'Connell, what I propose doing in relation to your evidence is initially taking through your Memorandum of Intended Evidence that you kindly provided the Tribunal, and asking you to confirm that the contents of your memorandum are correct, and if there are any matters that you wish to clarify in the course of me opening it, please feel free to do so.

What I would then propose doing is dealing with one or two matters arising out of your memorandum, and in the course of doing that, I may want to refer to some of the documents that have been circulated by the Tribunal. Do you have a copy of your memorandum with you?

A. I have a copy, yes.

Q. Very good. Now, you have informed the Tribunal that you were assigned the Bernard and Norah Dunne Trust of the 16 March 1964 case in November 1994 to deal with Capital Gains Tax arising on the appointment by the Trustees of shares in the Dunnes Holding Company to Mr. Bernard Dunne. Prior to the appointment of the shares, Noel Fox, on behalf of the Trustees sought a meeting with the Revenue to discuss the Trustees' liability to Capital Gains Tax and Capital Acquisitions Tax consequent on this transaction. Two

meetings took place, one on the 16th and the other on the 18th November, 1994. You attended both meetings with Michael O'Grady, the then Assistant Secretary in Capital Taxes Branch. Following these meetings, Revenue confirmed agreement the timing of the payment of Capital Gains Tax and also the availability of the Capital Gains Tax as a credit against Capital Acquisitions Tax. Isn't that correct?

A. That's correct.

Q. And I think, in fact, in attendances that the Tribunal has seen of those meetings, but that we don't intend to refer to today, that Anne Sheridan of the Capital Taxes Branch may also have been at one or both of those meetings?

A. She attended the first meeting.

Q. At the first meeting.

You have informed the Tribunal that the Trustees submitted the Trust's tax return for 1994/1995 in January 1996. The return contained the required details relating to the disposal of the shares in Dunnes Holding Company. It also disclosed receipt of a dividend from Dunnes Holding Company. In a covering letter submitted with the return, the tax agents, Oliver Freaney & Co, stated that the dividend was used to discharge the Trustees' liability to discredit any trust tax and claimed: "It was agreed by the Revenue, Mr. Seamus Pairceir, that no additional liability to tax would arise in relation to this dividend."

This agreement, which you have placed in parenthesis, has

also been mentioned by Mr. Fox at one of the meetings which you had referred to in November of 1994; is that correct?

A. That's correct.

Q. That file that was returned by the Trustees in January 1986, that was in relation to Capital Gains Tax; is that right?

A. It was a tax return, which included income tax and Capital Gains Tax, yes.

Q. You informed the Tribunal that from various conversations with Michael O'Grady dealing with these meetings, you formed the view that he accepted that what the agent had said regarding this agreement was correct. On this basis, you wrote to Eileen O'Sullivan of Dublin Tax District on the 13 March 1986 advising her to raise an assessment in respect of Capital Gains Tax, but not to raise an assessment in respect of the dividends shown on the return.

Is that correct?

A. That's correct.

Q. You have informed the Tribunal that speaking to Michael O'Grady about this sometime later, you realised that you had misunderstood something he had said, and that you were incorrect in thinking that he accepted that the claim by the agents was correct. This conversation was probably sometime in late 1996 or early 1997, as you do not appear to have taken up the file again until shortly before the second Capital Gains Tax installment which became due in December of 1996. Isn't that correct?

A. That's correct.

Q. You have informed the Tribunal that having realised that the question of whether an income tax assessment was required was not settled; you sought evidence within Revenue relating to this alleged agreement. You examined the papers in the Office of the Chief Inspector of Taxes; copies of these papers have been supplied to the Tribunal. You contacted Dublin Audit District No. 7 District, the Dublin Audit District dealing with trust to ascertain if that District was aware of or had applied such a treatment to trusts. You recollect contacting Capital Taxes Branch but did not recall whom you spoke to there. No evidence supporting the contention that such an agreement was made emerged from your inquiries. Is that correct?

A. That's correct.

Q. You have informed the Tribunal that following discussions with the then Chief Inspector, Mr. Clayton, and the then Assistant Secretary, Ms. Moore, an income tax assessment for 1994/1995 issued in July 1997. This was appealed on behalf of the Trustees by their agents, Deloitte & Touche; is that correct?

A. That's correct.

Q. You have informed the Tribunal that in the course of correspondence relating to this appeal, the agents modified their position claiming it was John Reid on the then Chairman's behalf, rather than the Chairman, who had given the alleged undertaking regarding further tax liabilities.

I think in fact that was in a letter of January of 1986,

was it?

A. It was in a letter.

Q. It may have been subsequent to that?

A. It's at some stage I haven't got the letter in front of me, but it was in a letter.

Q. We can look at it when we are looking at the documents.

You informed the Tribunal that John Reid worked in Capital Taxes Branch in 1987, but by 1987 had transferred to Direct Taxes Administration Branch. You sent a copy of this correspondence to John Reid for his observations. John Reid replied that he had no recollection of giving such an undertaking. Is that correct?

A. That's correct.

Q. You informed the Tribunal that following discussions with the Chief Inspector and Assistant Secretary, assessments for the other years in question were raised in February of 1988, and that these assessments from also appealed; is that correct?

A. That's correct.

Q. You say that the appeals were heard and determined by the Appeal Commissioners, and there was one hearing before the Circuit Court Judge. At that time you say there were many outstanding issues between Revenue and the Dunnes family, Dunnes companies and the Dunnes Trust. The Trustees indicated that they wished to settle these income tax appeals in the context of settlement of these other

matters. The Trustees made the tax on all but one of the tax assessments. You say that although contact was maintained, the appeals were not subsequently listed for hearing. Is that correct?

A. That's correct.

Q. I take it when you refer there to contact being maintained, do you mean there contact in relation to the appeals that were then pending?

A. On-and-off telephone conversations to know what progress was taking or whether we would go ahead.

Q. And would you have been the person making that contact with the Dunnes Trustees or their agents?

A. Yes, and/or possibly they contacted me, but it was contact with me, yes.

Q. You say that in 2004, all outstanding matters between the Revenue and the Dunnes family, the Dunnes company and the Dunnes Trust were settled, and the outstanding income tax was paid and appeals withdrawn. Is that correct?

A. That's correct.

Q. That completes your memorandum.

A. That's true, yeah.

Q. Now, can I ask you, Mr. O'Connell, in 1994, I think you were with the Chief Inspector's branch of the Revenue; is that correct?

A. That's correct.

Q. And I think we have heard over the last number of days of evidence that the responsibilities of the Chief Inspector's

Office were to oversee the collection of income tax, corporation tax and Capital Gains Tax, and perhaps one or two other matters?

A. That's correct.

Q. And what was your position in 1994?

A. I was my position was in charge of technical services dealing with corporation tax and Capital Gains Tax.

Q. And Capital Gains Tax. So your particular areas were corporation tax and Capital Gains Tax?

A. Correct.

Q. And as of now, are you still involved in that area, or have your responsibilities changed?

A. My responsibilities have changed, but I am still involved in corporation tax mainly.

Q. I noticed, in some of the correspondence that passed between you and the Dunnes Trustees representatives, that you described yourself as being assigned to the Anti-Avoidance Unit. I think that was in later years in perhaps 1996/1997?

A. That's correct.

Q. Can you explain to me, were your duties different at that stage, in 1996/1997?

A. They were. When I was assigned to the Chief Inspector's Office, I had responsibility for Capital Gains Tax, corporation tax, and the Anti-Avoidance Unit; and at some stage in '93 or '94, the Anti-Avoidance Unit was expanded and set up as a separate unit, and eventually I got

transferred to take over the Anti-Avoidance Act.

Q. I see. In relation to your dealings with the Dunnes Trustees regarding both the Capital Gains Tax and the income tax, did that relate to the business of the Anti-Avoidance Unit or to the general business of the Chief Inspector's Office?

A. It more related to the general business. I took the case.

Q. You took the case. You had come into the case in November of 1994, and you remained handling the case?

A. Well I was asked to hold onto it as I had the experience.

Q. Now, in your memorandum, you refer to these meetings that you attended with Mr. Fox and Mr. O'Grady in November of 1994, and I think at that stage Mr. O'Grady was Assistant Secretary in the Capital Taxes Branch; am I right in that?

A. That's correct.

Q. So he would have had overall responsibility in relation to Capital Acquisitions Tax; is that correct?

A. That is correct.

Q. Now, the meetings, I think, which were on the 16th and 18th November, 1994, they were with Mr. Noel Fox; is that right?

A. That's correct.

Q. And I think Mr. Noel Fox was the only person present on behalf of the Trustees; is that right?

A. That is correct, although he did phone, make phone calls during the meetings to check. But he was the only one present.

Q. He was the only one there. And those meetings, I just want

to clear up some misunderstanding that might have arisen because of something that may have been said in the Opening Statement. Those meetings were not for the purposes of discussing income tax; isn't that right?

A. No, they weren't.

Q. Those meetings arose in the course of, I think, settlement negotiations in relation to certain litigation that was then pending involving Mr. Dunne; isn't that right?

A. That is correct.

Q. And the principal purpose of those meetings was to discuss the Capital Gains Tax and Capital Acquisitions Tax consequences of a settlement that was then being proposed?

A. That is correct.

Q. I think, in particular, the matter under discussion was the timing of certain Capital Gains Tax payments that had to be made by the Trustees and the availability of a set-off of those payments against what would have been Mr. Dunne's Capital Acquisitions Tax liability; am I right in that?

A. That's correct.

Q. And of course that right to a set-off, I think, arose under legislation that was passed sometime in the 1980s; is that right?

A. That's not my area of experience, but I understand that is the position.

Q. What I am really trying to establish is there was nothing unusual about the right to set off. It was provided for by legislation?

A. It was under legislation and practice. What Mr. Fox was looking for was normal practice.

Q. It was just a matter of timing?

A. Only a matter of timing, yes.

Q. Now, in your memorandum, you indicated that it's your recollection that in the course of these meetings, Mr. Fox referred to the agreement in relation to income tax that had arisen in the course of the original settlement of the Discretionary Trust Tax issue back in 1987; isn't that correct?

A. That's correct.

Q. Can you recall what Mr. Fox told you on that occasion?

A. To my recollection, he said approximately what was in the letter that eventually arrived at 76, or words to that effect, that he had an agreement that there would be no further income tax on dividends paid down to pay this Discretionary Trust Tax. That's what he said.

Q. So effectively he said much the same to you as he subsequently repeated in his letter of January of 1986?

A. Yes. And no further comment was made on that at the meeting.

Q. Do you recall at the meeting did he mention that it was Mr. Pairceir who had concluded the agreement on the part of the Revenue Commissioners?

A. He said "the Chairman". He didn't mention the Chairman by name.

Q. I see. Well, obviously, because the agreement was

concluded back in 1987, it would have been fairly obvious

who the Chairman was; isn't that so?

A. It is now, but it wouldn't at the time. I wouldn't remember when particular chairmen were their office began and ended.

Q. I see. Can you recall, because I can't quite understand, how it arose that Mr. Fox would have mentioned that agreement in the course of your discussions in November of 1994?

A. It was mentioned. Why he mentioned it, I can't say.

Q. What you were discussing was Capital Gains Tax and Capital Acquisitions Tax; I'm not just clear what the context

A. This was a certain amount of other discussion. He certainly told us a certain amount about, I suppose, what might be termed general discussion on the course of negotiations and how they proceeded, and there were other items that were mentioned which were not actually relevant to the two pieces of business that were to be done.

Q. I see. The Capital Gains Tax liability of the Trustees that you were then discussing, would that have given rise to any income tax liability?

A. No. Not as I thought it was going to be financed, it wouldn't have. And it ended up that it didn't; that the shares

Q. You don't need to tell me how it was going to be financed. Really what I was going to ask you is, is this it was your understanding that it wasn't going to be financed by

way of a payment of a dividend?

A. Yes.

Q. Now, in your memorandum, I think in paragraph 3, you refer to certain conversations that you had with Mr. O'Grady in relation to those meetings, and you indicated in your memorandum that it was in the course of those conversations that you formed the view, correctly or incorrectly, that Mr. O'Grady accepted what Mr. Fox was saying in relation to this agreement; and I am just wondering, can you remember, were these conversations that you had with Mr. O'Grady around the time of the meetings, or at some later time?

A. Around the time of the meetings. I met Mr. O'Grady before each meeting, and I talked to him after each meeting.

Q. Right. So

A. It was during those discussions that, as I say, I formed this opinion incorrectly, as it turned out.

Q. So you and Mr. O'Grady must have been commenting on what Mr. Fox was saying to you about the agreement in the course of those meetings; isn't that right?

A. That's correct.

Q. And can you remember the gist of those conversations in relation to what Mr. Fox was saying regarding this agreement?

A. Unfortunately, I can't. It's a long time ago now. I just I came away from the meetings just convinced that this agreement had been accepted. Exactly why or how or what was said, at this remove, I cannot recall.

Q. And you think those conversations were in November of 1994?

A. Oh, they were at or about the time of those meetings.

Q. Do you recall whether Mr. O'Grady might have expressed some surprise that there might have been these kinds of agreements concluded?

A. I think so, yes. That was my impression as well, yes.

Q. That you were both expressing surprise?

A. Yeah. And I'm not sure well, as I say, that's my this is just a memory after a long time, that there was a certain amount of surprise, yes.

Q. And nonetheless, it was your impression that despite the surprise on both your parts, that Mr. O'Grady was accepting what Mr. Fox was saying about the agreements?

A. That's what I went away thinking.

Q. Can I refer you now just to some of the documents, if you wouldn't mind. Do you have a copy of the red document book with you in the witness box? If not, I can arrange to have one handed up to you.

A. I don't have one.

(Document handed to witness.)

Q. Can I ask you, just to start with, to turn to Tab 78 in that book, Mr. O'Connell. Do you have that there? That's a letter from Oliver Freaneys, actually addressed to Mr. O'Grady, dated 22nd January, 1996, and it's re Dunnes holding.

"Dear sir,

"You will recall that in November 1994, Trustees in respect

of the ordinary shares in Dunnes Holding Company appointed shares to Mr. Bernard Dunne Junior.

"We attach:

"A) completed and signed form 1.

"B) computation and C.G.T. liability.

"We have computed the Capital Gains Tax liability at (blank)an amount of (blank) was furnished to you in November of 1994, and in accordance with our agreement, a further sum of (blank), being the balance of the C.G.T. liability, will fall to you for payment in January 1997.

"To maintain the integrity of the Form 1, we have included an amount of $\text{€}2,200,000$, being the dividend paid by the Dunnes Holding Company to the Trustees in June 1994 to enable the Trustees to discharge their liability for Discretionary Trust Tax. As part of the first settlement of the Discretionary Trust Tax in 1988, it was agreed by the Revenue (Mr. Seamus Pairceir) that no additional liability to tax would arise in relation to this dividend.

"We look forward to your agreement to our computation.

"Yours faithfully,

"Noel Fox."

And with that was a copy of the return. And if I just briefly refer you to the second page I don't intend to spend very long on it, but you'll see at the very bottom of the second page, under the heading "Distributions of Companies Resident in the State" the figure of $\text{€}2,200,000$ was inserted in hand. In fact I think the far right of the

document on the screen has been obscured, but I think the figure there was $\frac{1}{2}$ 2,200,000, and that was what was received well, by letter of the 22nd January, it looks as if the notation below the date is that of Mr. O'Grady, and it seems to record that it was received on the 30th January; is that correct?

A. That's correct, yeah.

Q. Now, Mr. O'Grady, in his memorandum, says that he is not certain why Mr. Fox sent this return to him, because he had no responsibility for the Capital Gains Tax element of this transaction, and that he simply transmitted this letter directly to you. And that's what he says in his memorandum.

A. As far as I recollect, that is the correct position.

Q. Do you recall whether you and Mr. O'Grady had any discussions or conversations at this stage in relation to the contents of the letter?

A. I don't recollect any conversations at that stage.

Q. Right. There is a handwritten note on the bottom right-hand side of the letter, the 22nd January; is that your writing, Mr. O'Connell?

A. That's my writing, yes.

Q. And I think you record: "I rang Mr. Fox of O.F. & Co and advised him that we had agreed due date

A. The "we" is crossed out; it's "The agreed due date"

Q. "The agreed due date was December 1996. He accepted this."
This was in relation to the Capital Gains Tax?

A. Yes, the Capital Gains Tax.

Q. Now, in the course of that conversation with Mr. Fox, do you recall whether you made any reference to what was stated in this letter?

A. No. That was the only matter I dealt with in that conversation.

Q. As far as you were concerned, you had already discussed this with Mr. O'Grady back in the previous November of 1994, and that it appeared that it was being accepted that that was this agreement?

A. That's correct.

Q. Now, I should, at this stage, bring to your attention, Mr. O'Connell, what Mr. O'Grady has told the Tribunal in relation to this; and if I can just refer you to a copy of his Memorandum of Intended Evidence, just to enable you to comment on it, if you wish to. I'll just get you the divider number. It's at Divider 14; it's the last memorandum in the Tribunal Book of Memoranda.

You see it there? It's headed "Narrative of Mr. Michael O'Grady on matters relating to income tax assessments raised on the Trustees of Bernard and Norah Dunne Trust arising from dividends paid to the Trustees which were used to discharge the Trustees Discretionary Trust Tax liability."

And if I can just refer you to directly to paragraph 6, which is at the top of the second page: "Conversations with Mr. O'Connell on alleged income tax agreement".

He says: "I have no idea how or why Mr. O'Connell came to the view from talking to me that Revenue had agreed that no further income tax liability arose in respect of distributions made for the purposes of meeting liability to Discretionary Trust Tax. I had no direct or indirect knowledge of or any involvement in the matters relating to the alleged agreement referred to in the penultimate paragraph of the letter of the 22nd January, 1996, from Mr. Fox to me. I was not in a position to confirm or otherwise anything about this alleged agreement. Whatever conversations I had with Mr. O'Connell about this issue, I am absolutely certain that I did not confirm or indicate that Revenue had agreed that no further Trustees income tax liability arose on the dividends used to pay" I think that should be "Discretionary Trust Tax."

So it looks from that that, while Mr. O'Grady I think accepts that he did have conversations with you, he is not clear how or why you would have formed the view that he accepted the agreement that Mr. Fox had contended for in the meetings in November of 1994 and again in the letter of the 22nd January, 1996. Do you think that there could have been some confusion or misunderstanding between the two of you regarding this, Mr. O'Connell?

A. I discussed this matter with Mr. O'Grady later, late 1996/97. And I fully accept I was wrong; I had a misunderstanding. I fully accept that now.

Q. Is it possible, in fairness to yourself, Mr. O'Connell, is

it possible that because at that time Mr. O'Grady was Assistant Secretary on the Capital Taxes side, and that because these negotiations had apparently taken place in the course of the settlement of the Discretionary Trust Tax liability, that perhaps, if he didn't necessarily reject these agreements, that you might have concluded that he was somehow tacitly agreeing with them?

A. No, I don't think

Q. Could that be an explanation?

A. I don't think that is an explanation.

Q. Do you think you might have

A. Again, I am going here I don't really remember exactly what happened, but I don't imagine that would have happened. I think I just misunderstood something he said.

Q. Right. Is it possible you might have discussed it with someone else?

A. I don't think so. I have no memory of discussing it with anybody else.

Q. Right.

A. Again, just to state that my responsibility was for Capital Gains Tax and corporation tax, and that's why I would not have discussed it with anybody else, because it was outside

Q. It's just that I have in mind that after you received that letter of January, 1996, as you say you may have misunderstood or been confused about something that Mr. O'Grady had said to you in the course of your November

1994 discussions, you then took a further step on foot of the letter of January, 1996, in that you sent a memo and you communicated with Ms. Eileen O'Sullivan of the Dublin Tax District on the 13th March of 1996. Do you remember that?

A. I remember that, yes.

Q. We'll just have a look at that document. It's at Divider 79. Now, you see that document there?

A. Yes.

Q. Just to look at it quickly, you say, "I refer to our recent telephone conversation.

"I attach 1994/95 tax return and agent's covering letter for the above trust. The return was received on 30 January 1996, so there is no surcharge.

"I have confirmed with Michael O'Grady of Capital Taxes that the Revenue Commissioners have agreed that no further liability arises in respect of distributions made for the purposes of meeting liability to Discretionary Trust Tax.

There is therefore no need to issue an income tax assessment".

Then you go on to deal with Capital Gains Tax. You say

"That the total liability to Capital Gains Tax for 1994 /95 is (blank). The trust made a payment of (blank) in

November 1994. It was agreed that the balance of the tax would be payable in December 1996. When the Capital Gains Tax assessment is being raised, the due date should be 27 December 1996. I would appreciate if you could arrange to

let me have a copy of the Capital Gains Tax assessment.

"Please return the papers to me and I will deal with the question of whether the gain as computed by the agents is acceptable."

So here you were informing Ms. O'Sullivan that there was no need to raise any assessment in relation to income tax; isn't that right?

A. That's correct.

Q. That was, would you agree with me, a fairly significant step to be taking?

A. That had to be done. A decision had to be taken. The decision was taken.

Q. Yes, absolutely, a decision had to be taken, and a decision was taken. But am I right in thinking that if you had had any doubts at this stage about that agreement, you would not have been telling Ms. O'Sullivan that there was no need to raise an assessment?

A. Absolutely true. I was convinced.

Q. You were quite convinced at this stage?

A. I was quite convinced at that stage, yes.

Q. And you were quite convinced on the basis of something Mr. O'Grady, or something that you two of you discussed following the meetings or before the meetings of November 1994?

A. At that date, that is the position, yes.

Q. Can I just ask you one thing about self-assessment and returns and assessments that I am not clear on. We have

heard from other witnesses over the last number of days that from 1988, gradually in relation to some, and then subsequently in relation to virtually all taxes, that the onus passed from the Revenue to the taxpayer to make a return. And it appears here that a return was made, and then you are directing Ms. O'Sullivan, after that return was received, to raise an assessment. And can you just explain to me the role that assessments played in the post self-assessment era, if you like.

A. An assessment was required in accordance with the return, and on the basis of that assessment, the tax, the final tax became payable.

Q. I see. So the onus is on the taxpayer to make the return; and is it the case then that the Revenue accepts what's in the return at that stage? Is that the position?

A. The normal practice is to raise an assessment in accordance with the return, yes.

Q. Can you just tell me, if a return isn't made and the Revenue was aware of the fact that the taxpayer should be making a return, what options are then open to the Revenue?

A. The normal practice is to seek the return.

Q. And how do you what I'm trying to get at is how do you go about seeking the return? What steps does the Revenue take?

A. As was in this case, I wrote out and asked for the return.

Q. Just a simple letter asking for the return?

A. That would be the first step. There is a compliance

programme down the line whereby

Q. What does that compliance programme involve? The first step is you write and ask for the return?

A. If the return doesn't come in, it would be picked up I haven't really been involved in this by the compliance programme, where the person would be eventually prosecuted for failure to file the return. Normally, in most cases, the letter is sufficient.

Q. Just a simple step, write them a letter saying "You should be making a return; looking forward to receiving it"?

A. Yes.

Q. Now, you have already referred to subsequent discussions that you had with Mr. O'Grady, which you learnt that you had misunderstood something that he had said to you in 1994, and I think in your memorandum, you indicated that those discussions would probably have taken place sometime in late 1996, 1997; is that correct?

A. That's right.

Q. Could you tell me, how did those discussions arise?

A. It's hard to know. There are a number of things on the file which may have been part of the conversations. The Capital Gains Tax final payment became due in December 1996, so I picked up the file around that time. There were two things we looked at. Actually collecting the tax, and also the question of the Capital Gains Tax computation, which would have involved a valuation, and I certainly consulted Mr. O'Grady about that valuation at or about that

time.

Q. That would have we have heard a lot about valuations of shares over the last few days. It would have been similar task

A. Well, Capital Taxes always had the expertise, so therefore that is why I would have contacted Mr. O'Grady at or about that time.

Q. But what I'm really trying to understand and to get at is how is it that this income tax agreement would have arisen at that stage between you and Mr. O'Grady, when what you were discussing was a valuation for Capital Gains Tax purposes and the balance of the payments due by the Trustees?

A. Again, it's very seldom that a conversation about one issue just sticks to that issue. There are side issues for different reasons come up.

Q. But Mr. O'Connell, you had no involvement, you told me with income tax; your area was corporation tax and Capital Gains Tax. Mr. O'Grady has told the Tribunal, or has informed the Tribunal, that he had no involvement in income tax. So how is it that in January of 1997 or December 1996, in the context of a second Capital Gains Tax payment and a revaluation of the trust for that purpose, that the issue of income tax would have arisen?

A. It arose.

Q. Are you certain, Mr. O'Connell, that it arose at that stage?

A. Well, I am reasonably certain.

Q. Well, let me just perhaps assist you in that. I want to show you and discuss with you another document. If you turn to Tab 84 in the book. Now, Tab 84 is made up of three documents; do you see that?

A. Yes.

Q. And they are all pinned together. They were pinned together on the Revenue file, and if I can just refer you to the start. There should be three documents.

MR. O'NEILL: We have only two documents in our book.

MS. O'BRIEN: I can hand the third document up and hand it around. It's just a table which Mr. O'Connell appears to have appended to the second document in that set of three documents.

Let me just show you the second document, initially,

briefly. The third document is just a set of figures,

Mr. O'Connell, that you appended, what appears to have been a document generated by you, the second document.

A. The second document, I saw this for the first time when the Tribunal showed it to me at some stage.

Q. I see. So this wasn't a document that was prepared by you?

A. Well, I may have written the in fact I am probably sure that I wrote the typed element, but the I have never seen the surrounding.

Q. The annotations?

A. The annotations on it.

Q. Fair enough. It's the typed element I am referring to. I

think that is your document, isn't it, the typed element?

A. Well, I have no real recollection of this document beyond the third paragraph, which states: "I contacted William Treacy". Now, I contacted William Treacy, so therefore, I feel I must have prepared that document, yes.

Q. Well, it's written in the first person, and it appears to record your contact with Willie Treacy; and as you say, you recall that contact, so I think we can probably take it it is your document. Certainly the typed portion of it would be your document?

A. I think so, I think it is, yeah.

Q. Now, as you say, you know nothing about the annotations on it?

A. No.

Q. But you see there is a date up on the top right-hand side, the 21st May of 1997.

A. Yeah.

Q. Now, I think we may have just a copy of the third portion. That was a table I think that you appended to that document; isn't that right? That just shows

A. This actual document was the one I have never seen before.

Q. Let me just show you, or assist you

A. And I don't think I prepared this document either. That's not mine either.

Q. We'll read the document, which I think you are happy enough you prepared, and we'll ignore any of the annotations on it for the moment.

A. Okay.

Q. It's there headed "Dunnes Family Settlement.

Income Tax."

And it records:

"The assets of the Dunnes Family Trust consist entirely of shares in Dunnes Holding Company. The trust became liable to the Discretionary Trust Tax when this was introduced in 1986. Up to this the trust had no income, in that Dunnes Holding Company did not pay dividends. It was decided that a dividend sufficient to pay the Discretionary Trust Tax would be declared each year."

And that's just the statement of what the position was, isn't that right, Mr. O'Connell?

A. Correct.

Q. It then goes on to state: "As shown by the attached chart, the credit attaching to distributions did not match the standard rate of tax for all years. This leaves a small additional liability to income tax to be assessed under Schedule F in the case of persons liable at the standard rate of tax. Strictly, then, the trust has an additional liability to income tax in respect of the dividends declared to pay the Discretionary Trust Tax. As part of the settlement of the Discretionary Trust Tax issue in 1988, it appears that the then Chairman agreed that this liability to income tax would not be levied in this (type of) case.

"I contacted Willie Treacy in Dublin Audit District No. 7.

He was not aware that this treatment had been applied in any case. He was not able to instance another case where the only income of a trust is dividends declared for the purposes of paying Discretionary Trust Tax.

"As far as I am aware, the 1994/95 tax return is the first income tax return submitted by the Trustees. A form C.G.T.I(T) for 1984/85 was issued to and completed by the Trustees."

That was the form, wasn't it, that they enclosed with the letter.

Finally, "It would appear that the reason that income tax assessments were not raised on the Trustees since 1988 was because the Inspector was not aware of the Trust income (self-assessment was introduced in 1988)."

Doesn't that look as if that's your document?

A. Oh it is, yeah, I think that's my document, yes.

Q. And in fact if we just look at the table which you refer to in the second paragraph of your document, it's a table which lists the tax years on the left, starting in '82/83 and ending in '97/98; it shows the standard rate of tax.

Is that right?

A. That's correct.

Q. In the second column. And in the third column, it shows, I think, the dividend tax credit; would that be right?

A. That's correct, yeah.

Q. That seems to be shown as a fraction; that's how it appears, anyway . Isn't that right?

A. Yes, that's correct.

Q. Can you just explain to me why that's shown as a fraction, or what it means? Because I can't quite make it out.

A. The fraction, it's just pure mathematics. The standard rate of tax is shown in the second column.

Q. That's the percentage, isn't it?

A. Yeah. Just work on a figure of 100, or maybe we work on a figure of 65. If a person received a dividend of $\frac{1}{2}65$, say euro pounds at that stage, they would get a credit of 35 over 65. I am looking at the year '83/4. They would get a credit of 35 over 65, which would be $\frac{1}{2}35$.

Q. I just wonder why would they do that, or why would they approached

A. That's what the legislation says. You multiply it by 35 over 65. Give a credit of 35, add it to the original, giving you 100 as the amount chargeable to tax. Charge it to tax 35 percent, you charge 35, and then the amount added is the credit deducted off again. And that would result in nil liability.

Q. And the legislation actually refers to the credit as the fractions that are shown there?

A. To my recollection, it does, yeah.

Q. I just didn't understand why you would have used those fractions, but that's in the legislation, is it?

A. Yes.

Q. Now, before I look in detail in relation to what you have recorded in that note, can I just show you what the note

was attached to in the files that were produced to the Tribunal. I know that you didn't have any input into this, but I just want to show you, in terms of timing, what it is attached to.

A. Yes, yes.

Q. Now, if you look at the first page of that tab.

A. The next tab, is it?

Q. No. The one we are looking at, Tab 84. The first of the three documents that were pinned together. That's a document headed "Capital Gains Tax", and it refers to the discussions which took place in 1985 and 1986 with the trustee of the settlement made by Bernard and Norah Dunne as to whether the settlement involved a disposal for Capital Gains Tax purposes. Revenue's subsequent assessment of tax due was appealed.

"B. Submissions were made to the Revenue in November 1994 as regards the arrangements to apply to the discharge of Capital Gains Tax liability arising from the distribution of one-fifth of the trusts shares," etc.

Then there is a heading: "Income tax.

"A. A submission was made by the Trustees in 1988 about the manner of application of income tax to trust income where the income was paid into the trust by the Dunnes Holding Company for the purposes of defraying Discretionary Trust Tax and where the income concerned had already been subjected to corporation tax at company level."

Now, that appears the date is wrong, 1988, but it

appears to relate to what Mr. Fox had said to you and what Mr. Fox wrote in the letter of January 1996, and the matter that you were then inquiring into; isn't that right?

A. Yes.

Q. Then it says: "In April 1994, representatives of the company established contact with Revenue..." whatever.

Now, can I just show you, then, in the next tab,

Mr. O'Connell, a letter which Mr. Cathal MacDomhnaill, on behalf of the Revenue Commissioners, forwarded to the registrar of the McCracken Tribunal, which was dated the 28th May of 1997. Do you see that?

A. Yes.

Q. Now, I'm not going to read the whole letter, but I am going to refer you to the fact that there was a schedule appended to that letter. I don't know if there is a schedule appended to the copy that you have. If you haven't, I'll arrange for one to be handed up.

Do you see, there is three pages attached to it, and this was information that was being provided by the Revenue Commissioners, Mr. MacDomhnaill, then Chairman, to the McCracken Tribunal. And if you look to the bottom of the first page, "Clause 4. Other Revenue matters."

Do you see that?

A. This is in the appendix?

Q. Yes, in the appendix. Do you see that, "Other Revenue matters"?

A. Yes. I see it now.

Q. You see "A: Payments". I am not going to open all of this. And if you go over the page, the heading at "B" is "Capital Gains Tax including Discretionary Trust Tax," and if you go to the very final page, you see "C" is "Income Tax/capital Gains Tax"; do you see that?

A. Yes.

Q. What I want to just draw your attention to is that paragraphs (a) and (b) of that schedule appear to be identical to paragraphs (a) and (b) of the document that I just referred you to. Do you see that?

A. Yes.

Q. Now, if I go

A. Can I just look at them, maybe just to confirm that.

Q. There or thereabouts.

A. Paragraphs A?

Q. And B.

A. Are very similar to?

Q. Paragraphs (a) and (b) of the document that I have just referred you to, which was the documents pinned to the document you produced indicating the inquiries you had made. Do you see that?

A. Perhaps I am looking at the wrong two documents.

Q. If I take you first to perhaps I can help you if I take you first to Tab 84.

A. Correct, yes, Tab 84.

Q. Tab 84 is made up of three documents. The first document is the document to which I want you to refer; do you see

that?

A. Yes.

Q. We just read it out.

A. Oh, I see, yes, now I have the two. That seems to be a direct copy of that.

Q. You see that?

A. Yes.

Q. Paragraphs (a) and (b) appear to be, if not identical, virtually identical?

A. I now see the document you are referring to.

Q. Now, can I take you then to paragraph (d) in the appendix to the letter to the McCracken Tribunal, and I'll just read that out to you. It says: "A point was raised by the Trustees on a return made by them in 1996 about the manner of application of income tax to trust income where that income was paid into the trust by the Dunnes Holding Company for the purpose of defraying Discretionary Trust Tax and where sums involved had already been subjected to corporation tax at company level. This question is under consideration." Do you see that?

A. Yes.

Q. That appears to deal with the matter that you were inquiring into, doesn't it?

A. Yes.

Q. And it appears to be a refinement of what was in the document that we first looked at, the document that was attached to your memo regarding the inquiries that you had

been making; isn't that right?

A. What document I am sorry, I am lost again.

Q. Not at all. We were looking, you will recall, initially at the document at 84.

A. Yes.

Q. The documents at 84 are made up of the three documents.

A. Yes.

Q. There is your document, the table that you attached to your document, and the document on the top.

A. That's correct, yes.

Q. The second document we were looking at if you lay them down side by side, Mr. Coughlan suggests, I think that should help you. The second document, as I said, is the last page of the appendix to the letter which Mr. MacDomhnaill sent to the McCracken Tribunal; do you have that?

A. Yes.

Q. Now, I read you out paragraph (a) of the document at Tab 83 relating to a submission made by the Trustees. And you agreed with me that that appeared to relate to the agreement which Mr. Fox had asserted and into which you were then inquiring.

A. Yes.

Q. All right. Now, if you look at paragraph (d) on the final page of the appendix to Mr. MacDomhnaill's letter do you see that?

A. Yes.

Q. It says and I read it out to you. And what I was asking you was, do you agree with me that paragraph (d) in the appendix to Mr. MacDomhnaill's letter appears to be a refinement or a redrafting of paragraph (a) under the heading "Income Tax" in the document that was attached to your document?

A. In the document attached to my document?

Q. Yes, the one that we just read out.

A. This is headed "Dunnes Family Trust Income Tax".

Q. The document attached to that, the first page of the three documents at Tab 84.

A. Yes, oh, yes, sorry. I agree with that; (a) and (b) are it's a submission.

Q. One refers to a submission, and the other I suppose is more definite. It refers to a fact that a point had been made in 1996; isn't that right?

A. Yes, yeah.

Q. And really I suppose, Mr. O'Connell, what I am going to suggest to you now and ask you is, doesn't it appear from those documents that the inquiries that you were then making in relation to income tax, and which formed the subject of information being furnished to the McCracken Tribunal, may in fact have been prompted by the inquiries made by the McCracken Tribunal?

A. That is not my recollection. As I say, I don't know when that document of headed "Dunnes Family Settlement Income Tax" was prepared. I notice there is a date 31/5/97 on it,

but that wasn't my date, nor did I know that the document had left my file or a copy of it.

Q. I see.

A. So this document, I don't know when it was prepared, but it is not my recollection that my inquiries or I began to doubt the validity of this so-called agreement was prompted in any way I just wasn't involved, and I wasn't involved in preparing any of the documents you have read out, nor did I see them at the time. I am referring simply to the annotated document. Clearly, on my file, there is a clear copy of that which is mine, but I have not seen this annotated version.

Q. All right. Well we'll take it very slowly.

A. It's not my recollection.

Q. You accept let me take you again to Tab can I just show you the fax cover sheet on the attached attached to the second copy of this letter we have just circulated. Do you have it there?

A. Yes.

Q. You see it's to Frances Cooke, Revenue Commissioner. Her fax number is given. It's dated the 28th May and the message is: "Frances, Commissioner Quigley asked me to send you a copy of the reply sent to the Trustees", and it's signed, Michael O'Grady sorry, "to the Tribunal." Sorry, "To the Tribunal today". And it appears to be Michael O'Grady's signature.

A. Yes.

Q. So it appears that Mr. O'Grady certainly had some involvement in relation to the preparation of that letter; isn't that right?

A. Yes. I can't disagree.

Q. And your recollection is that you began to doubt this as a result of conversations that you had with Mr. O'Grady?

A. Yes.

Q. And you accept, and you accepted, and I took you through it very, very slowly, Mr. O'Connell, that the document that you prepared, albeit without the annotations, was appended in the files that had been produced to the Tribunal to a draft of the appendix which was ultimately sent with the letter to the McCracken Tribunal; isn't that right?

A. Yes.

Q. Now, in your memo, you then inform the Tribunal Memorandum of Intended Evidence, that following discussions with Mr. Clayton, I think, and Ms. Moore, you then proceeded to inform Mr. Fox that an assessment would be raised; isn't that right? I think you can take it

A. That's the gist of what's in the

Q. I'll just show you, if you turn to Tab 86, there is a copy of a letter, in fact, from Ms. O'Sullivan. She'd have been the District Tax Inspector; isn't that right?

A. That's correct.

Q. Who would have formally raised the assessment, or would formally raise it, and it's dated the 14th July.

"Dear sir,

"I am writing to you in your capacity as a trustee of the above-mentioned trust and with reference to your letter of the 22 January 1996 with the 1994/95 Form 1 for the Trustees of the Dunnes Settlement Trust.

"Because the income tax standard rate and the imputation rate were the same prior to 1988/'89, no net income tax liability arises before that year, and no assessments are being made for years prior to that year.

"An income tax assessment for 1994/95, based on the return for that year, is being made and notice of it will issue shortly. Details are as follows."

And you set out there, or it's set out the details of the computation of the income tax. "My records show that apart from 1994/95 return, the Trustees have not submitted any returns for the years 1988/'89, etc. Please forward all outstanding income tax returns without delay."

There is a note there at the bottom right-hand corner of the letter, Mr. O'Connell. "I rang Maureen. Told her that return was recorded before the specified date. No surcharges."

That's because the return for that year was actually received within time; isn't that right?

A. I presume so. Again, that's not my note.

Q. It's not your note?

A. I presume "Maureen" there should have read "Eileen", but that's

Q. Yes. "Was received within time, so there were no

surcharge", because a surcharge liability had been included there of 10% for the late filing; isn't that right?

A. Correct. That was just correcting that matter, yeah.

Q. And that letter would have been forwarded at your direction? Well, you were dealing with this,

Mr. O'Connell, weren't you?

A. Yes. Again, memory yes, that was at my direction.

Q. That was at your direction?

A. Yeah.

Q. You were dealing with this from the start to the finish?

A. I may have been on holidays when it actually went out, but it was my direction, yes.

Q. Yes, fair enough.

Now, you subsequently, I think in February of 1998, raised a series of further assessments; isn't that right?

A. That's correct.

Q. I just want to refer you to a table which was on the Revenue files which shows the income tax which would have been payable by the Trustees, and I think which was subsequently subject to assessments. Do you have a copy of that with you, Mr. O'Connell?

A. I have just been handed a copy.

Q. Did you prepare this table?

A. I don't think so. It doesn't although it may have been prepared from documents I prepared, but I don't appear it doesn't look like something I would remember ever doing.

Q. So would it have been prepared by the District Tax Office?

A. I can't say. You can recognise your own way of doing things. It's the footnotes and the like.

Q. It would be based on information that you would have provided?

A. Yeah, oh no doubt about that. Those figures, from a brief look at them, are correct.

Q. The first column shows the tax year. The second shows the standard income tax rate, which was the same was on your chart that you appended to your note. The third was the standard tax credit. Again, those fractions that we discussed in your note. The fourth was the Discretionary Trust Tax paid. And the fifth was the trust's income tax liability. Do you see that?

A. Yes.

Q. And just the note there was that "It was assumed for the purposes of this exercise that all Discretionary Trust Tax payments in Column 4 were funded by way of dividend received by the Trustees from the holding company." Do you see that?

A. Yes.

Q. And just to briefly refer to each of the years. There'd have been a nil liability for the years 1984/85, 1985/86 and 1986/87, because the standard income tax rate and the standard tax credit rate and dividends were the same; isn't that right?

A. That's correct, for up to '87.

Q. Then for the year 1987/88, the tax liability would also

have been nil; isn't that right?

A. Correct.

Q. '88/89, the liability would have been $\dot{\imath}_{\dot{\imath}}^{\dot{\imath}}\frac{1}{2}35,294$; isn't that right?

A. Correct.

Q. '89/90, it appears that no Discretionary Trust Tax was actually paid in that year, so there was no liability, clearly, to income tax; isn't that right?

A. Correct.

Q. 1991, the Discretionary Trust Tax paid was $\dot{\imath}_{\dot{\imath}}^{\dot{\imath}}\frac{1}{2}1,719,000$, and the tax liability would have been $\dot{\imath}_{\dot{\imath}}^{\dot{\imath}}\frac{1}{2}47,750$ for income tax; isn't that right?

A. Yes, that's what's shown on the page.

Q. Right. So the total, then, for all of those years was $\dot{\imath}_{\dot{\imath}}^{\dot{\imath}}\frac{1}{2}700,460$. That's up to '96/97; isn't that right?

A. Correct.

Q. That doesn't make any provision for interest; isn't that right?

A. Correct.

Q. And it doesn't make any provision for penalties on late filing or any other penalties for nonpayment; isn't that right? Isn't that right?

A. Correct.

Q. Now, if I could ask you to turn to the next tab in the red book, Tab 87. This is a letter from Deloitte & Touche dated the 8th August, Inspector of Taxes. And I don't know if it was addressed to you, but it certainly came to you,

because you responded to this letter, Mr. O'Connell. Do

you have it there before you?

A. I have it in front of me.

Q. "Dear sir,

"We refer to your Notice of Assessment. We wish to lodge

an appeal against the assessment on the grounds that

"1. Following the settlement of the appeal on the

16 March, 1987, it was agreed that the trust would not be

subject to income tax if its only receipts were from

dividends from Dunnes Stores Holding Company and that the

dividends were paid into the trust for the sole purpose of

discharging the Discretionary Trust Tax annual

inheritance tax.

"2. The dividend of $\text{£}2,933,333$ was used solely for the

purpose of discharging the annual inheritance tax.

"3. Should the dividend be subject to income tax, it would

be necessary to obtain further dividends to pay this tax

and this procedure would have a compounding effect that

would never be completely finalised.

"In the circumstances, we should be obliged if you would

reduce the assessments to nil and advise that you agree."

Now, you clearly received that letter, because you

responded it to it, Mr. O'Connell; isn't that correct?

A. That's correct.

Q. If you turn over the page, we'll see your response, dated

15th September, "I refer to your letter of the 8th August

addressed to the Inspector of Taxes, Dublin Tax District.

I note your appeal against the above assessment. As regards the grounds of appeal:

"1. Can you confirm, please, that you are referring here to settlement of a capital taxes appeal in 1987. Please give the precise terms of the agreement referred to as you understand them and forward copies of any relevant documentation.

"2. Noted.

"3. It was not difficult to calculate the amount of dividend required to leave a specified sum in the trust fund after paying the income tax on the dividend. For example, to put the trust in funds in the amount of $\text{£}100$ in $\text{£}199,495$ would require a dividend of $\text{£}102.74$, the income tax on the dividend being 2.74. And that was your response. And you were effectively looking for details of precisely what they were asserting.

Were you saying in that letter that you were now satisfied that there was no agreement?

A. No. What I was saying was at that stage I had searched through the Revenue files, I had talked to everybody, whatever I had, and I could find no evidence of such an agreement on the Revenue files.

Q. Well, had an assessment been raised at that stage, Mr. O'Connell?

A. It had, yes.

Q. Well, we have heard over the last number of days that for the Revenue to raise an assessment, they must be satisfied

that the tax is due?

A. Yes. Well, I had no evidence that the tax wasn't due, so therefore I had to raise the assessment. Whatever way you look at it, I had no evidence that this tax was not due, so I raised the assessment.

Q. Well, two years previous, Mr. O'Connell, you had informed Ms. O'Sullivan that there was no need to raise an assessment. And you were absolutely certain at that stage that there was an agreement.

A. I had made a mistake.

Q. How were you so certain that you had made a mistake?

A. I talked to Mr. O'Grady.

Q. And what exactly did Mr. O'Grady tell you?

A. He told me approximately what's in his statement, that he hadn't told me that, that he had no knowledge of the of any such agreement, that he wasn't in Capital Taxes at the time. He had never seen any papers. He just knew nothing about it. So I misinterpreted what he said, and I fully accepted that.

Q. What was it that he said that you misinterpreted?

A. That, I can't I can't remember.

Q. You can't remember?

A. No.

Q. Did you make any other inquiries, Mr. O'Connell, at any time during the course of this correspondence, from anybody, in relation to the existence of this agreement?

A. During the course of?

Q. Of this correspondence, of this exchange?

A. Prior to writing this letter, I had, A) first of all talked to Michael O'Grady. Then I talked to Willie Treacy. Then I had a lot of files, old files in the Chief Inspector's Office which I had gone through. A lot of them referred to a lot of them were copies of Capital Taxes files dealing with the '87, because there was an income tax a Capital Gains Tax appeal in '88 which was there was a certain overlapping, so a lot of papers in the '88 Capital Gains Tax appeal were copies of Capital Taxes files, so I went through those papers. I contacted Capital Taxes. I don't know who I talked to there, but I contacted them. I asked them, did they know anything about this agreement? They said no. So at that stage I raised the assessment.

Q. Mr. Fox had said, in his letter of January of 1996, it was Mr. Pairceir who had agreed this with the Revenue; isn't that right?

A. Yes.

Q. Did you not go and ask Mr. Pairceir?

A. Well, really, I had nothing to ask him. I had no evidence.

Q. But, Mr. O'Connell, Mr. Fox said that he had an agreement, the Trustees had an agreement with Mr. Pairceir in 1987 that there would be no further income tax payable by the Trustees on dividends received for the purposes of discharging Discretionary Trust Tax. Wasn't the obvious person to ask about that Mr. Pairceir?

A. Not on the basis of hearsay.

Q. Did you feel constrained

A. My first port of call would be back to the taxpayer for some documentary evidence, something to put. If I had got back note of interview, note of contemporaneous note of any sort, I might have then considered putting but a statement by somebody who I don't know whether was there, was relating something he had heard, it wasn't sufficient.

Q. Well, why didn't you contact Mr. Fox then and ask him exactly what had happened, before you raised the assessment?

A. Again, that's the way I thought the best way to go about it.

Q. If it was hearsay that you were concerned about, that this was hearsay, I am not quite clear what hearsay you are referring to.

A. It was the statement, not even by Mr. Fox himself. I mean, he did mention something at a meeting, but the actual only letter I had stated that there was an agreement. There was no reference to who made the agreement, who was at it. Who conducted it. As it turned out, if I had written to Mr. Pairceir at that time, it was meant to be not Mr. Pairceir

Q. Let's look at the letter of the 22 January, 1996, again. It's at Tab 78. Do you see that?

A. Yes.

Q. "As part of the first settlement of the Discretionary Trust Tax in 1988, it was agreed by the Revenue (Mr. Seamus

Pairceir) that no additional liability to tax would arise

in relation to this dividend." Do you see that?

A. Yes.

Q. Isn't he telling you exactly what was agreed? Isn't that right?

A. But not with whom.

Q. Just wait a moment.

A. Okay.

Q. Isn't he telling you what was agreed?

A. Yes.

Q. Isn't he telling you when it was agreed?

A. Approximately. In or around.

Q. Isn't he telling you the context in which it was agreed?

A. Yes.

Q. And isn't he telling you who agreed it?

A. On the Revenue side, yes.

Q. Mr. Pairceir?

A. Yes. But he didn't say who told him when this agreement was made.

Q. I see. And that's the only reason you decided not to ask Mr. Pairceir?

A. Well, it's not normal to go back to any Revenue official when they are retired. When somebody is retired, they are retired. Unless you have got something, it's the only way of going about it.

Q. Did you feel constrained in this at all, Mr. O'Connell, because this was a former Chairman of the Revenue

Commissioners?

A. No. I was constrained because it was a retired Revenue official. If it was an Inspector of Taxes, if it was anybody who is retired, it's not normal practice to go back to somebody unless you can't proceed without and there have been occasions when retired officials have been contacted, but that's

Q. Dr. Thornhill, when he gave evidence to the Tribunal on Wednesday of last week, he had a recollection that he was contacted, he thinks probably by Mr. MacDomhnaill, the then Chairman, after he had retired, and he was by then Secretary General in the Department of Education, with a query, and it was his recollection that the query might have related to this agreement.

A. I think he is wrong.

Q. You think Dr. Thornhill is wrong?

A. In the very last thing you said. I don't think it related to this agreement.

Q. You don't think it related to this agreement?

A. I don't.

Q. I see.

To this day, do you know, did you or did the Revenue Commissioners ever ask Mr. Pairceir about this agreement?

A. No.

Q. Now, Deloitte & Touche wrote to you on the 3rd February, 1988. That's at Divider 89; do you see that?

A. Yes. They said: "We regret the delay in responding, which

was due to not having received the original letter. We would suggest that our reference is quoted on correspondence, as it helps to ensure delivery to the individual dealing with the case.

"We confirm that we are referring to the settlement of the Discretionary Trust Tax appeal in 1987. The agreement reached at that time was that, if the trust had internally generated income and if all of the receipts were used to discharge the annual Discretionary Trust Tax, the trust would not be liable to an additional liability to income tax. The trust has only received dividends to date which have been used to discharge the annual Discretionary Trust Tax liability.

"We have no documentation to support the position, but are satisfied that the undertaking was given at the time by Mr. John Reid on behalf of the Chairman of the Revenue Commissioners."

You see there is a handwritten annotation on that letter:

"No reference given on 8th August '97." Perhaps it just simply relates to the reference on the letter; is that it?

A. I have no idea. It's not my writing.

Q. So now they are referring to Mr. John Reid; isn't that right?

A. That's correct.

Q. And you had no difficulty in taking it up with alacrity with Mr. Reid; isn't that right?

A. That's right. Mr. Reid was an employee of the Revenue

Commissioners at the time.

Q. In fact you must have taken it up with him immediately, because I see the letter was dated the 3rd February, and Mr. Reid's memo to you was dated the 12th February; isn't that right?

A. That's correct.

Q. "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 dated 15 April 1987 which I received from Mr. O'Cathain (obviously at my request) and which I then typed and sent to S. 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. Don Thornhill, telling me that Seamus Pairceir was concerned about some income tax problem, and presumably that was the reason I contacted S. O'Cathain.

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

And that's signed "John Reid, Direct Tax Administration, 12th February, 1998". And with that, he enclosed a

document that you may have already seen, which was a memo that's been on the referred to in the course of evidence, from Mr. O'Cathain to Mr. Reid, dealing with the position regarding tax on accumulated undistributed income within a trust. That's the surcharge matter. Isn't that right?

A. Correct, yes. It also mentioned income tax as well, I think at the start, somewhere.

Q. I think surcharge is part of income tax?

A. Yeah.

Q. And here we have Mr. Reid again referring to dealings which he had with Dr. Thornhill and what Dr. Thornhill said to him about Mr. Pairceir having involvement in this matter, and still, it was decided that no contact would be made with Mr. Pairceir; is that right? Is that the position?

A. No decision was taken. It didn't occur.

Q. It didn't occur to you, or

A. It didn't come up in the course of any discussions. There was never a suggestion made that Mr. Pairceir would be contacted.

Q. Who were you discussing this with, Mr. O'Connell?

A. At that time I would have been discussing it with the Chief Inspector and with the Assistant Secretary.

Q. And who were they?

A. Chris Clayton and Maureen Moore. So it never arose. It wasn't that anybody said "no, don't," it just never arose.

Q. So it's not something you suggested, and it's not something

they ever suggested?

A. That's the position, yeah.

Q. Now, you wrote again to Deloitte & Touche on the 20th February, 1998.

"Dear Sirs.

"I refer to your letter of the 3 February. You appear to be mistaken as regards events which took place in March 1987. Mr. John Reid has advised that he has no recollection of giving an undertaking of the type referred to in the last paragraph of your letter. Neither is there a reference to such an undertaking in the Capital Taxes file current at the time of the settlement of the Discretionary Trust Tax (DTT) appeal. In fact, it would have been surprising if such a matter was raised. As the law stood at that time, the rate of tax credit matched exactly the standard rate of income tax, and this situation continued until 5 April 1988. The subsequent mismatching of credits with tax rates has given rise to liability for the years of assessment 1988/89 and 1990/91 to 1996/97 inclusive. Notices of assessment to reflect this liability will issue for all years except 1994/95 (which is already assessed) at the end of February.

"The records of the time do, however, show that a separate income tax matter was raised during the course of the settlement of the DTT appeal. This was whether DTT reduces the income of a trust in computing the undistributed income for the purposes of applying the surcharge provisions

contained in Section 13 of the Finance Act 1976. Having examined the relevant legislation, the Revenue Commissioners concluded that trust income applied in paying DTT was outside the scope of this surcharge. It may be that the undertaking suggested in your letter is being confused with this decision made by the Revenue Commissioners at that time.

"In these circumstances, I trust that on reconsidering the matter, you can now withdraw your appeal against the assessment for 1994/95 and will not find it necessary to enter appeals against those to be issued."

That was what you wrote on the 20th February, 1998.

A. Correct.

Q. So you were suggesting to the Trustees that the matter may well have been as a result of a confusion between the Trustees on the one part and the Revenue Commissioners on the other part; isn't that right. Isn't that what you were saying in the letter, that there was confusion

A. On the part of the Trustees.

Q. Oh, on the part of the Trustees, not on the part of the Revenue?

A. No.

Q. I see.

A. I don't think I was making that suggestion.

Q. I see. So that the confusion was that the Trustees thought that the agreement of the Revenue in relation to the surcharge was in fact an agreement in relation to income

tax; that's what you were stating there?

A. Yeah.

Q. And that was based on what you have seen in the files, and

I think Mr. Reid's memo; is that right?

A. Yes.

Q. Now, they responded to you on the 4th March, isn't that

right, and that's at Tab 92. It's a letter from Deloitte &

Touche. It has your reference on it. Do you see that?

A. 4th March, 1998, that's correct.

Q. Bernard and Norah Dunne settlement.

"Dear sir,

"Thank you for your letter of 20 February 1998.

"The standard rate of income tax and tax credit attributable to dividends from Irish companies began to diverge from 6 April 1978. The standard rate of income tax at that time was 35%, and the tax credit was 30/70, which is the equivalent of 30%. The Finance Act 1988 introduced the new rate of 32%."

So I think the point they were making there was that there

had been a divergence in earlier years; isn't that right?

A. Correct.

Q. You say "The appeal in 1987 was attended by three Trustees,

Mr. Bernard Uniacke, Mr. Noel Fox, and Mr. Frank Bowen.

Also in attendance was Mr. Liam Horgan, a tax partner (now

retired) of the chartered accountants firm Touche Ross. It

is the distinct recollection of all of the above that the

settlement agreed at the appeal was,

"The valuation was determined at $\frac{1}{2}$ 82,000,000.

"1984 value for DTT purposes $\frac{1}{2}$ 41,000,000 at 3%.

"1986 value for DTT purposes $\frac{1}{2}$ 41,000,000 at 3%.

"valuation of $\frac{1}{2}$ 82,000,000 used for valuation dates 5 April 1987, 5 April 1988 and 5 April 1989.

"provided the only receipts of the Trustees of the trust were dividends from the group used solely for the purposes of discharging the Discretionary Trust Tax.

"No other tax would be imposed on the Trustees in relation to the dividends.

"During the settlement discussions, contact was made with the Chairman of the Revenue Commissioners (Mr. Pairceir) to confirm that the agreement was in order. To the best of our knowledge, the Revenue Commissioner concerned with the settlement in all respects. The Trustees and Mr. Horgan are all willing to testify that this is their understanding of the settlement at the appeal hearing. Considering that Mr. Horgan was a tax partner, his interpretation of the settlement would have been very clear as to what was meant by no other tax (other than Discretionary Trust Tax) would be payable by the Trustees.

"Based on the agreement at the 1987 appeal, the Trustees have taken great care to ensure that the terms of the agreement have at all times been adhered to. No income has been received by the trust for the benefit of any of the beneficiaries or for other purposes.

"With regard to the surcharge, it is our understanding that

if all of the receipts of a trust are comprised of funds to discharge Discretionary Trust Tax, no surcharge would arise under Section 13 of the Finance Act 1976 (because there is no distributable funds out of which distributions may be made). As this is generally known to be the view taken when interpreting this Section, this would have been no need to seek an assurance that a surcharge would not apply.

"In the circumstances we would request that the assessments raised are withdrawn."

So that was the Trustees' response to your suggestion that there had been a misunderstanding, wasn't it?

A. Correct.

Q. And they certainly weren't agreeing with you that there was any misunderstanding; isn't that right?

A. Correct.

Q. They were making it very clear that prior to the settlement of the Discretionary Trust Tax issue in 1987, there had been a time when the standard rate of tax and the tax credit rate had diverged, and that was in 1978; isn't that right?

A. Correct.

Q. And they were saying that they were there, they were each of them was accountants. They said Mr. Horgan was there, although there was some doubt about it, and that there was no question of any confusion on their part; isn't that right?

A. That's what the letter from Deloitte that's what the

letter from Deloitte & Touche says.

CHAIRMAN: Mr. Horgan acknowledged that that letter was incorrect as regards his attendance and opinion.

A. The letter, again, just reading that letter, when I did read through it, it goes back to Mr. Pairceir and overlooks John Reid again. So it seems to be, you know, there seemed to be confusion even on the person writing to me, about who did what. I mean, first of all it was the Chairman, then it was John Reid. Now we are back to the Chairman again. So you can see a certain amount of confusion. No matter how categorically they state in the letter what happened, they still seem to be confused.

Q. MS. O'BRIEN: Now, Tab 97 is your response of the 16 March.

You say:

"Dear Sirs,

"I refer to your letter of the 4th March.

"At the time the Discretionary Trust Tax appeal was settled the standard rate of income tax exactly matched the rate of tax credit for dividends, and this had been the position for the previous four years. The Revenue files indicates that the possibility of these rates diverging again at some future date was not an issue during the discussions leading to the settlement of the Discretionary Trust Tax appeal in 1987.

"The settlement as outlined by you is fully in accordance with the law as it stood at that time. It would be reasonable for the Trustees to assume that in agreeing this

settlement, the Revenue Commissioners agreed that subsequent years of assessment would be dealt with in like manner, providing the legislation underpinning the terms of settlement remained unchanged. However, it would not have been reasonable for the Trustees to have assumed that subsequent amending legislation would be ignored when settling the future years. In this case the legislation was amended in 1988, which gave rise to a liability which did not exist at the time of the settlement of the Discretionary Trust Tax appeal in 1987. Thus, I consider the terms of settlement of the appeal in 1987 are not relevant here.

"Regarding the last paragraph of your letter, in 1987, considerable doubt existed as to whether a payment of Discretionary Trust Tax reduced the amount to be surcharged under Section 13 Finance Act 1976. This doubt was removed when the Revenue Commissioners expressed their view on the matter.

"The assessments have now issued for the relevant years of assessment.

"If you think that a meeting might advance matters, perhaps you would telephone the writer. You gave your number to arrange a mutually suitable time."

Do you remember at all, did they take you up on that offer of a meeting?

A. They didn't, no.

Q. I think you were then served with the notice of intention

to appeal the additional assessments that had been raised;

isn't that right?

A. That's correct.

Q. And I think the appeal then proceeded before the Appeal Commissioners; is that right?

A. That's correct.

Q. Can I just ask you one matter, Mr. O'Connell: Am I right in thinking that when the assessments in this matter were raised, that the actual tax assessed was paid?

A. I don't think so.

Q. You don't think so?

A. I probably have. I think the tax was paid following the Appeal Commissioners determination. Now, that's

Q. So it's not a precondition of an entitlement to an appeal an assessment that you pay the tax assessed, or anything like that?

A. No. Once you appeal, the collection procedure stops.

Q. If you receive an assessment and you want to dispute it, but you pay the tax without prejudice to that appeal, does that have any impact on your interest exposure in the event that the assessments are upheld?

A. Normally the appeal procedure doesn't interfere with the date the tax was due. So that regardless of the outcome, the tax is due tax is due and interest is charged as it would have been if that had been if the tax had never the final payable was not disputed.

Q. What about in terms of penalty: If the assessment is

raised, you dispute it, and it goes to the Appeal

Commissioners. If you have paid the tax without prejudice, does that have any consequences in terms of any exposure that a taxpayer might have to penalties?

A. There are different types of penalties. Penalties for in regard of tax and nonpayment of tax would normally be, I think again, I could be wrong but are only due where there is further neglect involved. There would be penalties for failure to file or late filing of returns, which are separate penalties.

Normally, in normal circumstances, you know, what the Revenue Commissioners are looking for is to get the return, and once the return is received, then they are happy with that.

Q. Now, we know that this went before the Appeal Commissioners. Were you involved at all I am not going to go into the hearing in any detail, but I just want to ascertain, were you involved in the case at the stage that it went to the Appeal Commissioners?

A. I would have briefed counsel, yes.

Q. And you were in attendance for the hearing?

A. Yes.

Q. And I think we know that the Appeal Commissioners upheld the assessments; isn't that right?

A. That's correct.

Q. And I think we also know that the Appeal Commissioners ruled that they had no jurisdiction to consider the issues

that had arisen on foot of the Trustees' contention that there had been this agreement; isn't that right?

A. Correct.

Q. So the it's not a question that the Trustees dropped their assertion that there was an agreement; the Appeal Commissioners simply ruled that they didn't have jurisdiction to address the legal issues that arose on foot of that contention; isn't that right?

A. I think you are correct there, yes.

Q. And the Trustees appealed that determination to the Circuit Court; isn't that right?

A. They sought a rehearing, yes.

Q. And that would have proceeded in the ordinary way before a Circuit Court Judge?

A. Correct.

Q. Now, having brought their appeal for a rehearing to the Circuit Court, I think the Trustees took an unusual step in Revenue matters, in that they brought an application for discovery of documents against the Revenue; isn't that right?

A. Correct.

Q. That, I think, came before the Circuit Court in late 2001; is that right?

A. Correct, yeah. I think I am sure of that, yes.

Q. And I'm not going to open the affidavit, but I'm right in thinking, am I not, that that application for discovery was grounded on the affidavit of the Trustees' solicitors?

A. I think that's the correct I am not one hundred percent sure of the procedures, but I am nearly sure that's the position, yeah.

Q. Again in that affidavit, the solicitor who had been informed of the position by the Trustees asserted that this agreement had been concluded at the time of the settlement of the Discretionary Trust Tax issue; isn't that right?

A. That's correct.

Q. And I think she also said in that affidavit that had the Trustees not been entirely confident about their position, that they would have considered availing of the first tax amnesty in relation to this income tax liability; isn't that right?

A. It's so long since I have read that affidavit, I don't know. I am sure

Q. You can take it from me.

A. I will take it from you that it is in it, yes.

Q. Now, I don't want to go into the details of how this matter ultimately concluded at this time, but I just want to ask you this: Were you involved in the ultimate conclusion of these assessments?

A. Yes, I was.

Q. I see. And you stated in your memorandum that this tax was paid?

A. The tax was paid. Appeals were withdrawn.

Q. Now, would you agree with me, Mr. O'Connell, that if there wasn't this agreement, if there was no agreement between

the Revenue Commissioners and the Trustees, that between 1988 and 1997, there were, I think, not to put it too harshly, but to put it fairly, there were a number of oversights or misunderstandings on the part of the Revenue?

A. Oversights on the part of the Revenue?

Q. Yes.

A. Are you referring to any one in particular?

Q. I'll go through them if you like.

A. Okay.

Q. Firstly, the Trustees made no returns; isn't that right?

A. Correct.

Q. For each of the years from 1988 to 1994; isn't that right?

A. Correct.

Q. Now, you told me that if a return isn't made, that you simply write a letter and you ask for a return to be made.

But no action seems to have been taken on the part of the Revenue in those years, right up to 1997, to require the Trustees to make a return; isn't that right?

A. Well, they made a return in '96.

Q. Apart from that year, which arose from the special circumstances of their Capital Gains Tax and Capital Acquisitions Tax liabilities, there were no returns made, were there?

A. No.

Q. And there were no requests to them to make returns; isn't that right?

A. As far as I know. As I say, I came to the file in '94.

There was no income tax file open at that stage. I opened an income tax file.

Q. There were no assessments raised in any of those years until, in fairness to you, you took the matter up in 1997 and 1998, and you raised the assessments?

A. That's correct.

Q. But for effectively nine years, there were no assessments raised; isn't that correct?

A. Correct.

Q. Now, in November of 1994, when Mr. Fox told you about the agreement, nothing was done at that stage; isn't that right?

A. Correct.

Q. And that was due to a misunderstanding?

A. Correct.

Q. And in 1996, when Mr. Fox wrote to the Revenue and he asserted this agreement in black and white, nothing was done at that stage either; isn't that right?

A. Correct. That, I think, is probably the same misunderstanding.

Q. Yes. Nothing was done.

And in all of the time that Mr. Fox had referred to Mr. Pairceir as having been the person that concluded this agreement, no inquiries were made, as far as you know, by the Revenue of Mr. Pairceir; isn't that right?

A. That's correct. I wouldn't say it was an oversight.

Q. No, I am sure it wasn't.

Thank you, Mr. O'Connell.

MR. O'NEILL: I have no questions, Chairman, thank you.

THE WITNESS WAS EXAMINED BY MR. NESBITT AS FOLLOWS:

Q. MR. NESBITT: In respect of the position of Mr. Fox, he approached the Revenue in quite an open way; do you accept that?

A. I accept that. I won't dispute that.

Q. So as I understand your evidence, there appears to be something of a misunderstanding.

A. Could you be more precise?

Q. Well, as I understand the gravamen of your evidence here, you are giving your answers as best you can, looking at other people's documentation and some things that you have done, and there is this agreement that's said to exist:

Mr. Fox thinking he has an agreement to be entitled to be treated in a certain way in relation to tax, and the Revenue saying, "No, that's wrong".

A. I think I take what you are getting at. I came to the file in '94, never being involved in the case in any shape or form before that. I was being referred back to an agreement that took place in '87. I didn't even know there was a Discretionary Trust Tax problem. I don't think I knew there had been a Capital Gains Tax appeal at that stage. I knew nothing about the case. So all I could go on was what people told me or what documents I read.

Q. And insofar as you were able to investigate and ask questions, everybody was quite open with you?

A. I think they were, yes.

Q. And the file had references that went one way, went other ways, as you looked through it?

A. The old files, or my current file?

Q. Whatever files you looked at.

A. Yeah, the old files I looked at, yeah, I found nothing in those files to suggest the agreement, as was put forward.

Q. But when you spoke to people, they were quite open with you; they did their best?

A. Oh, I think so. Yeah.

Q. Was there any sense of somebody trying to hide something?

A. I found it unusual in the correspondence that I was being referred to an agreement made by the Chairman and then being referred to one made by John Reid and then being referred back to the Chairman again. I just found that confusing. But otherwise it was open.

Q. But was all there to look at; nobody was trying to hide that moment?

A. I accept that, yes.

Q. So these were just normal files. Anybody who would visit them would find this information there?

A. Yes.

Q. Not the stuff of some great conspiracy to hide it?

A. Oh, no. No.

Q. Thank you.

THE WITNESS WAS EXAMINED BY MR. CONNOLLY AS FOLLOWS:

Q. MR. CONNOLLY: I want to ask you some questions on behalf

of Revenue Commissioners, Mr. O'Connell.

When you had discussions with Mr. Fox in November of 1994, did he specifically indicate to you that this assertion, that there was to be no income tax liability for the Trustees, arose out of the settlement in March of 1987 concerning the Discretionary Trust Tax?

A. That in 1994?

Q. Yes, your first contact with him was November '94 on this matter; but did he say, "Look, this arose from the agreement that was put in place in relation to Discretionary Trust Tax in 1987", or was he specific at all as to where it came from?

A. What my difficulty with the question is that so much information arrived over time. It's a bit difficult to decide, especially in a meeting which wasn't recorded and which something was only mentioned as an aside, precisely what was said. And I may have picked up some information later at the time, but that's approximately what he said, yeah.

Q. In fairness to you, is it the situation that you don't recall what was asserted as being the original date in which this agreement was reached, and the circumstances?

A. That's a it's a difficult question. I would be almost sure that he did refer to Discretionary Trust Tax in '87 when saying that about the income tax, yes.

Q. But in any event, following your meeting, he followed the matter up with a letter, and then the assertion was being

made.

A. Yes.

Q. And did you look at the settlement which was reached by the barristers on both sides in relation to Discretionary Trust Tax settlement?

A. I looked at it sometime later. At the time I got you are talking about the return being received, I had formed an opinion that that was in order, so I looked no further.

It's only at a later stage I came across this agreement, which was not on my file, but were in the files in Capital Taxes.

Q. All right. At some stage you did look at this document which was the settlement agreement in March of 1987 concerning Discretionary Trust Tax?

A. I did, yeah.

Q. And would you agree that there is no mention in that at all of a nonapplication of income tax in relation to monies coming into the Trustees to pay the Discretionary Trust Tax?

A. I accept that.

Q. There is nothing in that. And would you also agree that nowhere in the files that the Revenue have is there any other document, such as a side agreement or a letter, setting out that position between 1987 up to 1994, when you were in contact with Mr. Fox? There is no document of any kind setting out that position?

A. No. Looking through the documents, as I searched through

the documents, if you were to say the documents pointed in any direction, they pointed away from there being such an agreement.

Q. And when I am speaking of documents, there was no document coming from the trust or their agents, and there was no document generated within the Revenue which tended to corroborate this assertion that there was such a special arrangement not to apply income tax?

A. No, in my view, the documents pointed the other direction.

CHAIRMAN: Well, I suppose except for Mr. O'Connell's own letter to his colleague which he stated was written under misapprehension.

MR. CONNOLLY: My question was up to 1994. Because I think he wrote to Mr. O'Connell after this assertion was made in November '94 by Mr. Fox. And my question was premised, sir, for the period 1987 up to then.

CHAIRMAN: I understand.

Q. MR. CONNOLLY: I think you agree there is no document?

A. No document.

Q. And after that time, the only documentation that has been generated is what has been explored by the Tribunal here?

A. That's correct.

Q. And would you agree that an arrangement of this kind would have been not just unusual, but fairly unique, if there had been such an arrangement to waive income tax indefinitely into the future to favour one particular taxpayer?

A. I would never have thought for one second that such an

agreement would be made to favour one taxpayer.

Q. All right. Well, on that basis, did you contact the Dublin Audit District No. 7 to see if they had anything in the way of a ruling or an interpretation that would have allowed this type of matter to be applied to other trusts which were relying on payments in the way of dividends or otherwise to pay income tax?

A. I think, when I started my investigation, that probably was my first port of call. I rang the District to know was there any such general concession available.

Q. Because an arrangement of this kind, if it was put in place under general care and management provisions, would be in the same category as a Revenue ruling or an interpretation, and ought to have been available for other trusts in a similar situation; isn't that right?

A. That's correct.

Q. And the place you'd find some sort of a record of such an interpretation or ruling would have been in Dublin Audit District No. 7, as it then was?

A. That's correct.

Q. And there was nothing there?

A. No.

Q. And when the matter came before the Appeal Commissioners, as we have heard, nothing was produced from the Trustees in the way of any document generated by them or the Revenue which tended to corroborate their assertion that this special arrangement had been put in place by either

Mr. Reid or Mr. Pairceir, nothing?

A. Nothing was put forward.

Q. In 1988, I think self-assessment came into play, and that would have put the onus on the taxpayer in terms of declaring any tax liability that would have arisen in relation to tax of this kind, the income tax payment; isn't that right?

A. That was a change of procedure, yeah.

Q. So when you one of the explanations as to why there may not have been urgency on your part or anyone else's part in the Revenue when this file was being looked at in 1994 and 1995 was that in 1988, the ball was in the taxpayer's court to deal with income tax liabilities of this kind; isn't that correct?

A. Correct.

Q. And a course of action which could have been open to a taxpayer in a situation of doubt was to send in a tax return with nil liability, but raising a query that there was some reservation in relation to an item of this kind; isn't that a course that would have been then open?

A. There is such a procedure still there.

Q. That wasn't availed of in that situation. I think it's called an expression of doubt.

A. That's right.

Q. No such procedure was availed of by the taxpayers in this situation which would have alerted the Revenue to the query and the matter could have been addressed sooner?

A. That's correct.

Q. And the comfort you would have had, as the official dealing with this particular file, was that you had, in the absence of any fraud or negligence, you would have had a period of six years to deal with the matter from the time when a return was first delivered to you?

A. The clock starts when the return is received, yes.

Q. But the tax liability would go back to the date on which the tax liability arose under law?

A. In normal circumstances, yes.

Q. So that you had plenty of time to deal with the matter, but that the ball was firmly in the taxpayer's court at all times?

A. Yes.

Q. Is that a fair way of describing it?

A. That's a fair way of describing it, yes.

Q. All right. Thank you, Mr. O'Connell.

CHAIRMAN: I accept now, Mr. O'Connell, that as regards the particular conundrum we have examined today, it was quite complicated. You had a Discretionary Trust, you had different types of taxes being considered, different branches of Revenue, an overlap of the period that was taken that was succeeded by self-assessment in 1988, so it wasn't a simplistic situation. But if one takes, perhaps, an oversimplified position, perhaps, let us suppose a PAYE employee has some other income outside his 9-to-5 employment, and he is assessed for arrears of tax,

or income tax by Revenue for $\frac{1}{2}$ 1,000, it would be absurd for that taxpayer to suggest to Revenue that he should be paid his wages gross, without deductions of PAYE or PRSI, so that he could make good the amount?

A. Yes.

CHAIRMAN: If you had a tax bill, you couldn't insist on gross payment just so that you could discharge that tax.

A. That's true.

CHAIRMAN: And I accept the analogy isn't exact, but I was just putting it in its most simplistic term.

You stated in response to Ms. O'Brien that you did not see fit to contact Mr. Pairceir because the general practice was not to trouble former employees; that you took a different course with Mr. Reid because he was still employed with Revenue.

A. That's correct. I mean

CHAIRMAN: You did mention that in some exceptional circumstances, recourse would have been had to former employees?

A. I have seen one example, I think, in my career.

CHAIRMAN: Might this not have been arguably such an occasion? It was an enormously big case, and you are talking about the person whom, as we have heard from Mr. Curran yesterday, was the boss of Revenue, and who would have seemed to have authority to bind Revenue if he had made a particular determination?

A. If I had got some direct evidence of this agreement,

anything, I probably would have gone to Mr. Pairceir then.

But I had no direct evidence. I had nobody actually stood in front of me and said, "I agreed the following", or "I have a record", or "Here is my note of the agreement that I made with Mr. Pairceir". Nobody had said that to me.

If somebody had come along to me and said, "Look, I talked to Mr. Pairceir. There is the note. Conversation, there, I wrote down he agreed the following", I would have immediately contacted Mr. Pairceir. But I had nothing.

Nobody actually gave me one piece of what you might call direct evidence. Now, that's the approach I took.

CHAIRMAN: When the matter fell on your desk, had you been aware that Mr. Pairceir had had a period as consultant to either the Dunnes Trust or Mr. Dunne following his retirement?

A. No.

CHAIRMAN: I see. Thanks very much indeed, Mr. O'Connell.

THE WITNESS WITHDREW

CHAIRMAN: I see the next witness is present. Do you want to make a start?

MS. O'BRIEN: Mr. O'Grady.

MICHAEL O'GRADY, HAVING BEEN SWORN, WAS EXAMINED BY

MS. O'BRIEN AS FOLLOWS:

CHAIRMAN: I think, insofar as I have always declared even the most far-fetched or contingent interest, I think you and I, Mr. O'Grady, are mutual parents of girls trying to make their way into third-level education and I don't

think that will affect either of us in the same school.

Q. MS. O'BRIEN: Thank you, Mr. O'Grady.

What I propose doing, Mr. O'Grady, is just taking you through the narrative which you kindly furnished the Tribunal, just to ask you to confirm that it's correct; and I'll just return to deal with one or two matters. I don't anticipate that I'll be referring you to very much in the way of documentation, but there might just be one or two documents that we'll have a look at.

This is a narrative provided by Mr. Michael O'Grady on matters relating to income tax assessments raised on the Trustees of Bernard and Norah Dunne Trusts arising from dividends paid to the Trustees which were used to discharge the Trustees Discretionary Trust Tax liabilities.

And in relation to context, you have informed the Tribunal that in the context of Mr. Tadhg O'Connell's narrative to the Tribunal in which he referred to various conversations he had with you in relation to this matter, the Tribunal wrote to the Revenue Solicitor on 10 May 2005 requiring a narrative from you in relation to, firstly, your knowledge of the matter; secondly, your dealings with Mr. John Reid in relation to the matter; and thirdly, your input into the determination that assessments should be raised.

Now, you have informed the Tribunal that at the time, you were in charge of Revenue's Capital Taxes Division from 1993 to 1996. Capital Taxes Division had responsibility for Capital Acquisitions Tax encompassing gift,

inheritance, and Discretionary Trust Taxes, stamp duties and Residential Property Tax. And I think at the time you were Assistant Secretary in overall with overall responsibility for that branch; isn't that right?

A. That's right.

Q. Were you the immediate successor, then, Mr. O'Grady, to Dr. Thornhill?

A. Yes.

Q. Now, you say that in relation to the November 1994 meetings with Mr. Fox, that you can confirm that you attended the November 1994 meetings referred to in paragraph 1 of Mr. O'Connell's narrative. These meetings were concerned with two specific timing matters arising from the litigation settlement between the Trustees and Mr. Bernard Dunne, the timing of the Trustees Capital Gains Tax credit against Mr. Dunne's Gift Tax arising from the appointment of shares out of the trust, and the payment by the Trustees of Capital Gains Tax arising from the same event in two moieties. Mr. O'Connell represented the Chief Inspector's Office at the meeting, while you had responsibility for Capital Acquisitions Tax. The Chief Inspector's Office had responsibility for Capital Gains Tax and income tax.

Then in, in relation to Mr. Fox's letter of the 22nd January, 1996, you have indicated that the Trustees have assessment return of income and Capital Gains Tax for the tax year 1994/1995 was sent to you in January 1996. You passed this on to Tadhg O'Connell. You are not sure why

the letter of return was sent to you, as you were not responsible for income tax and Capital Gains Tax matters. It was probably because of your involvement in the November 1994 meetings.

In relation to conversations with Mr. O'Connell on the alleged income tax agreement, you say that you have no idea how or why Mr. O'Connell came to the view from talking to you that Revenue had agreed that no further income tax liability arose in respect of distributions made for the purposes of meeting liabilities to Discretionary Trust Tax.

You had no direct or indirect knowledge of, or any involvement in, the matters relating to the alleged agreement referred to in the penultimate paragraph of the letter of 22nd January, 1996, from Mr. Fox to you. You were not in a position to confirm or otherwise anything about this alleged agreement. Whatever conversations you had with Mr. O'Connell about this issue, you are absolutely certain that you did not confirm or indicate that Revenue had agreed that no further Trustees income tax liability arose on the dividends used to pay the Discretionary Trust Tax.

In relation to dealings with Mr. John Reid, you have informed the Tribunal that the Tribunal's letter of the 10 May specifically requires a narrative from you in relation to your dealings with Mr. John Reid about this matter. You have no recollection of any contact with Mr. Reid about this matter; that is, the alleged agreement

in relation to the income tax treatment of dividends to pay

Discretionary Trust Tax.

In relation to your input into the determination that

assessments should be raised, you refer to the fact that

the Tribunal's letter of the 10th May specifically requires

a narrative from you in relation to your input into the

determination that assessments should be raised in respect

of the dividends used to pay Discretionary Trust Tax, and

you confirm that you had no involvement in this

determination. And your narrative was dated the 16th May,

2005. Isn't that correct?

A. That's correct.

Q. Mr. O'Grady, I think you are now one of the Revenue

Commissioners; isn't that right?

A. Yes, since March 2002.

Q. The November 1994 meetings, I think they were on the 16th

and 18th November of that year, and we have discussed them

with Mr. O'Connell in the course of his evidence.

Can I just ask you, had you had dealings with Mr. Fox

before these two meetings?

A. No.

Q. None at all?

A. Not that I can recollect, no.

Q. He had a Capital Gains Tax and a Capital Acquisitions Tax

query that he needed to raise, so it's suppose it's not

unusual that he would have made contact with the Revenue

and asked to meet with you?

A. Yeah, I understand it was quite urgent, reading the note.

It was to finalise a settlement that was pending in the High Court at the time.

Q. And we have heard, really, that the meeting was in relation to the timing or the synchronisation of the Capital Gains Tax that the Trustees would face and the Capital Acquisitions Tax liability that Mr. Dunne would face in relation to the settlement and arising from its terms?

A. Yes, it was a timing issue. The credit for Capital Gains Tax was out of sync with the liability for Capital Acquisitions Tax, for Gift Tax in this situation. So it was a question of getting an undertaking that the credit would be allowed at the time the Gift Tax liability would crystallise, which I think was four months after that. That was common practice at the time, so I was able to confirm that.

Q. And in fact the credit is Capital Gains Tax against the Capital Acquisitions Tax.

A. Yes.

Q. Isn't that right?

A. Yes.

Q. Now, Mr. O'Connell has informed the Tribunal in his evidence that he recalls that in the course of these meetings in November, Mr. Fox also mentioned this agreement in relation to income tax. Do you have a recollection of that?

A. No, I have no recollection of that.

Q. You have no recollection at all?

A. No. It may have been mentioned, but I have no recollection of it.

Q. Do you remember discussion in the course of that meeting of any matter other than the Capital Gains Tax and Capital Acquisitions Tax liabilities that were then pending?

A. No. I have read the notes of the meetings, which have jogged my memory, but I can't recollect anything extraneous to those. But they may have been mentioned, but I just can't recollect them.

Q. Is it possible that there would have been discussion in the course of those meetings of the obligations the Trustees would have to make returns in relation to either the Capital Gains Tax or Capital Acquisitions Tax?

A. It is possible. The return was due in the normal course. The issue here was primarily about payment, payment of the well, obviously the Capital Gains Tax was the critical issue. Gift Tax was the other issue. But returns were not the matter at issue. It was the payment.

Q. Was your experience always in the Capital Taxes Branch of the Revenue, or did you have experience outside that branch before you were appointed Assistant Secretary?

A. All of my experience before that was on the taxes side. I had spent 20 years before that as a Revenue a tax official, essentially.

Q. I see. So you would have been reasonably au fait with matters of income tax and Capital Gains Tax?

A. Yes.

Q. And you'd have had an overview, really, of all of the various heads of tax and tax liabilities; is that right?

A. Yeah. The taxes I would have had experience with were income tax, corporation tax, Capital Gains Tax and Value Added Tax. They were the taxes that were administered by the Chief Inspector of Taxes Office. And for the six years before I came to Dublin, I was a District Manager, District Inspector in Athlone dealing with the Midlands region.

Q. But you have no recollection at all of this agreement being referred to at the meetings

A. Not at those meetings.

Q. in November?

Do you remember discussions with Mr. O'Connell around the time of those meetings? I presume you would have discussions with him.

A. Oh, yes, yes. I mean, the meetings there were two meetings in quick succession, I think. One was on the 16th, and there was another one on the 18th. There was also a question of payment. The actual first moiety was came in on, I think, the 21st.

Q. This was the first moiety of the Capital Gains Tax; is that right?

A. Yes.

Q. So you would have had discussions and meetings with Mr. O'Connell?

A. During that time, yes.

Q. Was there anybody else, do you recall, at those discussions, or a party to them in any way?

A. At the first meeting?

Q. No, at the discussions that you had with Mr. O'Connell around the time of the two meetings in November of 1994?

A. Anybody in Revenue, is it?

Q. Yes, anybody else from Revenue.

A. No. The only other person that was involved was Anne Sheridan in the Capital Taxes Branch, and she was at the first meeting. She wasn't at the second meeting, I think.

Q. Would you have had any dealings at that time with anyone else in the Chief Inspectors Office, other than Mr. O'Connell, in relation to your dealings with Mr. Fox?

A. On the morning of the meeting, the meeting was arranged at quite short notice, so I would have telephoned I think; this is my recollection I would have telephoned Christy Clayton in the Chief Inspectors Office to say that there was an issue involving Capital Gains Tax and Capital Acquisitions Tax, and he, as I understand it, arranged for Tadhg O'Connell to come over and meet Mr. Fox with me.

Q. And after the first meeting, or the second meeting, or indeed between them, do you recall, did you have any further discussion with Mr. Clayton about it?

A. I don't think so. I can't recall any further discussion. I think the matter was dealt with by myself and Mr. O'Connell.

Q. Now, you know that Mr. O'Connell has told the Tribunal, and

indeed has given evidence that it was as a result of something that was said in the course of your discussions regarding those meetings that he formed the view that you accepted that Mr. Fox that the agreement that Mr. Fox was asserting at the meetings was correct?

A. Yes.

Q. Can you assist the Tribunal at all as to what might have happened that could have given Mr. O'Connell that impression?

A. I am afraid not. I have tried to recollect what possibilities might have arisen, but I am afraid I can't recollect anything that might have given that impression.

Q. I see. Mr. O'Connell has then told us that he discussed the matter with you again some time later, some years later, in fact, and that

A. I don't think he said "years later". Perhaps I am wrong sorry, this is after 1994, yes, I beg your pardon.

Q. Some time later. And from those discussions, he realised that he was mistaken?

A. Yes.

Q. Now, do you recall those later discussions with him?

A. I have a recollection of a conversation I had with him, I don't know when it was, where I rectified the misunderstanding that he had.

Q. Well, can I refer you just to the letter; it might just assist you can I just refer you to this letter of January 1996, because it might assist you as to when you

had this discussion. I think it's at Divider 78.

A. I have it.

Q. And this was the letter under cover of which Mr. Fox forwarded his the Trustees' return for 1994/95; do you see that?

A. Yes.

Q. And that letter was addressed to you?

A. Yes.

Q. Now, as you have said in your narrative, you are not quite certain why it was addressed to you because it related to Capital Gains Tax, but you believe perhaps it's because you were the point of contact with Mr. Fox. Is that so?

A. That's probably the reason.

Q. Had you had any dealings with Mr. Fox in the intervening 13 months or so?

A. Yes, I had a meeting with him in 1995, I think, in relation to a valuation matter of preference shares. I don't know whether you want to go into that. But that was a second meeting I had with him, completely unrelated to this. This was a completely separate issue.

Q. And I think in your narrative you indicated that you received this letter and that you passed it on to Mr. O'Connell; is that right?

A. Yes.

Q. Is that your annotation just under the date, 22 January 1996, "Received 30 January '96"?

A. Yes. Yes, I think part of the reason I noted the date was

the I would have been aware of the implications for surcharge on income tax and Capital Gains Tax. The deadline for filing the return for '94/'95 was the 31 January, 1996. So just to make sure there was no surcharge issued; that it was actually received in Revenue before the deadline.

Q. And I presume you'd have read this letter?

A. Yes.

Q. You would have seen, then, exactly what Mr. Fox was saying?

A. Yes.

Q. And from your general knowledge of taxes and your knowledge of all of these taxes, I suppose you'd have been fairly astonished, would you, at what he was suggesting?

A. No, I wouldn't use "astonished". I didn't give it a whole lot of thought. I was certainly curious about it, but I can't say I was astonished, no.

Q. Right. But you were curious about it?

A. Yes.

Q. Do you remember whether that prompted you to take any steps to inquire about it at the time?

A. No. My recollection is I simply passed it over to Tadhg, because it was primarily an income tax matter.

Q. Right. You did make it clear in this letter that the agreement arose in the settlement of the Discretionary Trust Tax in the 1980s?

A. Yes.

Q. And obviously that's not a matter that would have come

within Mr. O'Connell's responsibilities, is it?

A. Not the Discretionary Trust Tax liability. That was a matter for Capital Taxes Division.

Q. And files in relation to that would have been within your branch?

A. Yes.

Q. Do you remember, did you discuss it with anybody else at the time?

A. Not within Capital Taxes Division, not that I can think of. I may have passed a comment, but I can't recall having any substantive discussion with anybody about it.

Q. So do you think you might have had any discussions with Mr. O'Connell around this time in relation to it, or not?

A. It's possible. I perhaps telephoned him and said "I got this; I am sending it over to you", but I can't recall any substantive discussion about the big issue here, which is the income tax issue.

Q. Well, as you say, the big issue in this letter was what was being asserted by Mr. Fox.

A. Yes.

Q. Now, do you recall the conversation you had with Mr. O'Connell when he realised that he had been mistaken about something that you had said earlier, and that you were not accepting that there was an agreement in relation to this big issue?

A. I recall putting him right on that misunderstanding, yes.

Q. And can you tell me about that discussion between the two

of you?

A. I don't know how it arose. I know we had a discussion, probably around the end of December 1996. I mean, we may have had sporadic discussions in the meantime; I don't know. But we certainly had some discussions around the end of 1996 involving this particular case, because at that time I had been transferred to the policy and legislation side, around the end of December 1996, and there was an issue about the timing of the second Capital Gains Tax payment. There were some Exchequer implications there as to whether it fell within the 1996 Exchequer year or 1997, because the payment came in at the very end. I do remember having a conversation with him around that time in relation to this particular case.

I may also have had a conversation with him about the valuation for Capital Gains Tax purposes arising out of this return, because Capital Taxes Division did have a responsibility, as you probably know from these proceedings, in relation to share valuations, so the April 1974 valuation may have been an issue.

They are two things that probably arose around the end of 1996. It may have come to light in the course of those conversations. It may have been later. Mr. O'Connell, as I understand it, is unsure as to whether it was late 1996 or early 1997, and I am equally unsure. I am just giving you some contacts that I know I had with him at that time

Q. Well, for the moment, we'll take it that you are unsure as

to when it happened. Can I ask you about the conversation itself between you and Mr. O'Connell when it became apparent to you that there had been this misunderstanding.

A. I don't know the detail of the conversation, but I certainly was astonished, to use your own word of a few moments ago, that that impression was gained, and I rectified it.

Q. Well, you must have been concerned that he had that impression, were you?

A. Yes, I wasn't aware that this was the situation at all. In fact I hadn't seen the I am sure you will be referring to it in a moment the document in relation to the note to Dublin Tax District. I wasn't aware I hadn't even seen that until a few weeks ago. So I was completely unaware that this impression had been gained, or had been gleaned by Tadhg.

Q. Because, as Mr. O'Connell has said in his evidence, he was absolutely certain, when he took the step of informing Ms. O'Sullivan not to raise an assessment, that you were satisfied there was such an agreement.

A. Yes. I don't know how that impression came about. As far as I am concerned, it was a misunderstanding. I'd like to be able to help the Tribunal on this, but I really can't recall anything that would have prompted Tadhg to come to that conclusion.

Q. Well, when you realised, then, sometime in 1997

A. Or 1996.

Q. or 1996, indeed that there had been this misunderstanding between you, did you take any steps at that stage to inquire about what had happened with regard to the settlement of the Discretionary Trust Tax yourself? Because clearly that was outside Mr. O'Connell's bailiwick.

A. No, I had moved on at that point. I was in the Policy and Legislation Division from December 1996, I think it was.

Q. Right. Now, just one last thing I wanted to ask you. You would have been aware, I presume, in the Policy and Legislation Division, that inquiries were raised by the McCracken Tribunal with the Revenue in relation to dealings with, not just the Dunnes Trustees, but generally with the Dunnes organisation and the Dunnes interests?

A. Yes, of course.

Q. Would you have had any input into the preparation of responses

A. Yes.

Q. for that?

A. Yes.

Q. I'll just show you a copy of the letter of the 28th May 1997 that we were looking at this morning, because it has a fax cover sheet, and the fax cover sheet indicates that a copy of this letter was sent by you to Frances Cooke, the Revenue Solicitor.

A. Yes.

Q. Do you see that? Now, there is reference on the last page of the appendix to this letter, Mr. O'Grady, to this very

income tax issue. If you go to the very last page of the appendix do you have it there?

A. Yes.

Q. You see it's headed "C. Income tax/Capital Gains Tax". Do you see that?

A. Yes.

Q. It deals with various discussions with the Trustees, submissions made in 1994, matters that occurred earlier in 1994, and then finally, at point D, it records: "A point was raised by the Trustees on a return made by them in 1996 about the manner of application of income tax to trust income where that income was paid into the trust by the Dunnes Holding Company for the purposes of defraying Discretionary Trust Tax and where sums involved had already been subjected to corporation tax at company level. This question is under consideration."

A. Yes.

Q. Do you see that?

A. I see that.

Q. So in fact reference to this whole issue was included within the appendix and within the information being furnished to the McCracken Tribunal by I think the then Chairman of the Revenue Commissioners, Mr. MacDomhnaill?

A. Yes.

Q. Now, do you recall having any input into the assembly of that information?

A. I recall having an input into the assembly of the Capital

Taxes elements of it. These are the matters that were relevant to my previous responsibilities in Capital Taxes Division. I don't recall having an input into the wording of paragraph (d) there, but I may have had. I was part of my responsibilities, I was reporting to Commissioner Quigley at the time, and the policy and legislation side of Revenue had a sort of a general almost secretarial role in relation to a lot of important issues that were going on at the time.

So I would certainly have been aware of it, but whether I was involved in the drafting of point number D, I am not sure about that. I certainly was involved in coordinating, or at least I had some involvement in coordinating some of the material that came from the Capital Taxes Division. I'm not sure why, exactly. I think there may have been my successor may have left shortly after that, after I left, and I may have been involved because of my knowledge of the case. That's my recollection.

Q. Yes, I see. I just wonder, is it possible that the conversations between you and Mr. O'Connell in relation to Mr. O'Connell's mistaken impression regarding your acceptance of the agreement that Mr. Fox was asserting, could they have occurred around about the time that this information for the McCracken Tribunal was being assembled?

A. It's possible. I just don't know. I gave you some options about when they may have arisen in relation to December 1996. I don't know that I had any conversations with Tadhg

O'Connell in relation to the preparation of the McCracken Tribunal material. I may have. But as I say, I wasn't directly involved in the income tax/Capital Gains Tax side of preparing the material, but I did have some involvement in coordinating the Capital Acquisitions Tax side.

I honestly can't tell you about that. It is possible. I'm not sure when this misunderstanding was rectified. It could have been December '96; it could have been at some point in 1997.

Q. Well, just to assist you, I don't think it was actually rectified in terms of a step being taken towards an assessment until July of 1997.

A. I am not sure when Tadhg started his initial inquiries. But so I am not sure about that.

Q. Thank you, Mr. O'Grady.

A. Thank you.

CHAIRMAN: Just in case it's possible that we can release Mr. O'Grady, Mr. O'Neill?

MR. O'NEILL: I have no questions.

MR. NESBITT: No questions.

MR. CONNOLLY: No questions, sir.

CHAIRMAN: In those circumstances, we needn't trouble you into the afternoon. Thank you very much for your attendance, Mr. O'Grady.

We have another witness, I think, for 2.15.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

MR. COUGHLAN: Mr. Cathal MacDomhnaill.

CATHAL MACDOMHNAILL, HAVING BEEN SWORN, WAS EXAMINED BY

MR. COUGHLAN AS FOLLOWS:

CHAIRMAN: Thanks for your attendance, Mr. MacDomhnaill.

Please sit down.

Q. MR. COUGHLAN: I think, Mr. MacDomhnaill, you have a Memorandum of Intended Evidence; isn't that correct? And do you have that with you in the box?

A. I have.

Q. I'll take you through this and very briefly refer to one or two other matters, and we shouldn't be too long.

A. Thank you very much.

Q. I think in your memorandum you deal, first of all, with meetings between Mr. Curran and Mr. Bernard Dunne, members of the Dunnes family or any representatives of the Dunnes family, the Trust, or the Dunnes Group; isn't that correct?

A. Correct.

Q. And I think at paragraph 1, you say: "The Tribunal wishes to know whether, apart from the meetings mentioned in the request, there have been any further meetings since 1988 between Mr. Dunne or any member of the Dunne family or any representative of the Dunne family, the Dunnes Trust or the Dunnes Group, and any Chairman of the Revenue Commissioners, and if so, the purpose of such meetings, circumstances in which such meetings were arranged, and whether any member of the Oireachtas had any role in arranging or facilitating such meetings".

Then you say that you had a number of such meetings. With the exception of the meeting with Mr. Pairceir in July of 1996, all meetings were arranged through Mr. Noel Fox, and no member of the Oireachtas had any role in arranging or facilitating such a meeting.

I think what

A. That is correct.

Q. That is correct. And I think, just to briefly flesh that out, you, in your capacity as a Revenue officer, had a number of dealings with Dunnes interests, if I could put it that way

A. Correct.

Q. in a professional capacity?

A. Correct.

Q. And I think that any such meetings that you had with them had been arranged through Mr. Noel Fox, who was both a trustee and an accountant; is that correct?

A. Correct.

Q. You had a meeting with them which involved dealing with Mr. Seamus Pairceir, who had previously been a Chairman of the Revenue Commissioners; isn't that correct?

A. I had one meeting with Mr. Pairceir himself.

Q. With Mr. Pairceir himself, and I think you would have been aware from that that Mr. Pairceir at that time and that was in 1996, I think, isn't that correct was, at that time, in some way involved in advising somebody on the Dunnes side?

A. I understood that he was engaged as a consultant in connection with a paper which was intended to be presented to the Minister.

Q. I just want to flesh that out a little there, and we'll go on.

I think you say that in late 1989, you became the Revenue Commissioner to whom the Collector General and the Chief Inspector of Taxes reported. The Collector General had, at the time, a large case section which monitored on an individual basis cases involving large amounts of tax.

This was done for the most part through telephone contact with the agents handling the tax affairs of the businesses concerned. Mr. Noel Fox was the principal contact person in relation to the Dunnes Group.

Arising out of this, you had a number of telephone contacts with Mr. Fox over the years, but at this remove, you cannot recall them all.

A. Correct.

Q. I think you inform the Tribunal that in November 1989, Mr. Fox contacted you by phone seeking a meeting with Mr. Ben Dunne. This was arranged, and you saw Mr. Dunne, who was accompanied by Mr. Fox. It was a brief introductory meeting, and no taxation issues were raised or discussed.

A. Correct.

Q. I think in July 1990, Mr. Fox telephoned and asked for an urgent meeting, and a time was arranged for the meeting.

Mr. Fox attended unaccompanied. He informed you that there had been a collapse in company profits. The failure to clear large amounts of stocks on the drapery side was responsible, and this resulted, at that time, in a cash-flow pressure. It was clear that payments on account of corporation tax were excessive, and that substantial overpayments would be available for set-off against current liabilities. The overpayments could not be quantified until figures were agreed with the Inspector of Taxes. He was seeking a stay on enforcement action for some of the current liabilities to allow time for the overpayments to be agreed. After consultation with the Collector General, a temporary stay was agreed.

And just to explain there, there may have been a current liability, or a liability of a continuing nature, but taxes had been paid in advance of corporation taxes.

A. Correct.

Q. And all Mr. Fox was seeking there was the indulgence of a little time in relation to a liability until that was actually agreed, and any offset in fact he expected a credit to be coming to him on the other side on the corporation.

A. Correct.

Q. Would that be the type of issue that was involved?

A. Notwithstanding that the company may have been making a loss at a particular time, they still have ongoing liability for Value Added Tax and PAYE. But the amounts

that are paid on account, then, for corporation tax, if they turn out to be excessive, effectively you could say, from a pragmatic point of view, some of that tax is already paid.

Q. This would be a type of matter you would be or the Revenue would be involved in with many companies?

A. Exactly, yes.

Q. I think you had a further meeting with Mr. Ben Dunne in 1991, by which time you had become Chairman. The meeting related to arrangements which the group wished to make regarding adjustments to corporation tax and PAYE. Through the Chief Inspector, you arranged that the matter be handled by the Inspector in charge of the district dealing with the Dunnes Group.

Again, this was just dealing with ordinary business matters.

A. Yeah, and I suppose by way of explanation, it would come to me because the adjustment for the remuneration in corporation tax would be dealt with in the Chief Inspector's area, and the set-off against the ongoing PAYE would be dealt with in the Collector General's, and I was the link between the two areas.

Q. Yes, I understand.

Now, I think you had further meetings between July 1993 and December 1996 with Mr. Fox. It appears that you met Mr. Fox in July of 1993, in April of 1994. You again met with Mr. Fox and Mrs. Margaret Heffernan. In July of 1994,

you had a follow-up meeting with Mrs. Heffernan and Mr. Fox. You had subsequent meeting with them which was also attended by Mr. Frank Dunne. You had a final meeting with Mrs. Heffernan and Mr. Fox in December 1996. You were accompanied by the Chief Inspector of Taxes, Mr. Christopher Clayton.

A. Correct.

Q. Just in broad terms, because I don't think we need go into this in any great detail, were these meetings to do with or circumstances surrounding the resolution of litigation which was then in existence in general terms?

A. No, the meetings the first meeting was, if you like, associated in this way, that a report had been drawn up by a separate team of accountants, and certain matters had come to the attention of the principals in the group that there were tax implications, and they wanted to they weren't finished with the examination when they knew that some items were coming up for attention, and they wanted to make a voluntary disclosure about that.

This was that was the two of the meetings related to that. The third meeting, I don't know if we have come to it, was about getting a copy of the PriceWaterhouse

Q. The famous PriceWaterhouse report, yes.

I think the last meeting, at paragraph number 8 the last meeting you had with a representative of the Dunnes Group was with Mr. Seamus Pairceir in July of 1996 and was arranged at his request. He agreed to let you have his

note of the meeting, and this note you included with the documents available to you. He was acting as a consultant in connection with a submission to the Minister for Finance seeking an amendment of Discretionary Trust Tax law. The arguments being put forward were based on business and competition considerations rather on any perceived taxation anomalies. The meeting was for briefing only, but he did not say that some but he did say that some holding arrangements might be sought later from Revenue in the event of a favourable response from the Minister.

Sometime later, a letter was received from Mr. Fox, and you sent this to Capital Taxes for attention without suggesting any particular line of action.

A. Correct. Could I make one change here?

Q. Yes, indeed.

A. It's really the second-last meeting, because the meeting with Mrs. Heffernan about the PriceWaterhouse report was afterwards; it was later in 1996.

Q. Very good. I don't think anything turns on it one way or another, Mr. MacDomhnaill.

A. No.

Q. Now, on the question of the determination not to appeal against the decision of the Appeal Commissioners on Capital Gains Tax appeal, September 1988. And you were asked what body within the Revenue Commissioners had ultimate authority. And you just deal with this, and I'll just run through this fairly briefly with you:

You say that prior to the introduction of self-assessments, there were a great many appeals to be dealt with each year. In the vast bulk of appeals, the Inspector dealing with the case would determine whether or not the decision of the Appeal Commissioners was to be accepted. If the Inspector wanted to appeal to the High Court on a point of law and he or she would have to express dissatisfaction immediately the Inspector did not have sanction to demand a case stated without first submitting the file to Secretary Taxes with a summary of the appeal proceedings and a covering report. The possible point of law to be pursued would be reviewed in Secretary Taxes, but in addition, a business decision would have to be made as to whether a case merited the costs associated with High Court or Supreme Court actions. At some point during this assessment, the decision would be made to engage counsel. The case would have to be evaluated on the basis of the strength or weaknesses of the legal arguments, the wider tax implications beyond the case in point, and possible costs. If the case was weak but the tax implications significant, an alternative course might be to seek an amendment to the legislation. And you say that that's setting out the general background on how matters would proceed.

A. Exactly.

Q. You say that in this instance, counsel had already been engaged prior to the hearing before the Appeal Commissioners, and in such a situation, the decision to

accept the decision or not was, in effect, out of the Inspector's hands. This is particularly so as the outcome of the appeal hinged on the proper construction of the laws on trusts, rather than on taxation laws. In such a situation, the opinion of counsel would be a crucial factor. Cases where a large amount of tax is at risk, either because of the case itself or because of the wider application of the provision under challenge, tend to be pushed up the line for decision. The ultimate authority to make the decision is the Revenue Commissioner concerned, because one Commissioner is enabled in law to make decisions on behalf of the Board of the Revenue Commissioners.

In the case in point, Commissioner Reason felt the need to consult the other Commissioners. Because there was no difference of opinion among board members, no problem arose as to sanctioning authority. If there had been a disagreement in a situation where the Commissioner did refer the question to the full Board, it is probable that a majority decision of the Board would decide the issue.

A. Yes.

Q. I think you were asked any other record of consideration of deliberation in connection with the decision.

And you say that you have no separate record of the deliberation of Board level concerning the decision not to proceed with an appeal to the High Court, and you are not aware of any other such record, and as far as you can

recollect, this was an oral briefing in which the net points at issue were identified and the opinion of counsel was set out. There did not seem to be any doubt about the weakness of the Revenue's case.

Then you were asked for payment of Discretionary Trust Tax and revaluation of assets.

And you say that you were not involved in any consideration of the question as to whether or not penalties should be imposed on foot of late payment of Discretionary Trust Tax.

The collection of tax under the care and management of Capital Taxes Branch did not come within the remit of the Collector General. When contacted by Mr. Fox in February of 1990 about this matter, your response would have made it clear that this issue was not within your area of responsibility. You do not recall the phone call in question, but you do recollect a discussion with

Dr. Thornhill and Commissioner Casells. Your view was sought as to the appropriate action to be taken in the specific instance, bearing in mind the very complex valuation problems which seem to be causing the delay in furnishing returns and establishing the correct tax to be paid. These approaches were not submissions in any sense, but requests for an opinion. You recommended proceeding with the appropriate action to secure payment of the tax.

This is, I think, in the late 1980s, into 1990. There was what I think is described as slippage or slidage in relation to the payment of the Discretionary Trust Tax;

isn't that correct

A. Exactly. I should say, of course, that I had no expertise in this area at all.

Q. No, no, but I think that's what this issue is referring to here.

A. Correct, yes.

Q. And in fact, there had been it was rolling up over a period of time, isn't it?

A. As I understand it, there was a rule, a three-year rule, so that if you got a valuation for a particular date, it would roll on for three years, and then you are back, and you have got to get a new valuation for Year One of the next cycle, and that would roll on for three years. And that was the way it was working, so I think the delay would probably have been at the point of Year One of a cycle.

Q. But I think there were two matters arising here, wasn't there? There was a question of revaluation of the asset, and secondly, there was a delay sorry, I don't want to use the term there was a slowness in getting the tax in that was due as well; isn't that correct?

A. Correct. As I say, I haven't a great deal of expertise in this area, but I would say that the effective period for doing all this is three months before interest starts to run. And in the context of the valuation problems that were occurring here, that's a very short time, and that was probably what occasioned people to look for some kind of relaxation.

Q. I think it was relaxation in respect of a fairly significant sum of money, though, wasn't it, this time in 1989/1990, wasn't it, around this time that you are talking about here? I don't want to make a big issue about it, but it was a very large sum of money at this time?

A. This would the yield from this trust would dwarf, I think, in my view, the other yields.

Q. I think you then say that you received a call back from Mr. Fox, and it would have been to let you you would have called back Mr. Fox to let him know the person dealing with the issues, and nothing else?

A. Yes.

Q. You had no other dealings with Mr. Fox, Mr. Pairceir or any person in connection with the matter in question beyond that detail immediately above and the brief meeting with Mr. Pairceir in July 1996, as already described.

So you were aware, around this time, of Mr. Pairceir, were you, in 1990, Mr. Pairceir Mr. Pairceir had some involvement advising on

A. On a particular issue.

Q. And who did you understand, or who did you believe him to be advising at that time?

A. I thought he was I think he mentioned that the firm of accountants was involved in carrying in preparing this brief, and that he was assisting them.

Q. Sorry, I am not talking about 1996.

A. 1996, yeah.

Q. I am not talking about 1996. I'm talking about the earlier period.

A. The earlier period, I wasn't aware of his involvement at all.

Q. You weren't aware

A. I wasn't aware of Mr. Pairceir's involvement.

Q. At that time?

A. At that time.

Q. Very good. Now, I now want to come on to the issue which is an important issue really; it's the information which was supplied by the Revenue to the McCracken Tribunal. And I think you have been asked to deal with that because it was done under your signature; that would be the correct way of putting it.

A. Correct.

Q. And you say that you cannot say for certain why the examination of the Capital Taxes papers did not give rise to a mention to you of the reference to a request from the Taoiseach for a meeting between the then Chairman in 1987 and Mr. Dunne. Of course that's a reference to Mr. Pairceir; isn't that correct?

And then you say, one explanation could be that the Capital Gains Tax matters were dealt with at the time in the Office of the Chief Inspector of Taxes, and separate files were maintained in that branch. To the extent at that papers from the Chief Inspector's files were duplicated in the Capital Taxes files, they might not have been included in

the examination mentioned in your note.

Another possibility is that reference to the request in

Mr. O'Cathain's note may have been missed.

So I think what you are informing the Tribunal is, now, I

hasten to add, you were not the one that carried out the

search yourself of every document. You received a letter

from the Registrar to the Tribunal; isn't that right?

A. I had to prepare my reply on the basis of the responses that I got.

Q. And you gave instructions and put inquiries in train throughout the Revenue?

A. Well, there was a very short timescale for responding. And

what I what I have to accept responsibility for is that

I identified the areas and the people that I thought would

be relevant, and I made my approach to all of those and

formulated my reply on the basis of the information given

to me.

Q. This isn't a criticism; I am just trying to understand your

understanding of what may have occurred. Obviously this

Tribunal, and this portion of the Tribunal's business, is

very much focused on notes made by Mr. O'Cathain. There

are no other notes or no other records that we have seen or

that have been indicated to us by the Revenue Commissioners

that record some of the matters which Mr. O'Cathain has

noted as happening. And I think when you put your

inquiries in train, what you say could be a reason why this

was overlooked was, in the first instance, that files were

kept in different places within the Revenue; isn't that correct?

A. Yes.

Q. Or, secondly, that such a reference may have been overlooked in Mr. O'Cathain's notes by anyone who carried out a search of them; those are the

A. I don't know.

Q. You don't know?

A. at this point where Mr. O'Cathain's notes were on the Capital Taxes files or not, so I am just offering different suggestions.

Q. I understand. The Tribunal understands.

Now, you say these two matters which you draw to the Tribunal's attention as being possibilities in relation to the matter is that you put the matter of representations in the terms specified this is and I'll open the letter in a moment Ms. Annette O'Connell, Registrar to the Tribunal, wrote you a letter dealing with the question of whether representations had been made.

A. I think I read the letter.

Q. And I think you now say that you put the matter of representations in the terms he specified in Ms. O'Connell's letter to Mr. Pairceir yourself, and as your note indicates, he had no recollection of any representations from any member of the Dail or Seanad in relation to the Dunnes case. You are not aware of you, personally, of course

A. Yeah.

Q. were not aware of Mr. O'Cathain's reference to the Taoiseach or the meetings in question, but you are certain that if these matters had been drawn to your attention at the time, you would have mentioned them to Mr. Pairceir along with other items that were drawn to his attention?

A. Correct.

Q. I think you say that when formulating your response to Ms. O'Connell, you had to consider whether the request from An Taoiseach to the former Chairman, Mr. Curran, could be classified as a representation or submission of the kind mentioned, and you felt, on balance, that it was not.

There was no call for a report back and no request for any action to be taken other than to see the people in question. In addition, Mr. Curran himself did not consider that the request was a representation or submission. It follows that you had no reason to raise the matter in the response or at the Tribunal, and you were not questioned about it at the Tribunal, although it was known to the Tribunal, as is clear from Mr. Curran's evidence.

A. Yes.

Q. You say that there was no further contact between Revenue and the Tribunal following on the initial correspondence; in particular, lawyers for the Tribunal interviewed you, but you do not recall any reference in the exchanges to the request received by Mr. Curran from An Taoiseach. It is possible that other Revenue officers were also interviewed,

or that files were the subject of discovery order, but you have no personal knowledge of this, and for your own part, you do not know how the information passed into the hands of the Tribunal?

A. Correct.

Q. So just to summarise: You received a request, and I'll just I am not going to read this letter; I just want you to identify it. It's Tab 80. It's a letter dated the 8 April 1997. It's from the Tribunal of Inquiry, Dunnes Payments, addressed to the Chairman of the Revenue Commissioners, Dublin Castle, Dublin 2. And it's signed by Annette O'Connell, Registrar to the Tribunal.

I think can you identify that as being the letter you received from Ms. O'Connell?

A. I can.

Q. I think just in that, she sets out what the Tribunal's business is about, I think probably encloses the Terms of Reference of the Tribunal, and then goes on and she raises, I think, two specific matters, isn't that right, by way of inquiry. And she asks: "Consequently, as you are Chairman of the Revenue Commissioners, I am writing to you for the purpose of inquiring as to whether at any time during the relevant period" and she gives that period "as being the 1 January 1986 to the 31 December 1996, whether any representations or submissions were made by any person who was, during the 1 January 1986 to the 31 December 1996, a member of either House of the Oireachtas relating to :

"1. Possible amendment to tax legislation or other legislation including EC or European legislation, regulation, circulars or other Revenue procedures.

"2. Any other matter within the remit of the Revenue Commissioners which might affect the financial or business affairs of the Dunnes Holdings Companies as defined in the schedule of the Taoiseach's order, including Dunnes Settlement Trust and/or Mr. Ben Dunne or any person on his behalf or any company, trust or other entity controlled directly or indirectly by him."

Then she sends you a copy of the Taoiseach's order, and she lets you know that the Tribunal has to report, and she asks you for a response by the 16th April, 1997. That's the inquiry received.

A. Yes.

Q. I think the next tab, Tab Number 81, I think this is your own note, isn't that right, and we might just run through that very briefly.

And it's note regarding representations. I presume this is for circulation to a number of officials you deemed to be the appropriate people, perhaps, to make inquiries.

You say: "In view of the urgency of the request of the Registrar of the Tribunal of Inquiry, Dunnes Payments, I decided there was insufficient time to meet the deadline of all possible Revenue staff, past and present, who might have had dealings with the Dunnes case had to be canvassed in writing with a view to getting written responses.

Consequently I contacted Commissioners Quigley and Daly and appraised them of the correspondence, and I proceeded as follows:

"1. I asked Commissioner Quigley to have all papers concerning the valuation of shares in the Dunnes case examined in the light of the Registrar's letter, as this was the issue which had given rise to the most difficulty over the years."

You identify this was a major issue in Revenue dealings with the Dunnes.

A. Correct.

Q. You also asked the Chief Inspector of Taxes to consult with the relevant staff on his side regarding any settlement made since 1 January 1986 as to whether representations had been received from members of the Dail or Seanad, past or present. You further asked him to establish whether any such representations had been received in respect of any other aspects of the Dunnes case, in particular the possible Capital Gains Tax arising from changes to the trust setup or to hold shares in the Dunnes companies.

Commissioner Quigley asked the Collector General, Liam Hennessy, who will be aware of any representations involving changes in legislation governing income tax, corporation tax, and Capital Gains Tax. Michael O'Grady, who will be aware of any representations involving the main Capital Taxes, Pat Nevin, I think, who will be aware of any representation involving excise duty; Tom

Duffy who would be aware of any representation in connection with Brussels, customs matters or related issues. If any representation had been received from any member of the Dail or Seanad, past or present, aimed at producing an advantage for the Dunnes cases, and the response in all cases was no. The officers concerned consulted other officers in their divisions as they saw necessary.

The Chief Inspector phoned back to confirm that no representations had been received by him or the staff dealing with the Dunnes cases from members past or present of the Dail or Seanad in relation to those cases . The examination of the Capital Taxes papers revealed three references in late 1986 to the then Minister for Finance, Mr. John Bruton. One was contained in the file note by the then Assistant Secretary in charge of Capital Taxes Branch, Dr. Don Thornhill, and dated 3rd September, 1986, which stated that the Chairman, Mr. Seamus Pairceir intimated that he would inform the Minister of his intention to proceed administratively as the last round of negotiation had not resulted in progress."

I think we have had that particular matter opened before the Tribunal.

The second was a handwritten note, dated 23rd October, by Dr. Thornhill, which intimated that the then Chairman, Seamus Pairceir, had been contacted by the Minister concerning the Dunnes case. Again, I think we have covered

that; that was the Minister for Finance I think you are making reference there to.

A. Yes.

Q. The other was an explanatory note composed by Mr. Seamus Scott, share value expert, for the Minister, presumably at the request of the Chairman, as it was forwarded to him.

Mr. Scott confirmed that he did not receive the request for a note from the Minister.

Mr. John Reid, who was dealing with the Dunnes case on Capital Taxes Branch at the time, also indicated that he was not aware of any representation from members of the Dail or Seanad in relation to the case. You accordingly phoned Dr. Thornhill, who was unable to recollect his reference to the Minister. He confirmed that he did not receive any representations himself in relation to the Dunnes case from any member of the Dail or Seanad during his time in Capital Taxes.

You then phoned Seamus Pairceir, who had no recollection of any representations from members of the Dail or Seanad in relation to the Dunnes cases. But he accepted that there was some contact in the nature of an inquiry from the Minister as referred to in Dr. Thornhill's note, but he clearly did not regard this contact as representation.

This is borne out by the papers and by Dr. Thornhill's note. Mr. Pairceir would regard the note from Seamus Scott as a briefing note to be sent to the Minister.

As a separate matter, you phoned former Commissioner

Reason, who confirmed that he had received no representation whatsoever in relation to the Dunnes case.

You also phoned former Chairman Phil Curran, who recollects that at one meeting in Government Buildings about other matters, that the then Taoiseach, Mr. CJ Haughey, asked him if he would see Mr. Dunne and his advisers, who apparently had communicated to the Taoiseach that they were having tax problems relating to the family trust. There was no request to take any action other than to see the principals concerned. A meeting was arranged at which complex issues were raised, and Mr. Curran asked that the matter be set out in writing. No submissions in writing were subsequently received by Mr. Curran, and he regarded the matter as closed. He did not consider the Taoiseach had made any submissions or representations, or that he expected him, Mr. Curran, to take any action beyond meeting the people concerned and listening to what they had to say.

You asked Commissioner Daly to contact relevant personnel dealing with Customs and Excise matters, and he received confirmation from Assistant Secretaries Dowling and Fitzpatrick and former Assistant Secretary Kiernan that no representations had been received by them or their staff from members of the Dail or Seanad involving the Dunnes case. The Revenue Solicitor, Frances Cooke, was consulted by phone, and the terms of the proposed reply to the Registrar was agreed with her."

And you made that note and you dated it the 11th April of

1997; is that correct?

A. Yes.

Q. And can we take it that that represents a reasonably accurate account of your dealings and responses you received from all of the people you made inquiries

A. At the time, yes.

Q. And it was done at the time?

A. Yes.

Q. And then you consulted the Revenue Solicitor to deal how you'd respond formally in relation to the matter?

A. Yes.

Q. I think if we just go over the page, or the next tab, then; I'll just run briefly through Tab 82.

I think this is a copy of your response to Ms. O'Connell; isn't that correct? And you refer to her letter of the 8th concerning possible notice for, and relevant circumstances relating to certain payments and receipts of certain monies which may become the subject of evidence before the Tribunal of Inquiry (Dunnes payments).

"All relevant personnel have been contacted and the relevant files have been examined. As far as I've been able to establish no representations were made during the relevant period to the Revenue Commissioners or any offices of the Revenue Commissioners or by persons who were members of the either house of Oireachtas during the period relating to:

"1. Possible amendments to tax legislation or other

legislation (including EC or European legislation).

"2. Any other matter within the remit of the Revenue Commissioners which might affect the financial business affairs of Dunnes Holding Company as defined in the schedule of the Taoiseach's order, including the Dunnes Settlement Trust and/or Mr. Ben Dunne or any person on his behalf or any company, trust or other entity controlled directly or indirectly by him."

And it was signed by you as Chairman.

I think you then got a further letter dated 12th May, which is at Tab 83, I think from the Registrar for the Tribunal; isn't that correct?

And you say she said to you: "Dear Mr. MacDomhnaill, thank you for your reply to the letter I addressed to your Department on the 8 April, 1997.

"Arising out of continuing inquiry undertaken by the Tribunal, it is necessary now to seek further information.

I would be obliged, therefore, if you could give me details of any representations, submissions or applications made to your Department by the following:

"1. Dunnes Holding Company." She enclosed therewith a copy of the terms of reference of the Tribunal again.

"2. Mr. Ben Dunne or any person or his behalf.

"3. Any other member of the Dunne family.

"The representations, submissions or applications for which the Tribunal are concerned are those which might affect the financial or business affairs of Dunnes Holding Company,

the Dunnes Settlement Trust, Mr. Ben Dunne, or any other member of the Dunne family or companies, trusts or other entities, controlled either directly or indirectly by the Dunnes Holding Company or any of its associated companies or entities or by Mr. Ben Dunne or any member of the Dunne family. Such preparation, submission or application might relate to:

"(i) possible amendments to legislation, regulations, circulars or other Government or departmental procedures relating to, inter alia, company law, trusts, taxation generally, general financial provisions and planning.

"(ii) trade practices.

"(iii) import licences, including trade quotas and ancillary matters.

"(iv) any other matter coming within the remit of the Department which might affect or impinge upon the interests of Mr. Ben Dunne, the Dunne family, the Dunnes Holding Company or the Dunne Settlement Trust".

She was looking for a reply by the 23rd May 1997.

I think we have been through if you go to the next tab, then, Tab 84, this seems to be a document which seems to have been prepared by Mr. O'Connell. Again, it seems to be as a result of inquiries continuing within the Revenue.

A. Yes.

Q. So, I don't want to go through that until we come to Tab 85, which is, again, your response to the Tribunal, again, the information having been supplied to you for this

purpose; isn't that correct?

A. Correct.

Q. And I just wonder, do you have you have the reply.

There is a facsimile cover sheet. There is the letter, and then you have an appendix to the

A. That's the letter dated 28th May.

Q. Then you sent that back, having received or the information having been gathered for you. I don't intend sorry, perhaps I should just very briefly run through the letter.

"Dear Ms. O'Connell:

"I refer to your letter of the 12th instance seeking further information arising out of the continuing inquiries being undertaken by the Tribunal.

"On the 19th inst. Frances Cooke, Revenue Solicitor, telephoned you at my request concerning the contents of your letter. In the light of the clarifications obtained of the time span covered by the Tribunal's inquiries, the parties involved and the issues identified, I am now including in my response to you the representations, submissions and applications of professional agents, advisers or consultants and of the Trustees of the Dunnes Settlement Trust.

"The scale of Dunnes interests, their personal tax affairs and that of the corporate entities is very considerable, both in terms of value and in the number of transactions per annum. Over the ten-year period with which you are

concerned, Dunnes understood in this context to include over one hundred associated companies throughout the country, in their interaction with Revenue across all the taxes, Customs and Excise, would have submitted approximately 36,000 returns and paid an amount approaching $\frac{1}{2}$ billion in taxes and duties.

"Taking these factors into account and on the basis of the telephone discussion with you mentioned above, I am responding herein on the basis that you are not concerned with the representations, submissions or applications in the ordinary course of dealing with the taxation of the financial and business affairs of the Dunnes Holding Company, etc., and the statutory obligations of these parties with regard thereto."

You are pointing out I take it you are not talking about PAYE and corporation the normal business stuff which form the bulk of the business.

You said: "In the circumstances, you have concentrated on a number of items which, because of the issues involved and their complexity, seem to be worthy of mention in the context of your letter.

"I am attaching hereto a note of the details as requested, with reference to clauses (i) to (iv) of your letter, and with the replies under (iv) subdivided for convenience under the relevant tax heads. If you require any further information in relation to any of the circumstances or matters referred to, I should be happy to arrange for the

appropriate official to provide an assistance.

"In dealing with the taxation of Dunnes, I and my officials have at all times maintained the highest degree of confidentiality in accordance with the undertakings given to all taxpayers in the Taxpayer's Charter of Rights. The commercial interests of companies are carefully guarded. Meetings with members of the family and their advisers on various issues over the years would have been conducted on that basis. I expect that, in responding to the Tribunal to the fullest extent possible, that duty of confidentiality will be respected and preserved. In this regard, I acknowledge and appreciate the undertakings which have been given by His Honour Judge McCracken concerning confidentiality. I trust that nothing submitted to the Tribunal by me will enter the public domain unless the conduct of the Tribunal requires it, nor without notice to the taxpayer, where this is possible.

"In conclusion, I would emphasise that the items referred to in the attached notes were dealt with by the Revenue Commissioners acting independently and in accordance with our care and management responsibilities under the Taxes Acts.

"Yours faithfully,

C.C. MacDomhnaill."

I think you then furnish a schedule, which we have been through this morning, so I'm not going to open the whole matter up with you, other than to raise a point with you as

to whether you had any familiarity or knowledge at the time. And that is a question that I think you might know now, that it has been it had been asserted by the Trustees of the Dunnes Trust that they had an agreement with Revenue that they would not be they would not be liable for income tax on dividends which had been given to passed on to them from the Dunnes Holding Company to enable them to pay Discretionary Trust Tax. You know about that issue now?

A. Yes.

Q. Did you know about it when you were in the Revenue?

A. I think it came to light during the as far as I am concerned during the proceedings for the McCracken Tribunal.

Q. Right. Can you just help us. You knew nothing about it before that?

A. No.

Q. You set inquiries in train, and over a short period of time, it had to be done; the Tribunal were imposing time limits on you?

A. Exactly.

Q. And that was around that time something came to your attention; is that correct?

A. Well, I think somebody mentioned to me that there was they were disputing having to pay income tax on the dividends which had to be declared in order to pay the Discretionary Trust Tax.

Q. Did anyone say to you that at that time that they were disputing it on the basis that they had an agreement?

A. I thought that they were saying they were claiming that the some reason they were claiming that they had an agreement.

Q. But it was around that time that you gained any information about?

A. Exactly, yes.

Q. And to the best of your knowledge, and I know you didn't set about drafting all of these matters; these matters were done under your overall supervision, and you of course take responsibility for the letter going out, and the Tribunal perfectly understands that. But if you take the very last point on the schedule; that's at D.

"A point was raised by the Trustees on the return made by them in 1996 about the manner of application of income tax to trust income where that income was paid into the trust by the Dunnes Holding Company for the purposes of defraying Discretionary Trust Tax and where sums involved had already been subjected to corporation tax at the company level.

This question is under consideration."

Now, I think Mr. O'Connell, who I think may have been involved in preparing some of this work, I think accepts that that is a reference to that particular issue. Would you accept that?

A. Yes.

Q. Now, when you became aware around this time that the

Trustees were asserting or alleging that they had an agreement not to pay this income tax, did you become aware that they were claiming that this agreement was perhaps with Mr. Seamus Pairceir, previous Chairman of the Revenue Commissioners?

A. I think that's what was said to me at this time. Not beforehand.

Q. You made inquiries of Mr. Pairceir yourself?

A. No, I didn't raise this issue with anybody.

Q. That's what I just wanted to ask you about. You made other inquiries of Mr. Pairceir in order to make a response to the Tribunal?

A. No. I wasn't I took it that that was alerting them, in this particular letter

Q. No, no, sorry, I know you didn't raise this issue with him.

A. No, I did not, no.

Q. You did make inquiries of him generally; isn't that right?

A. On the first occasion, I contacted all the retired people that I thought would be involved to see if they had received representations from political representations.

Q. I understand your point. And you think that it was between you would have been unaware of this particular claim that there was an agreement when the first response was given to the Tribunal?

A. Well it wouldn't have occurred to me that it involved political representations. So that's what I was dealing with at that time.

Q. I'm just trying to establish

A. This is a wider canvass, going beyond public representatives.

Q. I am just trying to be clear about this. The first letter you received from the Tribunal, you responded to; and to enable you to respond to that first letter, you yourself made certain inquiries: for example, of previous Commissioners and chairmen. Isn't that correct?

A. Correct, yes.

Q. And at that time, the inquiry was directed to whether or not representations or submissions, or words to that effect, had been

A. As set out in the letter, exactly.

Q. Were you, at that time and this is now when you were making that first inquiry aware that the Trustees were claiming that they had an agreement in respect of the income tax?

A. To the best of my knowledge, I wasn't.

Q. When the second letter was received, as you say, it was a broader canvass?

A. Yes.

Q. And it threw up further information, as far as you were concerned?

A. Exactly, yeah.

Q. And one of the matters that it threw up was that you became aware that they were alleging or asserting that they didn't have to pay this income tax because they had an agreement,

and you believed you would have been informed that they were suggesting that it was with Mr. Pairceir?

A. I think that's my recollection of it, yes.

Q. And but you didn't make an inquiry of Mr. Pairceir at that time?

A. No, I didn't feel the need for no, I didn't.

Q. I just want to understand.

Now, when you heard that there was or it was being claimed that such an agreement existed, did you have any view about that yourself?

A. I think my view at the time was that if the credit attaching to the dividends was equal to the standard rate of income tax chargeable on a trust, there was no you know, during part of this time, the credit wiped out any tax liability that would have arisen, and I would regard that as common sense, not to be proceeding with an assessment just to cover it with a tax credit.

Q. Yes, I understand that.

A. But I don't think that that treatment would carry over.

Now, I am just saying this now. I don't think that treatment would carry over to a period when there was a difference between the tax credit and the tax.

Q. That seems to be the very point; that where they were the same?

A. When they were the same, it didn't seem to be a big point that you make an assessment simply to

Q. To return nil?

A. Exactly, yes.

Q. But where there was a divergence, an issue arose?

A. Then it's a different matter.

Q. If that were to be the case, when you were informed of this, were you in any way taken aback, surprised, astonished that it could be claimed that there would effectively be an agreement

A. I didn't think there could be an agreement to that effect.

Q. Well, you see, this is something that just occurred to me.

You had had many dealings with Mr. Noel Fox on a professional level, and a competent professional man, there is no doubt about that, in all your dealings with him. I take it you would have been aware of, perhaps not, through your work with Bowen and Mr. Uniacke and people like that, would you, over the years, that had a reputation, at least?

A. Mr. Fox's reputation, is it?

Q. No, they had a reputation as practitioners?

A. Oh, yes.

Q. All of these people?

A. Yes.

Q. You see, it just I wonder, could it be the situation that where men with good professional reputations were claiming that they had an agreement, and that such an agreement had been made with Mr. Pairceir, who was Chairman of the Revenue Commissioners and would be in a position to commit the Revenue in a situation, was there perhaps a reluctance to go near Mr. Pairceir to ask him on this

basis, that there was worry within the Revenue that perhaps what was being claimed was correct, and perhaps we just don't want to know about it?

A. Well, I think my thought on it would be that possibly there was an understanding when there was no difference, and they were reading too much into that. That would have been my

Q. I see. But to your knowledge, nobody checked it out, to your knowledge?

A. No, no. I didn't contact Mr. Pairceir on that.

Q. Thank you very much indeed, Mr. MacDomhnaill.

CHAIRMAN: I'll just check, Mr. MacDomhnaill, in case a couple of other barristers may wish to ask you a question or two.

Mr. O'Neill?

MR. O'NEILL: I have just a couple of questions,

Mr. Chairman.

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

Q. Good afternoon, Mr. MacDomhnaill. My name is Hugh O'Neill, and I appear on behalf of the Trustees of the 1964 Settlement, and I have only a few questions to ask you.

First, I want to ask you in relation to the decision that was made not to appeal the decision of the Appeal Commissioners holding in favour of the Trustees; in other words, that the 1985 transaction was not a disposal and therefore not the matter of or not the subject matter of Capital Gains Tax.

Now, I take it that the decision this was brought to your attention, I think, by Commissioner Reason, under whose jurisdiction this matter came?

A. Yes.

Q. And I take it that the decision that was reached by the three Commissioners was a decision made after the Commissioners you included had, as far as you were concerned, all information you needed to make an informed decision?

A. That is correct.

Q. And there was nothing unusual or irregular in relation to that decision, or the manner in which it was approached?

A. Absolutely nothing at all.

Q. Except perhaps unusual in that it was actually brought to the attention of all three Commissioners rather than being decided by one Commissioner?

A. Well, the only thing that was unusual about it was that it was brought to the whole Board. I can't recall any other appeal where that happened. But apart from that, it just came up in the ordinary course. Commissioner Reason, who would have been the Commissioner in charge, would have gone into that very thoroughly. The presentation to us seemed very convincing.

We started out, if you like, in Revenue, on the assumption that there was a new settlement; and of course, that if you had that of course, you had a very strong case for a deemed disposal. But I think the nub of the case in the

end turned out to be that there wasn't a new settlement, and that a power of revocation, that Revenue might have thought initially wasn't going to work in favour of the taxpayer, in fact did. And I think that altered the whole case, as far as I am concerned.

Q. And there was no intention on the part of the you or the other Commissioners to do any favour to the Trustees; if you thought there was any legs in any appeal, presumably you would have said, "proceed with the appeal"?

A. I think if we thought there was any case at all, having regard to the money, because the Capital Gains Tax yield here would have dwarfed all the other Capital Gains Tax at the time, that we thought if there was any chance. But I think the overall responsibility, both to the State and to the taxpayer, to make a fair decision, and while you could go along without any qualms and proceed to High Court and Supreme Court, if you like, indifferent as to what costs might be involved for people, I don't think that would be a proper exercise of administration. I have always felt that an appeal determination, whether by an Appeal Commissioner or in higher courts, gives the correct answer; that I don't subscribe to the idea that people win or lose appeals. I think, at the end of the day, you have got the correct answer; and if that's not satisfactory, then perhaps the law has to be changed. That's the way I look at it.

Q. But if you have got an opinion from the counsellor involved in the case saying, "In our view, or in my view, this

decision is wrong", presumably a decision may then have been made to appeal, instead of the decision not to appeal, on the basis of the clearly

A. If the argument had been 50/50 and the case law was going this way and that way, then you'll have to say, "There is too much money at stake here; we have got to give it a shot at the High Court anyway, and see how it gets on there".

In this case, it didn't seem a case that merited that action. And the fairest and most reasonable thing to do was to recognise that and not just go on another leg for the sake of doing it.

Q. Now, just one other aspect that I want to ask you. It relates to your dealings with Mr. Fox and with the Trustees and representatives of the Trustees from time to time.

I presume, as far as you are concerned, there was nothing irregular, improper or secretive in respect of those dealings; they were all above board?

A. They were indeed. In fact, the whole initiative of having, of having direct contact for higher-yield cases was a Revenue/Collector General initiative, and to the extent that accountants responded to that, I would regard that as an element of voluntary cooperation beyond the sort of basic requirements of the law.

Q. Thank you, Mr. MacDomhnaill.

THE WITNESS WAS EXAMINED BY MR. NESBITT AS FOLLOWS:

Q. MR. NESBITT: Mr. MacDomhnaill, just one matter I wanted to ask you about. You dealt with a meeting you described as

the last meeting you had, at paragraph 8 of your statement, in answering questions of Mr. Coughlan, and you met with Mr. Pairceir in July of 1996.

Now, am I right in thinking that when he came to that meeting, he was quite open about what he was about, who he was acting for?

A. Yes.

Q. No question of subterfuge, or any problem like that?

A. None whatever. If you like, he was updating Revenue on what was going on. That's the way I looked at it. I mean, the case was going to be made to the Minister, and he came and advised us that they were going to take that action. I thought it was a meeting where we were being well treated, if you like, by letting us know that a certain course of action was contemplated.

Q. So nothing untoward in where he came from and how he arrived to discuss matters with you?

A. Well, the arguments that he was suggesting to me were that this amounted to an additional rate of corporation tax for an enterprise that was competing with international companies, and that they didn't have the same burden, and this should be taken into account.

Q. And that was a legitimate point of view?

A. Absolutely, but it would have been a matter for the Oireachtas.

Q. Indeed. You apply the law, and the Oireachtas develops it and passes it.

Just coming back, you have been a Revenue Commissioner since late 1989?

A. I have been a Revenue Commissioner since July 23rd July, 1987.

Q. 1987, sorry. And the Revenue is a very structured enterprise; isn't that right? It's well organised, and people keep notes of what occurs, and there is a system of doing things the right way.

MR. COUGHLAN: That is a question which, for the premises of the question, was structured "and everyone keeping notes" does not seem to accord with the evidence which we have received which you have heard, sir, in this case, in this Tribunal so far.

It's the question I am objecting to and the way it's put.

MR. NESBITT: I didn't interrupt My Friend.

MR. COUGHLAN: I know you didn't.

Q. MR. NESBITT: Perhaps we could just deal with your experience, and obviously the Tribunal will be making its own mind up, but I am concerned to just understand, from your point of view, what you were able to find in the records of the Revenue concerning the implications that appear to be made by counsel for the Tribunal, something's adrift here, the fact that somebody might think they had an agreement was something that was wrong, and that the Revenue might have a different view of something that was wrong.

Did you see anything in the files that you had to deal with

that suggested there was something untoward about this state of affairs?

A. I think it's the obligation of every tax adviser to do the best he can for his client. And it's the duty of the officers of the Revenue not just to do the best they can for the Exchequer, but also to ensure that the correct tax is paid by this is the philosophy which I have always advocated that the duty of an officer of the Revenue Commissioners to establish the correct tax isn't taken away because there is an agent acting, or maybe a very aggressive agent acting. So I would see that the duty of the adviser is to make sure that all the entitlements that are available are obtained for his client. But I would think that equally, the adviser wouldn't go beyond that and look for something which is not due under the law.

Q. Maybe we break this down. So if you don't ask, you don't have an opportunity to receive, I assume, from the point of view of a tax agent dealing with the Revenue; you must try and put your case forward to the Revenue so they'll listen to it and form a view?

A. Yes.

Q. And from the Revenue's point of view, you must be even-handed; you must apply the law as you find it to the circumstances of the case?

A. Yeah. It's not the duty of an officer to get the maximum amount of tax from a subject. His duty is to get the correct amount of tax.

Q. And in the Revenue and this is something I think that may be apparent, and perhaps I could ask you about it there is a division between the concept of assessing for tax and a different job of collecting the tax when it's finally assessed and due and payable; isn't that right?

A. That is correct. It has been a principle of taxation that collection would be kept as a separate matter from quantification. This is, if you like, part of the checks and balances of the system.

Q. And by 1989, you were one of the Revenue Commissioners to whom the Collector General, who would be in charge of collecting and the Chief Inspector would be in charge of assessing tax, reported. So at your level it all came together?

A. Correct.

Q. Now, given your experience in that regard, I want to just repeat the question I asked. Having that level of experience and having had the opportunity of perusing the information and documentation that was available to you and has been before this Tribunal, did you see anything untoward in the fact that the taxpayer was attempting to get one treatment and the Revenue were looking at that and treating it in a certain way?

A. Definitely not. The vast bulk of taxpayers are trying to do that.

Q. And I think in this case the Revenue applied the taxation charges and recovered the tax in the circumstances of the

factual situation that came before them; they raised Discretionary Trust Tax and they got paid it. Isn't that right?

A. Yes.

Q. They attempted to levy Capital Gains Tax, and they went to the Appeal Commissioners, and they lost?

A. Yes.

Q. And eventually things happened in relation to the trust, and you may not know this and they were again paid; is that right? So no issue of somebody failing to levy tax?

A. I can't say it, anyway.

Q. And you have had the opportunity of reviewing the files for the purpose of coming to give evidence?

A. Well, I have had an opportunity of reviewing certain documents which were relevant to my involvement, if you like.

Q. Now, you understand the importance of the implication of another question that was put to you by Mr. Coughlan in relation to failure to draw information to the attention of the McCracken Tribunal; that's a very serious allegation being levelled against you.

MR. COUGHLAN: I made no allegation whatsoever, and My Friend should be very careful in the type of manner the looseness of the language that's being used here is outrageous.

CHAIRMAN: It is absolutely uncalled for, Mr. Nesbitt

MR. COUGHLAN: And Mr. Connolly did not object to any question.

MR. CONNOLLY: I didn't object to any of the questions raised, sir.

CHAIRMAN: There was no objection taken by Mr. Connolly.

It's singularly unhelpful, Mr. Nesbitt. I have already queried the necessity for your presence this week and last in the presence of Mr. O'Neill, and I find this particularly unhelpful. The Tribunal do not make allegations; they pursue lines of inquiry. And had these matters that emerged not been inquired into, the Tribunal would be seriously remiss.

Now, please put whatever matters may be pertinent.

Q. MR. NESBITT: In relation to the information that you made available to the McCracken Tribunal, as I understand it, you were most careful to review what was to be given to them, and you did that to the best of your ability?

A. I think I made as fair an evaluation as I could of the within the timescale. It required a knowledge of the organisation to be able to identify a fruitful line of inquiry that wouldn't drag on indefinitely. I think everyone involved would be aware now of the enormous size of this case and the huge volume of transactions involved.

Q. Indeed.

A. So I was careful to get to the real nub of the matter, which was political intervention, anybody being asked to do something. I felt that being asked to see somebody, which

didn't really ask to have the tax liability changed in any way or the procedures or the circulars or anything like that, didn't involve a representation or the submission of the kind mentioned in Annette O'Connell's letter. That was my assessment of the position.

Q. You did that to the best of your ability. Did anybody try and interfere with your access to documentation or your ability to bring to that Tribunal what you considered was appropriate?

A. I reject that. I think I went to some trouble in the timescale involved to contact all the people involved in all the areas most likely to bring something to light.

Q. Thank you very much.

THE WITNESS WAS EXAMINED BY MR. CONNOLLY AS FOLLOWS:

Q. MR. CONNOLLY: Mr. MacDomhnaill, I want to ask you some questions on behalf of the Revenue Commissioners. I hope not to keep you very long.

I want to ask you first of all in relation to the decision of the Revenue Commissioners not to appeal the decision of the Appeal Commissioners in 1988. Just to set the scene, I'd ask you to turn very briefly to the book of documents, to two documents. The first is at Tab 60, which is the opinion of Mr. Fennelly; and the second document is in the next tab. It's the advices of Mr. Savage, the Inspector dealing with the matter. Do you have those documents to hand?

A. Yes.

Q. I am just opening, not for the purpose of being repetitious, but just to set the scene before I ask you specific questions in relation to your own recollections. You will see in the opinion of Mr. Fennelly of the 15th November, 1988, that he says in the third paragraph: "I do not think it is necessary for me to write a full opinion about the issues in the case unless that is required. If so, I'd be glad to do so. Basically I would agree with the analysis upon which the Commissioners appear to agree." Then he goes on and deals in some detail, then, as to the thinking process of the Appeal Commissioners. And he says in the next paragraph: "Frankly, I would find it difficult to disagree with the opinion of the Appeal Commissioners." He then comments on that and their thinking process in the next number of lines, and he says in his penultimate paragraph: "I would be quite pessimistic about any chances of reversing the decisions of the Appeal Commissioners on appeal."

Now, yesterday, your former colleague, Mr. Clayton, suggested that there was something remiss or inefficient on the part of the Revenue Commissioners in not seeking a full formal counsel's opinion rather than relying on the views expressed, clearly and bluntly in Mr. Fennelly's letter.

What do you say in relation to the necessity or desirability of seeking a full counsel's opinion when you receive a letter of that kind?

A. First of all, we were approaching this at board level with

an open mind, and that letter which you have just quoted I think was the most telling thing that came to our attention. I didn't consider, when I saw the reference to getting a fuller opinion, that a fuller opinion could say anything more than what I feel we have got the opinion in that letter on the key issues.

Q. Does it follow from that you saw no point in getting a full formal opinion, given the frankness of the letter you had received?

A. I think this is a formal letter which is, if you like, a very cryptic opinion, but it's nonetheless an opinion.

Q. For your purposes, it served the same purpose as a full formal opinion?

A. As far as I was concerned.

Q. The next item is a letter from Mr. Savage, who was an Inspector in the Revenue Commissioners, dated the 17th November. You will see just at the end of the last paragraph sorry, the last sentence in the first paragraph, he says, having referred to Mr. Fennelly, he said: "I have discussed the question with blank Revenue counsel" that's Mr. Fennelly "after the hearing ended on the 23rd September 1988. We were both of the opinion that a decision would go against the Revenue and that there would be little prospect that the High Court would overturn the decision. My recommendation is that the Revenue should not pursue the matter further."

That was something that the Appeal Commissioners would have

to weigh in the balance as well, the views of Mr. Savage, the Inspector; isn't that correct?

A. The Revenue Commissioners?

Q. Yes, sorry, I said the Appeal Commissioners; the Revenue Commissioners would have to weigh that in the balance as well?

A. Well, he is the expert at that moment.

Q. What was the standing of Mr. Joe Savage in the Revenue Commissioners at that time, when he would have written that letter?

A. My recollection is that Mr. Savage was identified as a very able and promising Inspector. Nobody in my time in the Chief Inspectors would be put on that desk if he weren't of the highest calibre.

Q. Now, perhaps it was inadvertent, unintentional, but certainly an impression was given by Mr. Clayton in his evidence yesterday which tended to downplay the value of whatever input Mr. Savage had in relation to the decision of the Revenue Commissioners when looking at this matter.

A. I wouldn't agree with that.

Q. His opinion was to be valued, as far as you were concerned?

A. I would value Mr. Savage's opinion very highly.

Q. Now, I think you pointed out that while one Commissioner can make the decision as to whether or not a matter of this kind should go a step further on a technical legal point to the High Court or not. In this particular case, the decision was made by all three; that's yourself and

Mr. Curran and Mr. Reason?

A. As briefed by Commissioner Reason.

Q. And the person who would have had the most familiarity with this file on these issues would have been Mr. Reason?

A. Mr. Reason had carriage of it at Commissioner level.

Q. What sort of person was Mr. Reason? Was he a hasty or careful person? Give us some idea, because he is not going to be giving evidence before the Tribunal. Tell us something about Mr. Reason, please.

A. I couldn't say anything about Mr. Reason that wouldn't be in superlatives. I learnt most of my trade from Mr. Reason when I was an Assistant Secretary under him; and before that, when I was working with him, Mr. Reason was the leader in the drafting of the Corporation Tax Act, which was a massive piece of legislation. He was in charge of that team. He was also in charge of the Legislation Branch for very many years with responsibility for the drafting and assisting the Minister in the Dail in having the legislation enacted.

So he is it would ill become me to say anything that wouldn't reflect well on Commissioner Reason.

Q. Well, what do you say to a suggestion that was made yesterday by Mr. Clayton that this decision not to appeal the matter to the High Court was a hasty decision made by the Revenue Commissioners?

A. I don't know what the basis for that is. But I wouldn't agree with it. There was no

Q. Was there any time pressure on you in making this decision?

A. In

Q. In the decision not to appeal the matter further, was there any time pressure on you?

A. I wasn't aware of any time pressure. I know that an assessment like that would stick out very prominently in the context of Capital Gains Tax, but I wasn't aware of any pressure whatsoever.

Q. Do you think it was in any way poorly considered or an inappropriate decision made by the Revenue Commissioners?

A. I was a party to the decision, and I therefore think it was the correct decision.

Q. Just one final matter. You were asked by Mr. Coughlan about the perception that was held by the Trustees that income tax was not to apply in relation to the receipt of money by way of dividends in order to be able to pay Discretionary Trust Tax. Was there ever any reality in an assertion of that kind, as far as you're concerned, once there was a slippage in the rates between Discretionary Trust Tax and income tax?

A. I think in most cases, if somebody felt they had an agreement like that, and you know, there's lots and lots of case law about taxpayers feeling they have had agreement with Inspectors, and they have gone to court and judicial review and mandamus and everything else. But I think in most situations, when a reasonable explanation is given to say, "Well, look, when we did it that way, there was no

difference; now there is a real difference, and there is no basis for continuing", that most people would accept that.

Q. Thank you.

CHAIRMAN: And one thing I should say, in conclusion, Mr. MacDomhnaill, and that probably I shouldn't be saying it to you as a former head of the Revenue Service, but in the context of the momentary frisson that arose a short time ago, just as I have no doubt that you, on the face from the documents you have produced, took very seriously the request you got from Judge McCracken, I'd like to make the observation now that throughout the dealings that the Tribunal, through its legal team, has had with the Revenue Service and their legal advisers, we have unfailingly found them to be prompt, courteous and professional. And indeed, bearing in mind that the professional life of a tax collector is dealing with confidential affairs, that probably has not been an easy thing to do. But while I will have to report on these and many other matters as best I can, I would take the opportunity of acknowledging that the relationship with the Revenue Service and the cooperation given has been prompt and the relationship has been good. So I feel that's something that should be said now.

Thank you very much for your attendance.

A. Thank you very much, Your Honour.

THE WITNESS THEN WITHDREW

MR. HEALY: I had intended to ask Mr. O'Cathain to deal

with a few short documents, sir, arising from something that was drawn to your attention, and indeed to the Tribunal's attention yesterday by Mr. Hugh O'Neill when he was referring to what he suggested may have been the consideration given by the Revenue Commissioners and Mr. O'Cathain to increasing the 1974 valuation to 8 million in November of 1986, which is obviously an extremely important point, both from the Tribunal's point of view and Mr. O'Neill's point of view.

I have looked through all Mr. O'Cathain's file. I have looked through, with the assistance of other members of the Tribunal legal team, the vast number of documents, and I can't find what appears to have been referred to. But rather than have Mr. O'Cathain come back twice, I have spoken to Mr. Sherlock. I think it's possible that Mr. O'Cathain may be able to give more guidance as to where we should look, and therefore I think it's preferable if that matter is left over until Tuesday morning. It won't take more than ten minutes.

CHAIRMAN: That seems preferable. In those circumstances, then, are we 10.30 tomorrow?

Thank you.

THE HEARING ADJOURNED UNTIL THE 24TH JUNE, 2005.