

THE TRIBUNAL RESUMED ON THE 24TH JUNE, 2005 AS FOLLOWS:

CHAIRMAN: I should just say that some matters arose since yesterday's conclusion which required the projected 10.30 start to be put back to 11 o'clock. We sought to convey that as fully as possible, but if anybody was inconvenienced or kept waiting for the changed start, I am very sorry about that.

MR. HEALY: Mr. Frank Bowen, please.

FRANK BOWEN, HAVING BEEN SWORN, WAS EXAMINED BY MR. HEALY AS FOLLOWS:

Q. MR. HEALY: Now, you haven't given evidence to this Tribunal or to the McCracken Tribunal before, so very briefly, I'll just tell you how I propose to take you through your evidence.

You have provided the Tribunal with two narrative statements. Really what they do is they take the Tribunal through a whole series of documents from your own files; isn't that right?

A. That's right, yes.

Q. And what I propose to do, is simply to go through those narratives, and certainly in the case of the first narrative, to deal with each document in turn as we go through it. If any questions arise, we'll try and sort them out as we go along .

A. That's fine.

Q. Now, do you have a folder of your own statement, or do you have a folder of all

A. I have it here, Mr. Healy, yeah.

Q. In my folder it's Leaf 9 of the big white plastic leaves.

A. Yes, I have it, the narrative statement, yeah.

Q. You are yourself a chartered accountant; isn't that right?

A. Yes, that's right.

Q. With many years' experience, and I take it are you still a member of the firm of Deloitte Touche and Partners.

A. No, I have retired for three years.

Q. But you were, until three years ago, a partner in that firm?

A. Yes, I was, yes.

Q. And I think you were a partner in relation to most of the events that are at the time, rather, of most of the events that are referred to in your narrative statement; isn't that right?

A. Yes, I would have been appointed a partner in 1969, I think, and so through all

Q. We are talking about '85.

A. Oh, yes, definitely, yes

Q. There may be odd references back to the sixties, but in any case, during the period in question you were a partner of many years' standing?

A. Yes, indeed, yeah.

Q. Now, you say in your statement "the trust", and you are referring to what we all now know as the Dunnes Trust, was set up in March of 1964 for a 21 year-period with a final vesting day on or about the 16th March, 1985. The

introduction of Capital Acquisitions Tax of 1986 and Capital Gains Tax 1975 did I say '86 there? The Capital Acquisitions Tax Act of '76 and the Capital Gains Tax Act of '75 and the Discretionary Trust Tax act introduced in the Finance Act of 1984 eliminated all the tax reliefs and benefits previously associated with Discretionary Trust Tax Discretionary Trusts and imposed potentially very substantial tax liabilities if the trust were to be appointed or allowed to vest in March of 1985.

Now, I think what you are referring to there is the trust was set up whereby the assets of the trust were subject to the Discretionary Trusts set out in the deed of 1964 with a vesting date in default of an appointment 21 years later; is that right?

A. Yes, that's correct.

Q. So that if nothing happened, if the Trustees didn't vest any of the trust assets in any of the potential beneficiaries or the class of beneficiaries, who were basically the Dunnes family, they would automatically vest after 21 years of the date of the execution of the deed; isn't that right?

A. It would have automatically vested in the six children, yes.

Q. Initially, I presume well, for many years, the advantages of a Discretionary Trust were that once the assets were within the trust, they weren't beneficially the property of anyone as long as the Trustees hadn't appointed

assets in favour of any of the potential beneficiaries;

isn't that right?

A. Yeah. The basic position would have been the impact of the Estate Duty and succession duty-type situations, and the fundamental principle was there that once the asset was transferred and the settlor survived for seven years, there was effectively no liability then to either succession duty or estate duty.

Q. During the period of the trust, the assets which had been accumulating up to a point immune from tax were overtaken by tax legislation; would that be a fair way of putting it?

A. Yes, the events of the Coalition Government of 1975, that era, when they brought in all those taxes and you haven't mentioned the wealth tax, which was obviously brought in in '75 as well but was repealed in 1978 all those taxes started to impact on as we would have impacted on individuals, they would also have impacted on so the benefit of having the Discretionary Trust as against an individual holding it was gone.

Q. Well, I suppose the difficulty was that once you took the money out of the trust, then it became subject to a whole load of taxes?

A. Yes.

Q. As long as it was within the trust, in general, until Discretionary Trust Tax came in, it was relatively still relatively immune?

A. Yes it was; it was immune, yes.

Q. And Discretionary Trust Tax had the effect of subjecting the trust assets to taxation even while they were within the trust; isn't that right?

A. Yes. There were two aspects to that: the initial 3 percent, which came in 1984; and then in 1986, the 1% came in.

Q. Which was an annual charge?

A. Which was an annual charge, yes.

Q. And I think we still have that, haven't we?

A. Well, the 3% is now 6, and we still have the 1%, yeah.

Q. And obviously the effect of those taxes today is to deter somebody from putting their money into a Discretionary Trust Tax, so you have to come up with some other way of protecting income legally, I mean, of course but in any case, by the time that the vesting date came, or as it was looming, you were going to have a very serious tax problem; isn't that right?

A. We had a very serious tax problem. And I mean, I Discretionary Trusts were a valid instrument in the '60s; they were probably not a very valid instrument in modern times.

Q. I want to be clear about this. There is nobody suggesting they weren't a valid instrument, and still aren't; it's just if you use them to avoid tax in the short term. In the long term, if your trust assets accumulate in value, you are going to have a tax problem eventually; isn't that right?

A. Yes, because essentially both the Capital Gains and the C.A.T. go forward, so at best you are only always ever making payments on account, or progress-type payments, really, as life goes on, yeah.

Q. You go on: "The long-term future of the trust has been under discussion for many years. By the end of 1984 the options available to the Trustees were either to appoint the trust fund or extend the term of the trust beyond March of 1985. The Trustees were advised that, as a matter of law, it was possible to extend the trust. The preferred option of the Trustees was to appoint the trust fund provided the cost was manageable. The only source of funding available to the Trustees would have been the assets of the Dunnes Stores Group of Companies. The Trustees decision to approach the Revenue was taken with a view to establishing whether a basis existed whereby the trust could be appointed and Capital Acquisitions Tax and Capital Gains Tax paid at a level which the Dunnes Stores Group of companies could afford.

So, what you were seeking to do was to establish, I suppose, to put to cut to the chase; we have been dealing with this all week to see what sort of value Revenue were insisting on as the value of the trust assets, because that would dictate almost everything in relation to how much you'd have to pay. Isn't that right?

A. Yes, that's the basic position. We had been looking at this issue since 1976, so we had a lot of homework done on

the process and what were the likely outturns and eventualities.

Q. "On an introduction from the late Hugh Coveney TD, Bernard Dunne and I met Mr. Alan Dukes TD, the then Minister for Finance, in February of 1985. Document Number 1 is a note I prepared of the points Bernard Dunne and I wanted to make to the Minister at that meeting. These points were made to the Minister."

And I'll just refer you to Document Number 1. Now, I have here in the book in front of me I hope you do too a photocopy of your manuscript note, and behind it a typed transcription. Now, I suppose you will find your manuscript easier to read, if you like, and I'll just do the transcription. Before you do that, I'll just ask you to explain who instigated the approach to Hugh Coveney.

Who was the person who had the contact with Hugh Coveney?

A. Well, I would have known Hugh many years, because, as you know, I lived in Cork, Mr. Healy; so Hugh would have been a long-time friend of mine. Hugh was also a qualified QS, and he would have done and his firm would have done a lot of work for Dunnes, so he would have been known to the family. They had all grown up in Cork, pretty well much together. So Hugh would have known the family extremely well. So I would have discussed it with the beneficiaries, with Bernard in particular, the concept of approaching Alan Dukes as part of a process. And we agreed that I would talk to Hugh Coveney about it. We would have had a lot of

confidence in Hugh Coveney in terms of his discretion and being discreet.

Q. What I'm trying to get at, was it primarily at your instigation?

A. It would have been, absolutely, yes.

Q. To go to your note we'll forget the formal parts at the top. You have "D/A", I think, or "D/S"; I am not sure.

"A. Dukes"; I don't know what the D/A means.

A. It's just Dunnes Stores. It's "DS".

Q. I beg your pardon; Alan Dukes.

And the next heading is "Discretionary Trust Tax". That was obviously something you wanted to talk about.

Underneath that, "Trust Situation." Does that mean roughly the sort of things we have been canvassing since you started to give evidence?

A. Yes, it's basically the issues particularly, if you like, the fact that the only asset that we had was the trading you know, we had the shares in the holding company, which owned all the trading assets; and therefore, any imposition of tax was going to be funds that would have to come out of the trading company, which would obviously impact on its ability going forward. So that was the whole tenor of our discussion with Alan Dukes.

Q. Or obviously raised by the company, one way or another?

A. Well, these would have been my notes of the things I jotted down prior to going to see him of the things I thought we would want to mention.

Q. Then you have "CT"; that's presumably your reference to the rate of tax. Is that right?

A. Yes. Rate of corporation tax at the time was 50%.

Q. The rate of corporation, of course, yes. And "no allowance on buildings.

No Government support

Substantial contribution prices investment".

I am not really sure what they mean, or can you remember?

A. If you want me to take you through them quickly?

Q. Yes. You go ahead.

A. The "no allowance on buildings" was a reference to the fact that in the retail trade, you get no capital allowances when you are building new stores, in contrast to all the allowances that are available in industrial buildings. So that was a contrast. The fact, at that time, retail trade was in receipt of no Government support.

You have got to think back: This is '85. The IDA would have you know, building and developing factories, and you know, doing a whole range of Government supports to get industry going. So we would have said

Q. Can you just hold on for one minute I am just wondering if I am depending exclusively on hearing you without the benefit of amplification, and I am not sure everybody can hear you.

A. So the capital allowances we have dealt with. There was no Government support for the retail trade. We would have believed we were making a very substantial contribution to

the Irish economy in terms of keeping prices down; the extent of our investment in new stores and all that kind of thing, we would have felt we were making a very significant contribution, and therefore we merited a hearing, if you like, in relation to the problems that we saw coming up.

Q. Then the next thing is "Northern Ireland currency". That's a reference to the fact that you would have had there were currency implications?

A. There must have been some currency issues at the time, but without looking back and seeing what the rates of exchange were around then, I really have no idea what that particular point was.

"Foreign competition" could have been talking about people like Marks & Spencers coming into the market. Tesco had come and gone in their first manifestation at that time.

And obviously, while the business was valuable, the family weren't possessed of extended personal fortunes.

The business assets exemption I think is a reference to the fact that there was a developing process of the exemption of business assets. Whether it was for C.A.T. or C.G.T. now, I'm not absolutely sure; but there was a developing situation there in relation to relief on business assets, which, again, the trust would not have been entitled to.

We obviously must have a philosophic discussion on the function of wealth.

Then the set-off for C.A.T. and Discretionary Trust Tax is really quite an important point, because C.A.T. is a tax

imposed on the transfer of property; it's an acquisitions tax. The Discretionary Trust Tax was being imposed fundamentally under the C.A.T. legislation, but it was not being treated, if you like, as a payment on account of future C.A.T. liabilities which it would have been in other jurisdictions for instance, like the UK.

So we have always had a fundamental problem with Discretionary Trust Tax in that it, in the nicest sense, all we ever got from the Revenue was a receipt. We never got any credit for it going forward against future C.A.T. liabilities which you would have got in other jurisdictions.

Q. "What do you want", I suppose, that's your note of him saying to you, "What do you want", or "What do you want us to do", or

A. "What do you want us to do" is probably that that means, yeah. And we also made the point, obviously in Number 8, that there was no C.A.T. on foreign assets; so our competition wasn't subject to the same kind of impediments or restrictions or charges on their funding, I suppose, basically.

Q. What you were doing was you were putting your best foot forward, making a play to say that in the situation in which your client well, in fact you, because you were the trustee found yourself, you felt there should be Government consideration given to presumably making the law more sympathetic?

A. Making the, if you like, the whole capital tax regime a bit more friendly, if you like, to indigenous Irish business and highlighting, if you like, the impact that the present regime was having on the business. Again, it's important to keep in mind that what we had was a very simple Discretionary Trust. We didn't have, you know, huge dividend income or, you know, large blocks of voting shares. We had a very simple trust, and which represented totally the underlying trading assets of Dunnes Stores, and that would have driven our thinking in this whole process.

Q. Well, I suppose, for whatever reason, or whatever thinking prompted it, you had a situation where all the family's wealth was locked up in the ordinary shares of the trust; isn't that it?

A. Exactly, yes.

Q. And if they were going to get at the at that wealth, they were going to have to basically get the shares out of the trust, or get the income out of the trust?

A. Well, they would have to get the shares to get the income. It would be fundamentally, if you like, the Discretionary Trust was set up in '64, had outlived its usefulness, really.

Q. Document Number 2 you say is a note of a telephone conversation with Alan Dukes on the 15 April 1985, where he indicated that he had spoken to the Revenue and that a meeting should be arranged.

I think this is something I can read through quickly, and

you correct me if there is anything you think I have
misread.

"Meeting with Alan Dukes.

"Meeting with Seamus Pairceir, who will contact me re
meeting to discuss situation with Seamus Pairceir and
senior Revenue officials.

"Important in view of mass (size) of numbers involved to
maintain confidentiality at senior Revenue level.

Anxious as far as can to meet our concerns expressed at
meeting.

"Valuation the general context of the legislation but no
interest in disturbing the underlying organisation.

Need to calculate the liability and the Revenue then have
latitude to discharge the liability on a settlement basis."

This is a telephone conversation you had with Alan Dukes in
which you were hoping to meet Seamus Pairceir?

A. Yes. Well, effectively, at the meeting, we had asked him
to set up a meeting with the Revenue at senior level, and
he had obviously phoned Mr. Pairceir and come back and said
Mr. Pairceir would contact me to arrange a meeting.

Q. You know, the way you explained to me that your earlier
note was a note of points that you and Bernard Dunne
intended to make to Mr. Dukes, and did make. Is this a
contemporaneous note of what you said to Mr. Dukes or he
said to you?

A. Oh, yes, it is. It's dated the 15/2/1985. And you know,
if I look at it, it certainly looks exactly that that

you know, obviously, if the Minister rang me, I'd have grabbed my notebook or pad and I'd have sat down at the phone and I'd have noted down what he said. And it's precisely that.

Q. Can I just mention one point. The last note we were looking at contains what I am suggesting is a sort of a view taken by you on the legislation. You were saying this legislation and the way this legislation evolved, and if you think of the point you were making, perhaps, the philisophic point about the function of wealth, you were endeavouring to give the Minister a perspective on the impact the legislation was having on both your both the Dunnes family and on the Dunnes business.

But here it seems that one way or another, the Minister was saying, "Well you'll have to talk to Seamus Pairceir about it"; in other words, were you getting any satisfaction on the legislation route?

A. No, we weren't. I mean, he basically set up the meeting, and I think Point 5 is quite relevant, because what he said, you'll have to calculate the liability, and obviously the Revenue have some latitude in doing a settlement. But it was totally an issue for the Revenue Commissioners. It wasn't an issue for him.

Q. That's what trying to get at.

A. Exactly that.

Q. You said Point 5 is the point where it's a case of what is the liability, and you can talk to them about settling it?

A. Talk to them about settling it, yeah.

Q. Document number 4 you say is a note of a telephone conversation with Mr. John Quinlan of the Capital Taxes Branch

A. Sorry

Q. "Document Number 3 is a note of a telephone conversation with Mr. Seamus Pairceir, Chairman of the Revenue Commissioners, where he indicated to me who would be involved from the Revenue in reviewing the situation of the trust and considering any proposals that we would be putting forward."

And it says: "Telephone conversation Seamus Pairceir. Appointment 3:00pm."

That's obviously a day you decided to meet him on. And this code name, or your name became the name by which the Dunnes affairs were going to be referred to.

A. Yes.

Q. And "Has been looking through the documents they have. Attending C.G.T." he refers to two or to three officials Mr. Clayton, Mr. Quinlan, and Mr. McDermott and then he gives you the location: "Upper yard"; "upper Castle yard", obviously, is what that means, "2nd floor". Not far from here.

The next document is the note of the telephone conversation with Mr. Quinlan.

Again, it might be quicker if you were to take me through the points that you were making.

A. I think what actually happened was that it's probably not the first note, but I think Mr. Pairceir said he would get somebody in the Capital Taxes Branch to call me and we'd discuss a kind of a process that could be put in place. Because obviously the Revenue only had whatever documents they had, which in those days would probably be only the wealth tax documents.

So I mean, this is a note of a conversation with John Quinlan. The first point is he seems to have said that he had established that we did have some options after the 16th March 1985. That was a view he expressed; in other words, our backs were not to the wall. I think he said that. Maybe I said it, but my kind of memory is it was he said it. Because the next point I have prefixed with my own initials. "I said to him we did not want to get involved in any tax planning, but there was a commercial need to distribute and set up the long-term future of the group."

In other words, there was a commercial need to appoint the shares to the family and let them get on with running the business without the imposition of the trust.

John Quinlan then said, "Well, why should the Revenue agree any figures before we move?" In other words, "Look, tactically, we can sit back and let you have got to decide what you want to do here".

"Beneficiaries are liable" again, he said, "Look, the beneficiaries are liable", but it recognises the underlying

assets and all trading assets, you know, which is fine.

He then, in inverted commas, "He says he wishes we were paying him a fee to advise", which is in fact what this was.

He also said something which is a bit prophetic: Obviously the valuations were likely to be miles apart. "We need one week for research". I think I pointed out to him that the wealth tax values were agreed to settle the tax payable and would not be, in our view, material to any discussion in relation to the C.A.T./C.G.T. position going forward. I said to him that we would have valuations for early March to the Commissioners, and we obviously discussed there were different bases of valuation for C.G.T. and C.A.T., which would be just a legislative issue.

So that was the summary of a conversation between John Quinlan and I, which was really the first formal contact, and we agreed to supply them with information and get on with the process.

Q. This really was the sort of start of the process, was it?

A. That was absolutely the start of the process, yeah.

Q. Now, prior to that, had you, in your professional life as an accountant, and I don't judging from some of the other documents we have seen, am I right in thinking, tax wasn't specifically your area?

A. No, it was not. No.

Q. By this time, 1985, accountancy practices had become very, very specialised, hadn't they?

A. Well, they had. I mean the whole and it has evolved more dramatically, even, since. I mean, at that time, Liam Horgan, Liam had joined us in the early '70s, and Liam would have been the tax partner who would have been, if you like, the integral part of the process, and obviously we would have had some input as well from the Oliver Freaney practice, and we would have had the Touche Ross International resources available to us, as well, at that time.

Q. Okay. But up to that time, had you yourself ever had occasion to seek access to the Chairman of the Revenue Commissioners in relation to any client of yours?

A. No.

Q. And were you aware of your office having to seek access?

A. I really can't say at this distance, Mr. Healy. But I would have it may have come up in a conversation between Liam Horgan and myself as being a way of going about it, but you know, I really have no view on it, to be honest with you.

Q. I am just I just want to try to put the evolution of the contacts you were having with both officialdom and politicians at that stage in context. Your initial concern was, how shall I put it: Am I right in saying that your initial approach or your initial concern was sort of a macro one, a political one: "Look, this is something we think the Government should be doing something about or changing the law on"?

I am just wondering why you went via why you asked Mr. Coveney to arrange a meeting with the Minister for Finance.

A. I would have I think some of the other it's come up, obviously, with other witnesses. I just think it was something, the kind of thing you'd do in Ireland. I mean, I didn't know Mr. Pairceir

Q. No, no, did you actually your initial approach to Mr. Coveney and to Mr. Dukes, did you approach Mr. Dukes with a view to gaining access to Mr. Pairceir?

A. Oh, yes, our whole approach to Mr. Dukes was to give us the introduction to the Revenue Commissioners. I hadn't at that stage, I didn't even know who Mr. Pairceir was. So our whole approach to Alan Dukes in February of 1985 was to set up, if you like, a high-level contact for us in the Revenue.

Q. I see. And it was both yourself and Mr. Dunne went to Mr. Dukes?

A. Went to see him, yes.

Q. I was seeking to distinguish between some of the broad issues you were discussing with Mr. Dukes and the more specific technical context of your discussions with Mr. Quinlan; do you follow me? Maybe you weren't making as big a distinction as that.

A. No. I mean, fundamentally, we went to see we wanted Alan Dukes to give us the introduction to the Revenue at the appropriate level. Again, I think you'll see coming

through it, the whole issue of confidentiality was an issue for us, and the whole issue of security. And if you like, I think that's why my name seemed to have got onto the file back in '85, because again, I think, without just putting it in context, you know, Mr. Dunne had been kidnapped in the '80s, and they were difficult times, and there were substantial sums of money; so we were anxious that we would deal with the Revenue at the highest level and with the highest level of confidentiality. And Mr. Pairceir understood that and put a senior team in place to deal with us on that basis.

Q. So the initiation of your discussions then was, as we said with Mr. Quinlan, and you mentioned, obviously, the nub of the whole thing, which is going to be the question of evaluation, and you mentioned the wealth tax valuations.

And do I understand you to be saying that what you were trying to communicate to Mr. Quinlan was that valuation was one that was agreed to settle tax, which was at a much lower rate than the rate we were going to be faced with now, and therefore, because it was simply a settlement, it couldn't be relied on as a material valuation?

A. Yes, I think as I said earlier, the wealth tax was introduced in '75. It was repealed in '78. We paid wealth tax for three years, '75, '76 and '77; and in July of 1978, I negotiated the settlement of the wealth tax with the late Herb Giblin, in fact, in 1978. So I would have been fully familiar with it. You know, whether it was seven or eight

years, I would have been familiar with it, but it was very much and it has come out in other discussions, it was very much a settlement agreed in a context of a tax that no longer actually existed, if you like, and we were probably one of a very small number of people who actually paid it, in fact.

Q. I see.

The next document you refer to is Document Number 5, a note of a meeting between the Trustees and the Revenue on the 7th March 1985. At that meeting, Mr. Pairceir advised the Trustees of his lowest possible valuation for the trust property. Then your comment is: "There was no capacity within the Dunnes Stores Group to pay the tax bill associated with this level of valuation. In the circumstances, the Trustees considered that they had no alternative but to extend the trust by reason of Revenue stance on valuation".

Document Number 6 is a note to Eddie Montgomery, the late Eddie Montgomery, and you say the terms of that are self-explanatory.

Just go to Document Number 5. This is your note of a meeting between the Trustees and Seamus Pairceir. Can you just fill me in on some of the names. The heading, obviously, I now recognise is "Dunnes Stores Trust". Then you have Derek Spiller; is that an official or part of your team?

A. Derek Spiller was I think the Chairman's Private Secretary.

I think he has been referred to as "D. Spillane" in

earlier I think that's who he was. He was the

Chairman's

Q. The Chairman of the Revenue Commissioners' Private Secretary?

A. Mr. Pairceir's Private Secretary other Personal Assistant, whatever the term.

Q. And who was there, if you like, on the Trustees side or on the Dunnes side?

A. Certainly there was myself, Mr. Fox, Mr. Uniacke, Mr. Montgomery and Liam Horgan. I haven't a note of who was there, but I think we are all reasonably certain we were all at that meeting. It was such a critical meeting that we were all there. I don't believe Mr. Freaney was there.

Q. Sorry?

A. I don't believe that Oliver Freaney, who was the other trustee, was there.

Q. Now, again I think it's much faster if you take me through.

A. Well, obviously what happened following my conversation with John Quinlan was we had sent in accounts and other bits of information that he had requested, and they had gone off and done their valuation. And obviously Mr. Pairceir had worked on that valuation with them, so he had nothing really but bad news for us. He basically was saying that he recognised or they recognise the real nature of the problem that we had, and it was "almost inescapable"

was a term that he used. And he said, "Look, the law doesn't allow him to take into account things like employment" or the kind of if you like, the economic arguments that we had made as part of the process. And he had effectively argued down his people to the lowest valuation he thought he could get them down to, was 80 million. And on that basis, the tax liability was 43 million.

And again, I think it's important to recognise, just at this particular point in time, there was no offset between C.G.T. and C.A.T. So both taxes actually applied.

Q. I see. Did that actually just come in that year, did it?

Oh, it did; you are quite right.

A. It actually came out of this process, in fact. Because it was at that meeting the Revenue, I think maybe not for the first time, but the Revenue focused on

Q. I think both Mr. Thornhill and Mr. O'Cathain referred to that; it was clear there was a double taxation.

A. It was a double taxation, and obviously that was a huge imposition. He said, "Look, I'm sorry; that's the law".

And he used the phrase "the awfulness of the position that we are all in". Other things we can do. He has you know, this concept of care and management of the taxes was an issue, obviously. The interest implications of any liability was 15%, was you know, horrific, if you like, as well.

And he said, "Look, I accept that it doesn't bring into

account the real considerations that brought you here".

And he said, "Look, I am actually down from where I was yesterday". In other words, he was saying to us, "Look, 43 million tax bill is as low as I can possibly get this".

And he said, "The problems of the economy put pressure on me that I cannot resist". In other words, he had a fundamental obligation to raise as much money as he could for the State, and that's the way he was approaching, to recognise that it was no answer to our problem.

And over the page, it just says you know, we obviously discussed how you would meet the bill, and is there any way I can move away? We had submitted a value I think it's on the record of 34 million. And there was obviously no way we could get between 34 and 80.

The next one, really, is they would have had no objection to us writing in against the 80 million valuation, and the initials would actually be "BDU", which would be "Bernard Uniacke". And I think that we discussed briefly that Bernard might make a submission, if you like, arguing against 80 million as a figure.

Q. Yes, I am just trying to understand that. "No objection to writing against 80 million"; in other words, put in a summation saying 80 was too high?

A. Yes, and Bernard was going to do that.

Q. That's "BDU", is it?

A. Yes.

Q. I was wondering.

A. It's easier for me to read it off the

Obviously we said, "Look, that's no use to us; we are going to have to talk to the Minister again". But obviously we never did.

Q. Sorry?

A. Sorry

Q. You said "We'll have to talk to the Minister again"

A. But we never did.

Q. I think another meeting, or maybe I am wrong, steps were taken to try to put together the basis for another meeting between you and the Minister. As I understand it from papers we have seen

A. Yes, yes

Q. it never came to a conclusion?

A. It never happened. And there is a very obvious explanation for that. It was the ICI/AIB debacle hit the press on the 17 March 1985, so we were seriously down the priority list. And obviously we had a very narrow we had a narrow time window of one week between the 7th March and the 14th March, so on the basis that the Minister was not available to meet us, then events just took their course.

Q. I can't decipher the date of the next meeting. Maybe the copy we have isn't sufficiently good.

A. The next one, is it 2nd August, 1985, "S. Pairceir"? Is that the one?

Q. No, it's something in July, just the note to Mr. Montgomery.

A. Oh it's a letter to Mr. Montgomery, sorry.

Q. Some date, it looks to me like in July.

A. It's obviously, like, the 15th or 16th or something like that.

Q. 1985?

A. Yes, it is, yeah.

Q. "Just a note to confirm that up to time of writing I have not had further contact from Mr. Pairceir Chairman of the Revenue Commissioners in relation to the Dunnes Trust.

"I will of course keep you advised when I do hear from him."

I suppose you don't remember what it was you were waiting to hear from him about?

A. Well, we had I mean, shortly after the 14th March, I think in very early April, John Quinlan contacted me again, and we sent them in the deeds, the extension deed and the deed appointing the preference shares. So they went into the Revenue, I think, around April 1985, and we were kind of waiting, if you like, for the next move. Obviously we had put the deeds in place, and so as far as we were concerned, there was no action required on our side.

Q. The next document is Number 7, I think. And you refer to these three documents together, 7, 7A and 7B. The first two are notes of two telephone conversations you had with Mr. Seamus Pairceir, and 7B is a file note of these conversations, which is self-explanatory. I think that 7B draws together everything that you have already referred to

in 7 and 7A.

If you could just take me through 7A.

A. I'll just keep the original open as well, because it could be helpful.

Q. You can stick with the original if you like, and if you have difficulty with it, sometimes the screen to your right there

A. I have no problem with it, just to get all the bits in synch. I'll just work off the originals.

I think we obviously had a telephone conversation on the 2nd August, 1985. What he basically said is, the Revenue now have a position on this. In other words, they had obviously spent the time between April and July discussing it internally, or whatever, and what their position is going to be, and he suggested that he would like to meet us and talk. The position had now crystallised. Number 1, in March of 1985, they believed there was a new settlement.

Point 2 was it was no beneficial ownership in possession.

And I think that would lead logically, if you like, to

Point 3, which arising out of that, there was no C.A.T.

Now, again, I think if you go back to the meeting of March '85, their position was at that time there was a C.A.T.

liability as well, but obviously they had looked at the

documents, and maybe they had taken some legal advice at

the time. So their position had moved from a dual tax

situation to a Capital Gains Tax situation.

The issues discussed were obviously the valuation which

could be done by way of compromise, and would we accept the C.G.T. position? In other words, would we accept, if there was a liability, and we could then go about maybe compromising the valuation. I think that's what I would interpret those as.

Number 6 says the Revenue believes there is a new trust, effectively, that the Trustees came into possession of the trust assets as against themselves, which is obviously a kind of a technical legal point. While they had believed that it was not within the power originally, I think they now accepted that it was within the power. And the suggestion was that we would meet on the 18th August, which was kind of two weeks after the 2nd.

And over the page, he then said they had indeed to raise the assessments within a reasonable time. So he was, if you like, setting the ground rules for the process that was actually about to start.

Q. He was explaining the Revenue position?

A. Yes, he was, and he was basically saying, "Look, we accept there is no C.A.T. liability. But we are going to pursue the C.G.T. position. And that really started the process.

We then spoke, obviously, again on the 9th August, and we obviously agreed there be a meeting after the holidays; maybe I was going away, or maybe he was. And I think we agreed we'd be unlikely to be able to agree a compromise.

The procedures would be an assessment, an amount and valuation. We could have a nominal assessment, obviously.

Arrangements on liability and valuation, and we could compromise our fight, as he described it.

There is also that reference to the Public Accounts Committee which has come up I think it's been addressed in earlier

Q. Yes.

A. You understand what that was.

Q. I think it was a reference to the fact that there could be, if the assessment issued, it would not necessarily go into the public domain in terms of an assessment raised on the Dunnes Trust, but the amount of assessment would become public knowledge or could become public knowledge?

A. It could become public knowledge, and it would be within the Revenue numbers and obviously would seriously distort numbers, and therefore would attract attention, and that's something, obviously, we would be anxious to avoid.

He was conscious of the length of time that had elapsed. I think an interest was obviously a very important issue in all this tax, because it was obviously 15%, you know, which is very, very significant in terms of cost, and as far as he was concerned, the clock was running since the 14th March. And he was, you know, making us aware of that. We discussed the Discretionary Trust Tax, presumably. Then the Number 7, he said he expected that they will probably win. He said the case law was against us. It could have been ultra vires, but there were risks. "Ultra vires"; I think by that he meant that, you know, what we

had done was beyond the powers of the Trustees to do. But obviously there were risks, I think he was also saying, presumably risks for him and risks for us.

So that was really the two telephone conversations that set the ground rules in terms of where the process was to go from then on.

Q. So you had those two telephone conversations with him within a week, and then I think the next document was the end of the month, I think; would I be fair in saying that it's a sort of a summary of the situation up to then?

A. Well, I think it was probably slightly different to that, Mr. Healy. I think if you look at Point 4 sorry, am I going too fast, or am I okay?

CHAIRMAN: That's fine.

A. I think you really need to look at Point 4 there

Q. MR. HEALY: I'm not arguing with you; I'm only taking the line of your first two lines. Summary of the points discussed. But I don't mind what way you take it. You can take me through it point by point or go to Point 4 first.

A. Which one are we on now? Sorry.

Q. We are on 7B

A. Sorry, are you on the typed

Q. Yes.

A. Sorry, I was still back where I was. Sorry. You want to ask me a question?

Q. I am saying that seems to be in the nature of a report, almost; it's a sort of a summary of your dealings. This is

not an account of a telephone conversation you had with anyone. It's not a contemporaneous account. It's you putting into perspective and trying to make a note for your file of the state of affairs as of that date, having had those two telephone conversations and your other dealings with Mr. Pairceir?

A. Well, the document of the 19th August, if that's the one we are talking about

Q. Yeah?

A. that was a file note that I put in place, you know, maybe a week after, which summarised maybe I had been talking to Eddie about it, and he said, "Maybe you should do a note or something on it". I didn't normally do file notes, I'd have to say; but obviously, I felt this was a very significant part of the process, and I put the file note on file, would have circulated obviously to my co-Trustees. Because again in '85, I'd have been living in Cork, and obviously Mr. Montgomery, et al, would have been living in Dublin, so that's what I would see is what this document is.

Q. That's an affliction that a lot of people have?

A. It's happened to us all, I think.

Q. Would you have reported following your two telephone calls?

Would you have reported to Mr. Montgomery, or Mr. Fox, or Mr. Uniacke, or would you have waited until you had

A. I'd say I would have called them immediately.

Q. Would you?

A. Yes.

Q. I see.

A. Well, Mr. Montgomery was the senior trustee, and was a very precise gentleman, and he required to be kept informed on all matters. So I would certainly have been very anxious to keep Eddie in the picture once the process started to develop.

Q. And as you have pointed out, in any case, things were issues were beginning to be defined at this point, weren't they?

A. Yes they were, yes.

Q. Maybe you'd just take me through the file note.

A. Sorry, do you want me to go through it?

Q. Yes, please, just in case something arises.

A. Point 1 was: "The Revenue had taken longer to come to their decision than originally envisaged, but as they had now done so it would be beneficial perhaps for us to meet. The position had crystallised, in that at March '85, the Revenue were satisfied that there was no transfer of beneficial ownership in possession, and as a result, there was going to be no C.A.T. liability. They were, however, of the opinion that the settlement of March '85 was a new settlement, and that the Trustees of the new settlement would come into the possession of the record as against themselves, and there would, therefore, be a liability to Capital Gains Tax.

I think this would be classified as a kind of deemed

distribution.

Q. Yes.

A. "Mr. Pairceir" and I was obviously spelling his name incorrectly at that time "indicated that originally he thought that we did not have any powers to do what we had actually done, while he was now satisfied that under clause 3(a) did give us the necessary powers we required."

I think 3(a) is a clause in the original, the 1964 deed.

"On our second conversation, of August 9, I indicated to Mr. Pairceir that we would not be able to meet him until after the holidays, and that in the meantime, we would consider our position; but I did not see that a compromise was likely on any of the points raised by him in our previous conversation."

We were both just setting the ground rules.

"The position that we saw was that he would ultimately have to raise an assessment for Capital Gains Tax, and that would pose problems of valuation and liability.

"As he saw it, if we felt that a compromise was possible, compromise could arise either in relation to the valuation or the liability, or indeed to both. He was concerned (as I was) that once the assessment was raised and in regard to the likely amount thereof, it would very quickly become a matter of public record and would in fact be available to the Public Accounts Committee after May of 1986."

Which is the same issue again.

"It may be possible for to us agree with him that a nominal

assessment would be made initially with an ultimate arrangement to revise the liability upwards should the courts decide that a liability arises.

"We were both concerned as to the length of time that this whole process would take, and it appeared to be a question of years rather than months. It would be necessary, therefore, to discuss the position further with the Minister for Finance.

"There is also the question of at what stage interest might arise in respect of any assessments raised. Obviously neither we nor the Revenue would be attracted by the thought of an ultimate interest penalty arising on either a final liability or a payment on account that had to be returned.

"We would also separately have to agree and dispose of the question of the Discretionary Trust Tax, both in relation to the Estate of the late Mr. Dunne and the potential liability in relation to Mrs. Dunne's half of the settlement.

"As a general comment, during the course of the conversation, Mr. Pairceir indicated that he was satisfied the Revenue would probably win any High Court hearing, as in his view, the case was against us. Naturally I was not prepared to discuss this possibility with him, other than to point out that there was nothing original in what we had done, and that there was actual UK Revenue guidance in relation to similar (although not perhaps identical)

situations". That's a reference to that SP 84 document that has come up earlier.

Q. Could I just ask you again to clarify the reference to the Minister of Finance. Do you mean that do you mean in Number 8 that it would be necessary for you or for him to discuss it referring back to your previous note; I presume it's you, is it?

A. I presume it's me. I really have maybe I was kind of threatening him with the Minister for Finance or something, but it was never really an option. I mean, he was saying to me we didn't have we had a liability, I'll be saying to him we didn't, and I'm going to talk to the Minister about it. Do you know what I mean, it would be that kind of a dialogue, I would have thought.

Q. Now, just so as not to be chopping and changing too much, and coming back to documents at a later point. Do you have the red folder of documents, or do you have a folder?

A. I have the big folder. 64 or 65?

Q. Yes, that's it, 65.

A. Is it this one?

Q. Yes, 65. If you could go to Leaf 16 of that.

The reason I'm referring you to Leaf 16 at this point, which is a document dated the looks like the 4/9/86.

Actually I just realise now I have got my years mixed up.

A. That's 1986. We are still in '85.

Q. I was going to refer you to that. I have got my years mixed up. I'm sorry now to ask you to go back to your own

document again.

A. It's okay.

Q. The next document is Document Number 8, and it's a note of a meeting with Seamus Pairceir.

A. Yes, I have that, yes.

Q. In which you say: "Seamus Pairceir advised that the Revenue accepted that there was no Capital Acquisitions Tax liability arising out of the extension deed, but they did believe there was a potential Capital Gains Tax liability arising out of the same event."

And looking at your note, again, the first point is the same as the point we have canvassed already: "Clause 3(a) works no C.A.T. However, the Revenue say new settlement" we have been over at that ground before.

Then a new topic, am I right? "Discretionary Trust Tax liability not in dispute", or words to that effect.

A. That's right, yes.

Q. Then "Para 4, three subparagraphs: Meeting not a continuation meeting. Nothing on the table. This is not a change of attitude."

It may be that nothing turns on it, but I just don't quite follow it.

A. Well, I think this is quite in the process, this is quite an important point, because what he was saying was that the meeting was not a continuation meeting. In other words, we had any previous discussions or meetings we had with the Revenue were now off the table, and we were

starting afresh.

Q. I see.

A. In a new situation. There was nothing on the table. In

other words, there was no offers of settlement or no

nothing. And but he was saying fundamentally there was

not a change in our attitude. I think he meant by that,

we'd still like to resolve the issues in a reasonable way.

But it was fundamentally saying, "Look, there is a new ball

game here".

Q. Right. Why would there be a new ball game? I mean

A. Because, I presume he was saying, "Look, all that

discussion on valuation and all that, those previous offers

that you had made and we had made, that's now over. We are

starting completely afresh".

You know, fundamentally, they were going to start issuing

assessments, and the due process was going to start,

whereas up to now we had obviously been discussing options

and possible compromises and things like that. So he was

basically saying, "Look, this is all new now from here on

in".

Q. I see. "Concern about security and confidentiality."

Well, we are aware of that.

Next point: "If at any stage the Revenue win, then

valuation will be addressed."

This seems to be some acceptance there that liability was

going to be tested first; is that right?

A. Yes. I mean, we would have believed there was no point in

a huge amount of time and effort going into doing valuations when we would have absolutely believed we had no liability. And therefore, we would have believed that the logical thing to do was to test the liability issue first, and then we deal with valuation afterwards, which was the reverse of the Discretionary Trust Tax position, where we had accepted liability. But we said, "Look, we'll argue valuation with you".

Q. And you were saying "Valuation of group for Discretionary Trust Tax, eliminate arguments over a valuation."

Because obviously, if you did work out a value for the group in Discretionary Trust Tax, then apart from the question of whatever discounts were to apply for the question of control.

A. There was a kind of an implication there, if you like, that obviously, if a lot of work was done on valuation for Discretionary Trust Tax, that it might and I would stress the word "might" create an environment in which it would be possible, if the Revenue won, to compromise the Capital Gains Tax. Because obviously if they won, we would have had to pay, the liability would then have crystallised.

Q. I suppose there was one other variable, in that you had different years, I suppose, for Discretionary Trust Tax?

A. Well, there were, yes, there were. And as you know, the Capital Gains Tax would have brought a lot of other issues into play. But I mean, fundamentally

Q. We have had an education on that.

A. You have had an education on that, indeed, yes.

Q. Now, I think there is a big jump now from October to March of '86. Document Number 9, what you have is a note of a telephone conversation of the 10 March 1986 with Seamus Pairceir in which you discussed Capital Gains Tax, and he mentioned the possibility of using ICC as independent valuation experts in the event of the matter going to appeal.

Just before we come to the note itself, can you say whether you have recorded every contact with him and whether therefore, I am right in thinking that not much appears to have happened in the interval between October and March?

A. I think it's a reasonable assumption that if someone like Mr. Pairceir rang me, that I would grab a note pad and write down, you know, just jot down things as we had a conversation. I think it's a reasonable assumption that I wouldn't have had any conversation with him between October and March, yeah.

Q. Okay. And would I be right in thinking, again, just so that the Sole Member can form some impression of how valuable all the documents are and I hasten to add, they are extremely valuable to the Tribunal.

Would you also record, how shall I put it, at least significant contacts with officials other than Mr. Pairceir?

A. I think in principle, yes, I would. Obviously I think the

key word there is "significant".

Q. I appreciate that.

A. You know, if it was something that moves the position forward, or something like that, obviously you would have been very careful. But if it was just a conversation where someone was looking for information or an exchange of information, then you might not necessarily record that.

Q. Okay.

A. But in general, I think my practice would have been in most situations I tend to have a pad and a piece of paper, and I scribble on it; you know. That's just the way I have always worked.

Q. Throw it on the file?

A. Just stick it on the file then, yeah.

Q. This note of March '86, 10 March '86, refers to

"Assessments, minimum sustainable position."

Again, I'm not sure from whose perspective that is supposed to have significance. Maybe you can throw some light on it.

A. It would I mean, it looks like it would seem it was the does it imply that it was the lowest figure that he could

Q. Might do?

A. It kind of implies that they come in at what they reckoned was the lowest possible figure. And again, if you go back to the '85, when he said he had argued them down to the 80 million. I presume he was saying, "Look, we have revisited

all this". And I think, if my memory is right, in fact, I think the assessment ultimately came out at 100.

Q. Yes?

A. Maybe said, "Look, it's a hundred, and that's as low as we can possibly get it". I think that would be a reasonable interpretation.

Q. "100 for DTT" and

A. I think it was 100 for Discretionary Trust Tax and 100 for Capital Gains Tax, yeah.

Q. "Valuation commitment it is his figure" I assume it means it's for him to stick a valuation on it, is what you are saying?

A. I think he was saying he was committed to the figure. In other words, to say it was a figure that the Revenue were committed to, not him personally, presumably, but the Revenue were committed to a figure of 100 million.

Q. Maybe clarify one thing. I think Mr. O'Neill may be suggesting that after the word "valuation", that I am wrong to have transcribed the next word as "commitment".

A. It is "valuation consultant," it is, yes. Yes, it is, actually, sorry, yes.

Q. Then we have underneath that, "Somebody from ICC", and then "Not going on property valuations". We know in any case that both sides proceeded on the basis of valuing the company in

A. We may have discussed the property issues as part of the process, yeah.

Q. Document Number 10 is a note of a telephone conversation of the 10 November 1986 with Seamus Pairceir, where we discussed the raising of Capital Gains Tax assessment and related issues.

Again, I think we'll make more progress if you go through the next document, Mr. Bowen.

A. It's a telephone conversation of November 1986, and I think obviously the first point is a meeting now is not likely to take place. Maybe earlier we had been talking about having another meeting, but obviously we had now decided there wasn't going to be one. Even if it did, it was not likely to ultimately influence his views or attitude. In other words, they had made up their mind. I think probably in November of 1986 this was more about Capital Gains Tax, because obviously the Discretionary Trust Tax assessment would have now issued so I think this is a C.G.T. conversation.

Q. I think you are right, yes, because it says "Assessment before the end of the month".

A. Yes, so the assessment is going to be coming out before the end of the month. And again, I think we came out in November of 1986. Again, there is this issue of it's on the books etc., etc., we have come across. The amount involved was obviously going to be very substantial, and obviously interest, if one thought that this kind of a number arose back in March '85, interest was going to be very significant. I obviously asked him, "What's the

position on payment on account and interest on overpaid tax?" And he said to me, "What alternative have I got? Am I afraid to lose if tax paid becomes repayable? He had examined all the facts in the case as sufficiently characteristic to sustain the claim of the new settlement.

They are also the deeming provisions." Then he said to me, "There is no equity here in this deeming process", because obviously we would if there was a deemed disposal, we were liable to tax; you know, there was no proceeds of a deemed disposal out of which we could pay the tax.

You know, I think it was just an aside, as it were. He had been asked to negotiate by the Minister. He had taken full account of the public interest in the matter. But at the end of the day, it's my responsibility his responsibility, obviously.

And the note then, Number 1: "He was going to call me back re interest", and there is a reference to "other taxes being due now." Which presumably reflected on the Discretionary Trust Tax position, because there wouldn't have been any other tax scenario under discussion. He probably called me back on the same day, because obviously there is a 1 and a 2 on the and they are both dated the 10th November. So

Q. 1, 2, and then he starts all over again?

A. Yes. But obviously, I think they are two separate conversations on the same day.

An interest charged, if we paid it, we would earn 1% free

of tax on overpaid tax. It was 1.25%, apparently; maybe that should be 1.5, which would be a nondeductible amount, obviously, if we lost. "He would have pay interest back to us on overpaid tax to us. He still believed marginal within the powers of the trust."

Q. That's the old section, or Clause 3 point.

A. Yes, exactly. I don't know what "do it in an odd and special piece of legislation in to 'catch other fish'."

I don't know what that reference is.

Obviously we recognise the long-term C.A.T. problem.

"Suppose we are wrong." What does he do if we were wrong?

He had a position paper on that obviously from Christy Clayton. "He has spent enormous amount of time and resources looking on this. They had obviously waited too long, and the Minister would probably ask him are you sure in the end, this must be an answer."

Because obviously, again, I suppose this quantum of tax was obviously going to be so significant that it would come to everybody's attention. He presumably believed that the Minister would become aware of it.

Q. What does that mean, "Are you sure in the end there must be an answer?"

A. I can't really read that, because that's the typed version I am looking at there. "Minister will ask me you sure in the end there must be" something. Maybe it's an agreement or something. I just don't know. I can't help, you, Mr. Healy; I am sorry.

Q. In any case, I think the upshot of the note is that he had been asked to negotiate by the Minister. He had taken full account of the public interest in the matter, but he felt it was his responsibility still to go ahead?

A. Exactly, yes.

Q. The first part of the note says: "Meeting not likely to take place". And I think that refers to a meeting you had hoped to have with the Minister for Finance?

A. It could very easily be.

Q. I just wanted to clarify that. That was the point I was coming to earlier when I got my dates wrong.

A. Could very easily be. It could be that we were either to meet with the Revenue, and there was obviously no point.

Or it could have been I said, "Look, we need to meet with the Minister". I think we did say that, but obviously that meeting never happened.

So, if you like, I think we were both accepting at that time that there was a process now underway that had an inevitability about it, and we might as well get on with it.

Q. In case it stimulates any other memory you might have of the matter, if you'd look at that document I asked to you look at a moment ago, Leaf 16 of Book 65.

A. Number 16, is it?

Q. Yes, please.

A. It's 4/9/86.

Q. There is a typed transcription behind it, but the

manuscript is relatively easy to read. It's a note within Revenue, and appears to be a note to an official from the Chairman. And reading from the top, where it appears to say "Frank Bowen"; in other words, he had had some communication with you.

A. Yes.

Q. "Delayed"; I am not sure what that means. "Not a whole lot. DTT." Then other references to Discretionary Trust Tax which are not terribly easy to decipher. Then underneath that, "Bowen", arrow to "Minister", then another arrow, "Have to face up to liabilities". Do you see that?

A. Yes.

Q. Underneath that again, "Chairman phoned". It may be that this is the narrative that explains the various sort of unstructured notes above.

"Chairman phoned. He has told Frank Bowen that the quote 'big bang' C.G.T. charge will not be made just yet but that the C.A.T. liability will be the subject of two assessments" and we know what that refers to both in respect of the late, as it then was, Mr. Bernard Dunne and the late Mrs. Norah Dunne.

And it goes on: "It is likely that the Bowens would see the Minister next week, which will advance matters."

And that was on the 4/9. By the 10/9, it appears that there was some impression that the meeting was not going to take place. Do you see that?

A. 10/11, is it? 10th November?

Q. 10/11, yes, sorry.

So at some stage prior to the 10/11, there seems to have been some arrangements made for you to meet the Minister, but that by the time you had the conversation of the 10/11, the meeting had not taken place, and it now seemed unlikely that it was going to take place; would that be a fair summary?

A. No, I don't think so. Because we would I would be I think I'd be pretty certain, anyway, at this distance, we never ever went back to was Alan Dukes still the Minister for Finance in '86? Presumably he was. We never went back to him, or never even sought to go back to him.

Q. I think John Bruton was the Minister for Finance at this stage, in fact.

A. Was he?

Q. Yes.

A. Mind you, there is a reference to John Bruton somewhere, but

Q. I think from Mr. Bruton's diaries, or his office diaries, a meeting had been arranged but never actually went ahead.

A. With me?

Q. Well, I am only assuming that it would have been with you, from the document that I have just referred you to. It may be that you were aware of a meeting somebody else was having and were referring to it.

A. I just don't know.

Q. In the course of a conversation

A. I have no recollection of it at all. My only recollection is Alan Dukes, and I can't remember John Bruton at all. I don't think I ever met John Bruton, I am not sure I ever met him.

Q. We know the meeting didn't go ahead.

A. Yes, yeah.

Q. But I think that and I can go into the documents if necessary; I'll find them later for you. But I think Mr. Hugh Coveney had a role in arranging the meeting?

A. With John Bruton?

Q. Yes. And I am assuming, therefore, because of his Cork connection with you, that it might have been you were involved in setting it up, and perhaps it was envisaged for that reason, because of the late Hugh Coveney connection, you were the person to meet the Minister.

A. I think that's a reasonable assumption, but quite honestly, I have absolutely no recollection of it at all. And obviously it didn't take place. I am not sure about the reference to the Discretionary Trust Tax, because in fact, hadn't the Discretionary Trust Tax assessments already issued?

Q. They had issued?

A. But he seems to imply that they were being issued again or something are they; what's that reference there?

Q. That's a fair point. I think they had issued.

A. "The C.A.T. liability will be subject" obviously C.A.T. is Discretionary Trust Tax; that would be the subject of

two assessments.

Q. That would suggest they hadn't issued, yes.

A. I mean, we had already got those assessments and appealed them.

Q. You had, yes.

A. And made a payment on account, in fact.

Q. Well, it was the 8th September, and this was the 9th. It may be that he was he mightn't have been aware of, you know, day-to-day technical affairs?

A. Weren't the C.A.T. in September of '86?

Q. Yes.

A. Fair enough. I thought they had been earlier.

Q. On the 8th September, and it's quite possible, I think that document was the 9th, the Chairman mightn't have been alive to

A. I thought they had been earlier than September. Fair enough, okay.

Q. Document Number 11 is a note I think from Liam Horgan; presumably it had come on to your file. Tax partner in Touche Ross, Cork, of a conversation he had with Mr. O'Cathain of the Revenue Commissioners. There is a reference here to a meeting Mr. Bernard Dunne had with the Revenue Commissioners. We are now reading out Mr. Horgan's note of what Mr. O'Cathain seems to have told him.

"He confirmed that Revenue would not argue values until appeal was determined in principle. Counsel to be employed is" so and so. "I picked up the name as" (blank). He

understands that Bernard Dunne has again been talking to Seamus Pairceir. Unlikely that Appeal Commissioners will fix a date for hearing until autumn."

I don't think anything else there is anything to be added to that. I think it's fairly self-evident.

A. I think it's fairly self-explanatory, yes.

Q. The next document is a note, is a letter of the 9th July from the late Eddie Montgomery, referring to Mr. Bernard Dunne having had further contact with the Revenue. It's a note keeping you up to speed, I suppose, just as you mentioned earlier, you would have kept him up to speed on developments.

"Dear Frank.

"Have you heard anything further regarding the listing of the Capital Gains Tax appeal, as it looks unlikely now that anything can be done before the autumn. I suppose you did not receive any confirmation as to what senior counsel they are employing, but it may be that they are not yet sent out any brief.

"I understand that indirect approaches have been made to Bernard to see if he would compromise the claim, which may suggest that the Revenue are not too happy about their chances of succession.

"Of course, if Bernard wanted to settle and had very attractive terms offered to him, I would not stand in his way, although it would not alter my own opinion regarding the legal position."

Now, since your own previous note, the last note that you prepared that we were looking at, of course the C.G.T. assessment had issued at the end of November of 1986, and by this time, by July of 1987, the DTT, Discretionary Trust Tax appeal had taken place and been compromised.

A. Yeah.

Q. So now, at this point, there was only one item, the biggest item I suppose, on the agenda, the C.G.T.; isn't that right?

A. That's correct, yeah.

Q. And you say that or he says to you that he understood that indirect approaches had been made to Bernard to see if he would compromise.

We haven't obviously got the benefit of Mr. Montgomery's evidence, but I was interested in what you said earlier about his being a very precise man. And I'm just, I suppose, rather intrigued by the fact that he says that he understood that indirect approaches had been made to Bernard to compromise. Did that strike you as in any way interesting, or worthy of giving it some thought?

A. I suppose, if you go back to the previous memo, obviously there had been a there was a conversation in June between Liam and Mr. O'Cathain in which the question of Mr. Dunne meeting Mr. Pairceir was actually on the record. I can't see any particular significance in his wording. I mean, it could imply it implied, obviously, there was a process going on of some kind, you know.

Q. Yes, it's just that I am interested in whether you can throw any light on the fact that Mr. Montgomery described the approaches as being made to Bernard, and they were indirect. I'm just wondering whether you had any idea what that meant.

A. I don't, no, no.

Q. The next document is another letter, this sometime after the summer of 1987. Again it's from the late

Mr. Montgomery, I think he brought you up to speed, in which he said,

"Dear Frank,

"I spent yesterday afternoon with Benny" I think that's a reference to Bernard Dunne

A. Yes, that's Mr. Dunne, yeah.

Q. "and he also appeared to have had the feedback from the Revenue that they were not anxious to proceed with their claim for Capital Gains Tax on the trust assets, but I suppose there is nothing we can do except to sit and wait and let the Revenue make the next move, although I am not clear how they can dispose of our appeal without a hearing. Possibly Liam would know whether they can serve notice of discontinuance".

I presume that's a reference to Liam Horgan, who would have had the technical knowledge to know whether that was the case.

"I also mentioned to Benny that we were considering giving the directors share option rights on shares in Dunnes

Stores Limited, and I shortly explained to him how such a scheme would work. Naturally I did not go into the matter with him at any depth, but he was quite keen on the idea, and I think we should take the matter a step further, but possibly we should not rock the boat until we get the Revenue off our back."

Again, I think that's fairly self-explanatory.

A. Yes.

Q. I think the next note is simply your notes of the Capital Gains Tax hearing, the same Number 15, and the same Number 16. I am not going to go into them in any detail. It's the fact of the hearing had occurred at that stage, and Dunnes were successful in convincing the Appeal Commissioners that their view of the law was correct, that there had not in fact been a new settlement but merely an exercise continuing powers under the old settlement; would that be fair?

A. Yes.

Q. Dissatisfaction had been expressed. That's a fairly standard step taken by anyone at the at a determination of the Appeal Commissioners; it allows you to take time to reflect on whether you'll appeal or not. Isn't that correct?

A. It creates the environment in which you have the three weeks to appeal to the Circuit Court or the High Court, depending.

Q. Strictly speaking, if you don't express dissatisfaction,

you can't do it; but I don't think people are condemned forever if they haven't expressed dissatisfaction on the day.

A. Well, I don't actually know that, but no, I would understand the normal practice to be that if you are dissatisfied, you express that dissatisfaction at the time, yeah. It's a fairly standard process.

CHAIRMAN: It's a somewhat strange phrase, to somebody neutral might think it's a personal reflection, but basically it's a form of keeping one's options open?

A. Yes, it's a form of keeping one's options open. It's a form of words that's maybe in legislation or wherever.

Q. MR. HEALY: Now, the next document I want to go to is Document Number 17, in which we are going to track back in time to July of 1986. And this is a letter to Eddie

Montgomery dated the 24th July 1986 which refers to a meeting, Noel and you, meaning Noel Fox, I presume, had with Seamus Pairceir following a telephone conversation with him in relation to assessments for Capital Gains Tax.

In it, you say: "Thank you for your letter of the 10 July.

I fully agree that a meeting with Trustees at this time would be both useful and desirable. I am going on holidays for two weeks commencing on Saturday 26 July and will get in touch with you immediately on my return, and we can arrange a suitable date. In the meantime you should let me have a note of any matters you would like to have placed on the agenda for that meeting.

"In relation to ongoing matters, very little has happened since we last spoke other than Noel and I recently met with Seamus Pairceir of the Revenue Commissioners. This meeting followed on a telephone conversation I had with Seamus Pairceir during which he indicated that the Revenue were now in a position to raise assessments for Capital Gains Tax, and that they had settled on a final valuation of $\frac{1}{2}$ 100,000,000 as a capital value for the assets deemed to be transferred. It was quite a useful discussion, and we agreed that further meetings were in fact necessary, and that in the meantime the Revenue would not issue an assessment or Capital Gains Tax based on the above valuation. I will brief you more fully when we meet."

At this stage, as far as you were concerned and I think this may be reflected in some of your earlier evidence you were under the impression that the figure for Capital Gains Tax was going to be 100 million.

A. Well, I think the

Q. The valuation figure.

A. Well, the 100 million was on the table for the Discretionary Trust Tax, obviously, and I mean, I mentioned 100 million there, so maybe the the implication of that is in the conversation they told me that they had settled on 100 million, which may be the 97 that they ultimately came up with, or

Q. I think they issued you an assessment at 120 million valuation in November. I am just wondering whether that

was a surprise to you.

A. Well, the 120 became 97 in terms of the actual gain, if you like.

Q. I think the figures were explained, in a letter, that they were based on a valuation of 120.

A. That's right, yeah. I mean the 100 is there, so I mean, it may have come up in the conversation. Maybe I thought it was 100 million, maybe I mean, had the Revenue arrived at the 120 at that time?

Q. I am simply trying to distinguish between valuation and actual gain.

A. Yes, I see the point, yes. I mean, the reality

Q. Is it possible you were discussing a valuation of 100 million, in which case a valuation of 120 might have made you a little bit peeved a few months later, or were you talking about the 97, maybe?

A. I just don't know, really at this distance. I obviously put in 100 million, so I'd have to assume it came up in the conversation. And I have put in 100 million there, yeah.

Q. Now, in all the documents we have been looking at, in which you have got a careful note of your dealings with Mr. Pairceir, and indeed any other relevant officials, or as you say, dealings of significance, you would have been in touch with your other Trustees, bringing them up to speed. Would you also be bringing Bernard Dunne up to speed?

A. Well, I think so, yes. I think that's right, yes, yeah. I

mean, it would obviously there was a dialogue, and again it's the function of the dates. I mean, in 1986, in 1986, it might be a function of when and how often I was in Dublin at that time. Obviously, Eddie again, based on his correspondence there would have met him, would have been in a position to meet him quite regularly. Mr. Fox would obviously be meeting him regularly as well.

So I think it's a reasonable assumption that as the process went on, not just Mr. Dunne only, but we would have kept all the family, if you like, in the picture as to what was going on. Because at the end of the day they were going to have to pay the bill if it arose, so they wouldn't have been dealing exclusively with Mr. Dunne.

Q. I am going to ask you now to turn to I think it's the next leaf in your book, in fact; it's Leaf B. And it's a second narrative statement. Do you see that?

A. Yes. Yeah.

Q. I'll just go through it briefly.

The first paragraph deals with meetings between Mr. Bernard Dunne and the Chairman of the Revenue Commissioners at the instigation of Mr. Charles Haughey in relation to the meeting between Mr. Bernard Dunne and Mr. Seamus Pairceir on or about the 4th June 1987.

And you say: "I have no knowledge of the meeting that took place between Mr. Bernard Dunne and Mr. Seamus Pairceir in June of 1987. I confirm that a review of documents in my files in relation to this matter has been undertaken and

that there are only two documents of relevance.

"1. Letter from Edward Montgomery to Frank Bowen, dated 9 July, 1987, which states that indirect approaches had been made to Bernard Dunne in relation to a potential compromise of the Capital Gains Tax matter.

"2. Letter from Edward Montgomery to Frank Bowen dated 8th September, 1987, which states that the feedback that Bernard Dunne had had from the Revenue is that they were not anxious to proceed with their claim for Capital Gains Tax. I further confirm that to the best of my knowledge, there is no reference in any documents within my power of possession or control that relate to the figure of 16 million with respect to an alleged settlement between the Revenue Commissioners and the Trustees in respect of the Capital Gains Tax matter. I can confirm that the alleged settlement never took place."

Now, we have looked at those two letters that you have identified there.

A. Could I just add there, Mr. Healy, obviously in my narrative statement I didn't include Liam Horgan's little note. I can't explain that, but it just seems to have been missed in putting the narrative statement together.

Q. They have covered it?

A. Yes, we have, but the three of them, they work together, I think.

Q. Now, I think you have been referred to this document already, the one I want to mention now. It's at Leaf

Number 42, Mr. Bowen.

A. That's in the big book, is it?

Q. It's in Book 65, yes. What you have in the leaf is firstly, the handwritten manuscript of a note made by Mr. Sean O'Cathain dated the 4th June 1987. Then after that there is a transcript, a transcription of that, a printed transcription. And then, because most of the substantive part of the note is in Irish, there is then a translation. Do you see that?

A. Yes, I do, yeah.

Q. And I don't mind which version you want to look at. In translation, it says: "Call from the Chairman. He met BD. They settled on (agreed) $\frac{1}{2}$ 16 million." I think the word "agreed" has to be seen to some extent as a rather limited form of agreement, and this will become clearer later on. "He was offered three years to pay it. Maybe he will clear it within that (time). It isn't fully accepted yet by BD. He is to think about it and come back to the Chairman." Then this is Mr. O'Cathain speaking: "I explained to him about the provisions of Great Britain." About, obviously, something similar.

Then "Look at figures for this."

If you had had that discussion with Mr. Pairceir, I take it I am right in saying you would have communicated it to all your fellow Trustees and to Mr. Bernard Dunne as well?

A. If I had had that conversation?

Q. Yes.

A. I suppose, in the first place, I don't think I would have had that kind of a conversation with him, to be absolutely honest. So what I would have done with it if you are saying I had had in general, I did, and I have accepted earlier I did, I would have kept all my fellow Trustees informed. And I would have I mean, the Trustees had worked together for a very long period of time, and so we would have had a lot of confidence in each other. But we would have kept each other up to speed on everything that was going on.

Q. Taking the note on its face, on its face it seems to suggest that on the Revenue side, Mr. Pairceir, and on the Dunnes or the Trust side, Mr. Bernard Dunne and Mr. Fox, I think, is with him had agreed on 16 million as a settlement figure. Now, they weren't saying that everybody on their side had accepted it; they had simply agreed on the figure. In other words, it's the same as two barristers or two businessmen agreeing that if they are going to do business, they'll do business at a certain figure, but that they want time to think about whether they will do business at all. That would be a relatively significant exchange, wouldn't it?

A. Yes, it would, yeah.

Q. And it would warrant, I suppose, being brought to people's attention?

A. Yeah.

Q. But you have confirmed, in any case, that you never heard

of it, and it wasn't that it it wasn't that it was brought to your attention and you rejected it or that you advised rejection of it, but that you never even heard of the proposition; would that be right? Am I summarising your evidence correctly?

A. I wouldn't say that, precisely, Mr. Healy. I think what I have said is I have no knowledge of the meeting, is the first thing that took place. And I have also said that I would confirm to the best of my knowledge and belief there is no reference in any of my documents in my power or possession or control in relation to the figure of 16 million.

I mean, I think

Q. I just want to be clear about it.

A. I think the practical if you look at Liam Horgan's memo and Eddie's two letters, obviously it was on the record that Mr. Dunne was meeting with the Revenue. It's a reasonable it's a not unreasonable presumption that if I use the word "settled" in the broadest sense if he felt he had settled something, that he would have come back, and he would have brought it back. Because he would have had to bring it back; he would have had to bring back to the Trustees, and he would have had to bring it back to the board of Dunnes Stores. Because obviously they are someone you know, he couldn't write a cheque for 16 million. So it would have had to go through an approval process. So that why I have absolutely no recollection of

the number, I have you know, I have looked through all the papers; it doesn't appear anywhere. I think the first time I heard of 16 million was when I saw it in the process that we are involved in currently.

But I think my reaction to it, quite honestly, is that we would just have thought when I say "we", I think the Trustees in their broadest sense and the advisers generally, would have thought that a settlement of Capital Gains Tax for 16 million was just an off-the-wall idea. Quite honestly, it was I mean you need to understand, and even Liam Horgan's note, which I think is actually the same day, the 4th June, Liam was on to O'Cathain. I'm not sure who rang who, but they were discussing the actual hearing of the Capital Gains Tax assessment, so that I think it's very important that everybody it's very important, Mr. Healy, that everybody understands that the Trustees never ever thought they had a liability for Capital Gains Tax.

Q. I appreciate that.

A. So that our general approach to a 16 million I think it's very well summarised in Mr. O'Cathain's note, because he had worked out a figure of 16 million, which in his view was the best deal for the Revenue, which was 16 million money, plus probably interest at 15%, which was 2 and a half million a year interest, and he was going to have the continuing benefit of the Discretionary Trust Tax. So you can take it, I mean, my comment on it, if you want my

opinion or my comment on it, is that it was such a, in the nicest sense, a ridiculous figure, that it never got past first base. We would never have settled for the Capital Gains Tax assessment.

Q. I quite appreciate that; that's your opinion as to what way you would have responded to the settlement, and I agree with you that there doesn't seem to be any document, on what you have provided the Tribunal with, and I don't doubt you have provided it with all the documents which refers to it. Your documents do refer to relatively low-key, I suppose, potentially low-key exchanges such as the one Mr. Montgomery reported to you when he says "I understood Benny got some feedback from the Revenue, and I understood that indirect approaches had been made to Bernard."

This is an exchange of information, if you like, even at a relatively low-key level, which might, might be thought to have significance; isn't that right? I am just simply trying to establish that this exchange, if it took place in those terms, is one that, on the basis of the other exchanges you have recorded, would have been brought to your attention?

A. Yes, I think it would, yes. I mean, yes, I think it would, yes.

Q. And can I just refer you to something else. I mean, there seems to be no doubt that the Revenue and the Trustees would have been prepared to settle had a figure been arrived at which was acceptable to both sides; isn't that

right?

A. No. No.

Q. Oh, you weren't prepared to settle under any circumstances?

A. I think if you look at what Mr. Montgomery said, Mr. Montgomery said and it's just his note, if you like, in 1986 or 1987, whenever it was he said if we got a deal on very attractive terms, was what he meant was what he said. And "very attractive terms" in my view, and you can accept it or reject it, Mr. Healy in my view would have been some very nominal amount to avoid the nuisance value of the appeal hearing.

Q. I see.

A. And that would have been the Trustees' position right throughout. Again, as I said to you and I know you have had lengthy discussion on this with Mr. Clayton we had been through a most exhaustive process before extended the deeds, put the extension deed in place, and we were as convinced as it was absolutely possible to be, and the Appeal Commissioner and the Commissioners themselves all agreed with us when the process was worked through.

Q. Are you aware of the evidence that has been given concerning the propositions that were being canvassed in settlement, including one whereby there would be an appointment? Were you aware of that?

A. I have read the papers, because obviously the only papers

Q. You are aware of that

A. Yes, I am.

Q. suggestion?

A. Can I make the comment, Mr. Healy, that I think what happened was that when Mr. Dunne went in originally, the discussion of the conversation was around Capital Gains Tax and an appointment of property to grandchildren and all that. The Revenue then and I don't say this in any negative sense they worked away on seeing if they could put together a settlement figure, and there was a lot of very good work, obviously, done in the Revenue on that. The figure was the 16 million was arrived at, and again if you think of 16 million three and a half years at 2.4 million is probably about 9 million. So it was never 16 million. Actually with interest, actually it was 25 million. We had already paid 4 million of Discretionary Trust Tax. So we were going to be in a situation that we would be paying, you know, 16 plus 9, 25, plus the 4 we have already paid, plus but the ongoing Discretionary Trust Tax. And somebody thought that was a deal. It just wasn't a deal. So what happened then was that Mr. Dunne, when he went back, he started to talk about C.A.T., because the only settlement that we would have been interested in was actually appointing the trust. That was the only settlement that would have been of interest.

Q. Because that means that

A. We were finished.

Q. you'd have bypassed the whole C.G.T. issue?

A. No. We would have appointed the trust and we would have dealt with C.A.T., C.G.T., and we'd have killed off the Discretionary Trust Tax, if you like.

Q. So if you could have, or if anyone on your side could have agreed a valuation that would have meant or would have meant that appointing the trust, and even taking a little pain, if that was involved, would have been a worthwhile settlement avenue to consider; isn't that right?

A. Yes. Effectively, we if you remember back to March of '85, our whole approach to the Revenue and our whole approach in this process, we actually wanted to pay money to the Revenue. But there was only there was a sum of money that we could afford. When we had done the calculations in '85, we had come up with a figure of maybe 12 or 15 million we probably could just about have handled, and that was on the table in 1985. When Mr. Pairceir put his 43 million on the table, then it blew us out of the water.

But we would always have been comfortable, I think, and perhaps even in '88 or '89 we could have paid a little bit more, but we would only have paid that to actually disband the trust. We would never have paid it to settle the Capital Gains Tax. That would be my absolutely considered position on it.

Q. But there can be no doubt, if this document is correct, that Mr. Pairceir, Mr. Dunne and Mr. Fox agreed on 16 million, subject to getting back to their people; isn't

that right?

A. Yes, on the face of it, yes, yeah. But obviously their people did not accept it or wouldn't agree with it.

Q. Well, they didn't come back to you, anyway.

A. They must have come back to somebody, because it disappeared awfully fast.

Q. You don't know that it was considered by anybody else? I don't think you were ever asked to consider any other settlement at or near that amount of money; would that be right?

A. I have no recollection of it, certainly.

Q. Could I just refer you to a document that may assist you.

It's Leaf 35. It's again a note of Mr. O'Cathain. It's headed "Crinniu" meeting of the 22 May of 1987. Do you see that?

A. I have it open here.

Q. It was about two weeks prior to the 4th June of '87.

A. Yes.

Q. And they are discussing various aspects, the strength and weakness of their case, and so on. If you go on to the last page, see where it says "Fuiris ghlaoch on Cathaoirleach" "I received a call from the Chairman. Noel Fox rang asking if, in the light of the ongoing negotiations, they could suspend their preparation by or with counsel for the appeal hearing. He agreed it would give a better atmosphere for negotiations.

"I mentioned the surcharge they had not adverted to it.

He will ask one in the Castle to look at the two files and review the position."

It seems that at that point there must have been some negotiations going on, inasmuch as if the record is correct, Mr. Fox wondered whether, in the light of the ongoing negotiations, the hearings could be suspended; do you see that?

A. I do, yes, yes.

Q. So that would seem to suggest that those negotiations culminated in what happened on the 4th June?

A. Yes, could be, yes.

Q. Did you know that Bernard Dunne had had a meeting with Mr. Haughey to seek to arrange a meeting between himself and Mr. Pairceir?

A. No, I know nothing at all about Mr. Haughey, Mr. Healy.

Nothing.

CHAIRMAN: It's just Mr. Healy, I think we have undertaken another trustee who may be interposed; he'll probably be significantly shorter, and in the circumstances, I think we should make every reasonable endeavour, if needs be by sitting on a little with a short break, to try and conclude Mr. Bowen and also Mr. Uniacke's involvement today.

We'll take it up again at five past two.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

MS. O'BRIEN: Mr. Bernard Uniacke, please.

BERNARD UNIACKE, HAVING BEEN SWORN, WAS EXAMINED BY

MS. O'BRIEN AS FOLLOWS:

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

A. Thank you for accommodating me this afternoon.

Q. Not at all.

Mr. Uniacke, I wonder, do you have a copy of your statement of intended evidence with you in the witness box, and just the documents that you provided to the Tribunal with that statement?

A. I do.

Q. Now, what I propose doing is taking you through your statement and just asking you to confirm that its contents are correct, and then I would propose going back and discussing one or two matters with you in a little more detail. I may refer to just one or two documents, but I don't expect that I'll be very long.

A. Fine.

Q. Now, your statement of intended evidence is dated 2nd June of 2005. You have indicated that you were a partner in Deloitte & Touche Chartered Accountants from 1970 until your retirement in August 2004.

A. That's correct.

Q. You have been a trustee of the Dunnes Settlement Trust since 1967, while one of your co-Trustees, Mr. Frank Bowen, was also a partner in the firm over the same period?

A. That's right.

Q. You say that because of Frank's frequent presence and

numerous commitments in Dublin, he adopted a far more active role than you in the day-to-day activities of the trust. Your involvement was mainly confined to significant events such as the decision to appoint or extend the Trust in 1985, valuation figures for Discretionary Trust Tax and the Capital Gains Tax assessment, and subsequent appeal hearing in 1988?

A. That's right.

Q. You say that with regard to the Tribunal's request for copies of all documents in your power, possession or procurement in relation to matters raised by the Tribunal, you wish to confirm that you have no such documents available to you other than copies of the documents listed in the attached schedule.

A. Right.

Q. You say that you are you were unaware of any question of payments being made to a politician prior to a telephone conversation which you had with Mr. Bernard Dunne on the 15th June, 1993, and the name of the politician was not mentioned at that time?

A. Right.

Q. You say that you do not recollect being informed of any meeting between Mr. Bernard Dunne and the Chairman of the Revenue Commissioners, and you confirm that Mr. Seamus Pairceir was not retained by the Trustees in any capacity?

A. That's right.

Q. And that completes your statement of intended evidence.

Now, as you have indicated in your statement, you were appointed a trustee, I think, in 1968?

A. That's right.

Q. And I think you say you are a chartered accountant by profession, and you were appointed a partner in what is now Deloitte & Touche back in 1970?

A. That's right.

Q. And your co-Trustee, Mr. Bowen, was also a partner in the same firm?

A. That's right.

Q. I think your other co-Trustees at the time, and continuing possibly through the '80s, were Mr. Fox, is that right, Mr. Noel Fox?

A. That's right.

Q. Mr. Oliver Freaney?

A. And Mr. Montgomery.

Q. Yes, and Mr. Montgomery.

A. That's right.

Q. I think Mr. Bowen said this morning that you have considered Mr. Montgomery, really, as the senior trustee amongst you?

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

Q. And I think your father before you had been a close financial adviser and perhaps accountant to the Dunnes companies; is that right?

A. That's right.

Q. Apart from your position as trustee of the Dunnes Trust,

were you also a financial adviser or were the firm auditors or accountants to any of the Dunnes companies,

A. Well, my firm was obviously auditor, or joint auditor to the Dunnes Group. I would have worked with Frank Bowen on the audit up to probably the early 1970s. And then we made the decision that Frank, because of his more regular involvement in Dublin, that he would take over the role of partner on that assignment.

Q. I see. Now, I think we have had information and documents in relation to it, and also Mr. Bowen has addressed it in his evidence this morning, but it appears that with the introduction of Capital Taxes legislation in the mid-1970s, that there was a significant impact in terms of the potential exposure of the trust to tax; isn't that right?

A. That's right.

Q. Now, I suppose in particular, in the event of an appointment to one or more of the beneficiaries, or in the event of the assets held in the trust vesting in the beneficiaries under the terms of the trust itself, there would be an exposure to Capital Acquisitions Tax?

A. I think between the various taxes, you could have been looking at up to 50% tax rate.

Q. And I think Mr. Bowen, and indeed Mr. Horgan, I think in his evidence last week, adverted to the fact that around the mid-1970s, this was a matter that you as Trustees gave serious consideration to?

A. That's correct.

Q. And I think in fact the Tribunal has heard evidence that expert advice was not only retained within this jurisdiction, but that you as Trustees also travelled to England in order to engage experts in the field to advise you as to what steps or what options were available to you?

A. That's right.

Q. And this was all in relation to the potential vesting of the trust in 1975 or

A. '85.

Q. or a possible appointment 1985; I apologise or a possible appointment that you might make in the interim?

A. Yeah.

Q. I think also in 1984 the Finance Act, which was passed that year, brought into the Tax Code the Discretionary Trust Tax itself, and that added an additional exposure to taxation of the trust?

A. That's right. We had a 3% initial levy introduced in '84.

Q. And that was in relation to the death of the late Mr. Bernard Dunne?

A. That's right.

Q. And there was also the 1% annual tax?

A. That came in I think in '86.

Q. In '86?

A. Yeah.

Q. And I think there was no issue of liability or exposure to those taxes; because it was a Discretionary Trust, you were automatically exposed to those taxes, and the only real

issue there was a matter of quantum, or how much you were going to have to pay?

A. That's right.

Q. I suppose as between the two taxes, the particularly significant or serious tax, which was going to expose you to a potential liability of 50 million, was the Capital Acquisitions Tax in the event of vesting?

A. Well, there would have been that plus, obviously, Capital Gains as well.

Q. Now, I think in your statement of intended evidence, you have indicated that Mr. Bowen was probably more actively involved in relation to the affairs of the trust but that you were involved in relation to significant events and significant decisions?

A. That's correct. I suppose Mr. Montgomery, primarily, in the late seventies, was giving the matter a lot of thought and had done a lot of research on it. And then Frank Bowen came working with him, I suppose, and relating to him very closely, late seventies, early eighties. And then, obviously, as the matter became more urgent, I think we all got involved.

Q. I think Mr. Bowen indicated in his evidence that he would have kept his fellow Trustees briefed of what was happening in terms of his dealing with the Revenue Commissioners and so forth?

A. That's right.

Q. Now, I think you did attend a meeting on the 7th March of

1985. This was the meeting that I think was arranged following a meeting that had been attended with the then Minister for Finance, and this was a meeting with Mr. Seamus Pairceir, the Chairman of the Revenue Commissioners, and a number of the Revenue officials; isn't that right?

A. That's right.

Q. And I think you also kept a note. I'll just refer you very briefly. It's a very short note. I think it's behind Tab 1 of your documents.

A. Right.

Q. And again, what we have done in the case of your documents also, Mr. Uniacke, is we have had them transcribed and typed up.

A. Fine.

Q. And I think you record "Mr. Parker, O'Connor and Murphy" "Mr. Parker", presumably is a reference to Mr. Pairceir?

A. That's right.

Q. The others were perhaps officials of the Revenue Commissioners?

A. I can't remember who they were, really, because I seem to recollect there was Mr. Quinlan, Mr. McDermott and Mr. Clayton. And I'm not sure where the names O'Connor and Murphy come in, but obviously they are there.

Q. You record: "Performance in past due to conservative dividend policy. Return on investment obviously related to dividend policy."

"Parker: What I have to say is the law can't bring in a calculations what has brought us here."

Below that: "Valuation 80 million equals 43 million tax."

A. That's right.

Q. So am I correct in thinking there that you are recording that the really, the ballpark figure that the Revenue had in mind for the valuation of the trust assets at that stage was $\frac{1}{2}$ 80 million?

A. That's right. That's the lowest figure that they could come to, which was obviously considerably more than we could that we could afford at the time.

Q. From your own point of view, in your own mind, what kind of figure did you consider that the Trustees could afford at the time?

A. Well, we were going very much on the Discretionary Trust Tax valuation at the time, which was around 34 million, and I think we were saying that we would be in a position to possibly pay a figure of around 16 million.

Q. Around 16. And in fact I think Mr. Bowen also prepared perhaps a more detailed note of that meeting. I'm not going to refer you to it, because it was opened this morning, and I think perhaps you were here this morning and saw it on the overhead projector. But he recorded in it as well that I think there was going to be no objection to you putting in submissions in relation to valuation, but certainly, from the documents we have seen on the Revenue side, I don't think you actually took that step; is that

correct?

A. That's correct, yeah.

Q. Can you tell me why it was considered that you wouldn't take that step of putting in submissions on valuation?

A. Well, I think we felt we were just poles apart, and there was very little grounds for negotiations. We could, perhaps, if there was an agreeable figure or something that we felt might be agreeable, we could come up with it. But certainly the difference between 16 and 43 was just too great.

Q. Now, I don't think you were involved, really, in a lot of the meetings that Mr. Bowen attended with Mr. Pairceir or contacts he had with Mr. Pairceir, or indeed meetings he had with officials. But you do have a note of one meeting that you attended on the 22nd October 1985, and I think that's behind Tab 4 in the booklet of your documents.

A. That's right.

Q. And that's dated the 22nd October, 1985. Now, we don't seem to have had that transcribed, Mr. Uniacke. So I could ask you to read it out, because I'm sure you'll find it easier to read your own writing than I will.

A. Certainly. The attendants there seem to be Mr. Pairceir, Mr. Quinlan, Mr. Clayton, Eddie Montgomery, Frank, Noel Fox, and myself.

I am saying that "Seamus Pairceir stated that the Trustees had power to act as they did in the 1985 deed". In other words, that we had the power to make the appointments that

we did. And as a result, the Revenue agree that no C.A.T. arose, as no one became beneficially entitled to anything under the 1985 deed.

"Discretionary tax on 50% of the trust arising out of the 1984 Finance Act". That's because one of the settlors had died, so 50% would have applied.

"And this was a suggestion that we discussed valuations with the Revenue Commissioners rather than leave it go to appeal". I think it says "Go to the Appeal Commissioners, etc."

"On Capital Gains Tax, we need valuations for 1974 and 1985." This is a point which Mr. Pairceir was making. And he was saying that "If the Revenue win at appeal, or any stage, then they will appeal for the valuation to be fixed, and if we win it at any stage, we may not have to discuss the appeal of valuation". Which is quite obvious.

Q. So it would be fair to say there what was certainly being discussed or considered was that as regards the Capital Gains Tax issue, that the question of liability would be dealt with initially, and then you could really park the matter of valuation?

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

Q. And you would need to produce valuations for 1974 and 1985. They would need to be addressed?

A. We would have had to if we lost the appeal.

Q. Yes.

Was this the first occasion, can you recall, that you

became aware that the Revenue Commissioners were going to treat the 1985 deed as a deemed disposal and to raise an assessment to Capital Gains Tax?

A. I think it was, although maybe from some other papers, we might have been aware prior to that meeting; maybe a month or so in advance. But certainly it's the first record that I have made that that was the occasion that we were informed.

Q. I take it that the view of the Revenue to it wouldn't have come as any great surprise to you?

A. Sorry?

Q. It wouldn't have come as any great surprise to you?

A. No, no, I wouldn't think so.

Q. I'm not going to ask you about the advice you had; we know that you had advice, and certainly we have been told that it was all very positive. But presumably you were aware that there was every possibility that the Revenue Commissioners would treat this as a deemed disposal and seek to raise an assessment to Capital Gains Tax?

A. Yes, we were aware of that.

Q. Now, I think, or I'm not sure, were you present at the hearing of the appeal in relation to the Discretionary Trust Tax assessments in 1987?

A. That was in September of '87, I was, yes.

Q. I think March of 1987, I think it was March of 1987. I think September of 1988 was the Capital Gains Tax.

A. It was, yeah. Sorry, you are right. It was March of '87,

I was at that appeal.

Q. You were there at both hearings before the Appeal Commissioners, both the Discretionary Trust Tax and the Capital Gains Tax?

A. The C.G.T., I was.

Q. And the Discretionary Trust Tax assessment was disposed of by agreement?

A. It was, it was the valuation was the issue, I think, there.

Q. You agreed the $\frac{1}{2}$ 82 million valuation?

A. That's right.

Q. And I think there was also provisions in relation to interest and so forth that were carefully worked out in the settlement that was concluded between the parties?

A. I don't recollect the detail of that, but I'm sure they were, yeah.

Q. I don't suppose you were involved, were you, in any of the dealings with the Revenue regarding the interest which accrued on the late payment of the money that was due under that settlement?

A. No. I think I would have as you say, I was at the appeal and the discussing the valuations, but I think my input ceased then as regards that.

Q. That would have been a matter, I suppose, that Mr. Bowen and indeed Mr. Fox dealt with?

A. Possibly, yes.

Q. Now, in your statement of intended evidence, you indicated that you do not recollect being informed of any meeting

between Mr. Dunne and the Chairman of the Revenue Commissioners.

A. I certainly don't recollect it, but you know, on the basis that the Trustees would inform each other, probably orally, something was happening, presumably I was told at the time, but nothing of a final nature came out of it. I certainly don't recollect it.

Q. Right. You don't mention in your statement the $\text{€}16$ million which it appears that the Revenue Commissioners were prepared to settle the assessment at?

A. No. As I say, that's one thing I don't recollect.

Q. Right. You don't recollect that.

Can I just refer you to the note in fact, it was opened this morning; I can just refer to it very briefly that was made by an official within the Revenue Commissioners, Mr. O'Cathain, in Irish. It was then transcribed in Irish and then translated into English, dated 4th June, 1987, arising from a telephone which he received that day from the Chairman of the Revenue Commissioners. I'll just refer you to that briefly. It's at Tab 42 in the red book of documents. We can hand you up a hard copy of it if that would assist you, Mr. Uniacke. I think you might have it there.

A. Yes, the 4th June, 1987.

Q. That's it, yes. It reads: "Call from the Chairman, he met BD, they settled on $\text{€}16$ million. He was offered three years to pay it. Maybe he would clear it within that

time. It is not fully accepted yet by BD. He is going to think about it and come back to the Chairman. I explained to him about the provisions of Great Britain. Look at the figures for this". And the initial there is "SOC", dated 4th June. And then "Value forward 14/3/85 circa of $i_c^{1/267}$ million".

"We must bring in Revised Section 34 in next Finance Act to ensure the value is not reduced further in disposition."

I take it that you would agree with Mr. Bowen that that was certainly a significant matter in relation to the affairs of the trust?

A. It certainly was, yes, yeah.

Q. You'd have expected to have been informed of that?

A. I think if we were going to act on it, or if it was going to get serious discussion by the Trustees or by the board of directors plus the Trustees, I certainly would have been informed, yes.

Q. Well, Mr. Uniacke, irrespective of whether there was going to be serious discussion, you were a trustee of this trust, were you not?

A. I was.

Q. And your duties were your personal duties, were they not?

A. They were.

Q. And you had solemn fiduciary obligations which you owed to the beneficiaries of this trust; isn't that the position?

A. That's right.

Q. And you weren't informed, as far as you know?

A. Not to the best of my recollection, but as I say, I don't recollect now. I am not saying I wasn't at the time.

Q. Isn't it almost inconceivable that if you had been informed that this assessment for $\frac{1}{2}$ 38.8 million could be settled for $\frac{1}{2}$ 16 million, that you wouldn't have remembered it?

A. I suppose if we felt that we were going to act on it, I certainly would have. I think we would have given it a lot of serious thought. But seeing that the original 38, we felt we hadn't a liability to it, then perhaps we wouldn't. We would have thought similarly about the 16.

Q. All right. Now, in your statement of evidence, you have confirmed that Mr. Pairceir was never retained by the Trustees in any capacity?

A. That's right.

Q. Can you tell me, were you aware that Mr. Pairceir was providing advisory services to Mr. Dunne?

A. I wasn't, no.

Q. Can I just ask you about one document, just to be fair to you. It's a document which you produced yourself, and it's at Tab 6 of the book.

A. Yes, I have that.

Q. It's headed "Dunnes Stores Group". It's a meeting of the 25th November 1987. The persons present appear to be Mr. Dunne, Mr. Bowen, and it refers to a proposal that property in nine separate locations be acquired. Do you see that?

A. Which point are you referring to?

Q. I'm just referring generally to the points made at paragraph (a) of that memo. Do you see that?

A. "Agreement in principle to acquire"

Q. Yes.

A. Yes, I do.

Q. And various steps that would be taken with a view to furthering that proposal; do you see that?

A. Yeah.

Q. And then there is another heading at (b), and again there is various steps to be taken in relation to the matter that was being discussed at (b). Do you see that?

A. I do.

Q. Then you see there at (c) this is the part of the note I want to draw your attention to it records: "LKH is to meet Mr. S. Pairceir"?

A. I see that.

Q. And it's dated the 27th November of 1987?

A. Yeah.

Q. Can you assist the Tribunal at all as to what that note relates to? Not the portions of the note at (a) and (b), but the part of the note that records that Mr. Horgan was to meet with Mr. Pairceir.

A. Off the top of my head, I can't see what the purpose of that meeting would be. I'm just trying to remember, in relation to November 1987, it seemed to be after we had agreed valuations, and it was prior to C.G.T.

Q. I should draw your attention, Mr. Uniacke, specifically to

the fact that by that time, Mr. Pairceir had retired as Chairman of the Revenue Commissioners. He retired on the 11th September of that year, and this was the 27th November. So it can't have been in relation to those matters that Mr. Horgan would have been meeting him.

A. Right. I can't assist you on that, I am afraid.

Q. Now, the final matter that I just want to take up with you, Mr. Uniacke, briefly, is the events that occurred in 1993 and on which you have already given evidence to the McCracken Tribunal. And just to recap on those.

I think you informed the McCracken Tribunal that in early 1993, you were asked by Mr. Bernard Dunne to attend as an observer at the weekly board meetings; isn't that so?

A. That's right.

Q. And you had indicated to the McCracken Tribunal that at that stage, tensions were building up between the members of the Dunne family?

A. That's right.

Q. And I think you related a board meeting that you attended, I think on the 14th or 15th June in 1993, at which a proposal and a motion had been made that Mr. Dunne's executive powers as a director should be suspended; isn't that right?

A. That's right.

Q. And I think you referred then to a telephone call that you received from Mr. Dunne the following day; isn't that right?

A. Correct.

Q. I think you have produced for this Tribunal also a note, in fact it was a transcribed note of the I think of the notes that you took in the course of that telephone call; isn't that correct?

A. That's right.

Q. Now, I just want to refer you again to the relevant portion of that note, and I think we have a copy that can go on the overhead projector which we have masked the other points which the Tribunal isn't interested in.

Now, I think it's dated the 15th June of 1993.

A. That's right.

Q. And that was the date of the call that you received; isn't that the position?

A. Correct.

Q. And it records: "On Tuesday next, 22nd June, NS". Is that can you just tell me who the "NS" refers to?

A. Noel Smyth.

Q. "Will attend at Dunnes Stores with the Investigation Branch of the Revenue Commissioners. On Wednesday 23rd June, NS will call a press conference outlining the foregoing" sorry, that's actually not the portion I intended to refer to. It's in fact the first page of it, and it records as follows: "Regarding the document submitted to Monday's board meeting by Mr. Frank Dunne regarding the proposed suspension of Mr. Ben Dunne, Mr. Ben Dunne has now considered his position and has drafted his response,

consisting of 12 points." Do you see that?

A. I do.

Q. "He will be making under Section 7 of the Companies Act 1990 for the appointment of an Inspector."

A. That's right.

Q. "Part of his evidence will refer to the payment of \$1 million paid to a member of a previous Government to influence legislation affecting the trust."

A. That's right.

Q. And I think in your evidence to the McCracken Tribunal, you had indicated that after that telephone conversation, you contacted Mrs. Heffernan. You also, I think, contacted Mr. Dunne?

A. Mr. Frank Dunne.

Q. Mr. Frank Dunne?

A. Yeah.

Q. And you would have also spoken to your co-Trustee, Mr. Frank Bowen?

A. That's right.

Q. Now, I just want to refer you to a very small portion of the transcript of your evidence to the McCracken Tribunal in relation to this matter, and I can put a copy of it on the overhead projector, and I'll put it on the overhead projector, Mr. Uniacke, and hopefully that will be enough; but if you would if you need to see a hard copy, I can arrange to get one for you.

It was your evidence on Day 16 of the McCracken Tribunal,

the 14th July, 1997, and I am going to refer you to page 19 of the transcript. And in fact here you were responding to questions being put by Mr. Cooney, who I think was counsel for Dunnes Holding Companies. We'll just start at the top of the page.

"Question: And I think that during the course of that conversation, he also made reference to specific pieces of legislation about which he wouldn't normally know; is that right?

"Answer: That's right.

"Question: He threatened proceedings under some Companies Act. I think you never heard Ben Dunne quote the Companies Act in such specific terms before; is that right?

"Answer: That's right.

"Question: He also went on to mention other actions which he or his legal adviser might take; is that right?

"Answer: That's right.

"Question: I think you agreed some of these threatened actions were quite fantastic; is that right?

"Answer: They were.

"Question: While you were obviously taken aback by them, in reflection, you wouldn't have taken them seriously; is that right?

"Answer: I suppose I would take them all seriously.

"Question: All seriously, but I think you considered them, you might conclude that they were a bit impracticable?

"Answer: Yes.

"Question: Mr. Uniacke, obviously you haven't been attending the hearings of this Tribunal since it first started, but you have been following the evidence?

"Answer: I have.

"Question: You are aware considerable evidence has been given about the tax affairs of the Dunnes Stores Group of Companies.

"Answer: I am, yes.

"Question: I think you have heard, I presume, that the present Chairman of the Revenue Commissioners described them as model taxpayers, effectively.

"Answer: I did.

"Question: On such evidence, I think you'll forgive me for stating the obvious, is heartily inconsistent with any attempt to evade tax or in any shape or form; isn't that right?

"Answer: That's right.

"Question: And I think it demonstrates to a certain extent the threat uttered by Mr. Ben Dunne during the course of this telephone conversation was at least an empty threat; is that correct?

"Answer: It was.

"Question: And one without any foundation whatsoever. Is that right?

"Answer: It's described as being a compliant taxpayer.

"Question: I think he mentioned specifically legislation, is that correct, in the point about which you have already

given evidence, he stated that he would reveal that a million was paid for the purpose of influencing legislation?

"Answer: That's right.

"Question: This legislation would be comprised in the Finance Act?

"Answer: That's right.

"Question: I have to confess that I have not studied all the finance acts from that time down to the present day, but I think you will agree there is nothing in any one of those Finance Acts which conferred a specific benefit to the trust; is that right?

"Answer: That's correct."

Now, in response to Mr. Cooney, when he suggested to you that you wouldn't have taken seriously what Mr. Ben Dunne said to you in the course of that telephone call, you said that you would have taken them all seriously. Do you see that? On page 19, at line I think it's Question 118.

And in fact I think in the course of evidence you referred to the fact that some of the points that I haven't read out that were raised by Mr. Dunne were then invoked by him in the course of his subsequent litigation; isn't that right?

A. That's right.

Q. So what he said, you took seriously at the time; isn't that the position?

A. I took them, yes, the threats as regards proceedings or likely proceedings under various Sections of the Companies

Acts, I certainly took seriously, yeah.

Q. Apart from the threats he was making as to what he would do, I take it that the substance of what he was saying in the course of that call is something you also would have taken seriously?

A. The 12 points that he raised?

Q. Yes.

A. Oh, yes, yeah.

Q. Now, at the time of that telephone call to you, you weren't aware that he had paid any money to a politician; isn't that correct?

A. No, that was the first occasion that I heard that.

Q. Now, if you had known at that time that not only had he paid $\text{\$}1$ million to a politician, but that he had in fact paid $\text{\$}1.9$ million to a politician, and if you had known at that time that that politician appeared to have had dealings in relation to the tax affairs of the trust of which you were a trustee, and if you had known that that politician had arranged meetings between Mr. Dunne and the Chairman of the Revenue Commissioners on two occasions, I take it you would have taken it even more seriously?

A. Well, I don't know what I could have done about it, really, as regards, as he stated here, affecting introducing or influencing legislation to affect the trust. If he did, there wasn't anything I could do as Trustee. But I certainly saw no evidence of that, and I'm not sure whether I could have taken it more seriously, other than reporting

to the directors.

Q. Thank you, Mr. Uniacke.

CHAIRMAN: Mr. O'Neill, as it's your evidence, I'll leave you till the end.

MR. NESBITT: I have no questions.

MR. CONNOLLY: No questions.

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

Q. MR. O'NEILL: Mr. Uniacke, I just want to ask you a couple of questions in relation to the last matter that you were being asked about by counsel for the Tribunal.

I think, in the course of giving your evidence to the McCracken Tribunal, you were not only examined by Mr. Cooney on behalf of the Dunnes companies, but I think you were also examined by counsel on behalf of Mr. Ben Dunne, Mr. Paul Gallagher.

A. I think you're right, yes.

Q. And I think, if we could have page 23 of the transcript, and I just want to I don't think you have if you follow the screen, I just want to go through your evidence.

Question 156: "The witness was cross-examined as physicals by Mr. Gallagher.

"Question: Mr. Uniacke, I appear on behalf of Mr. Ben Dunne and just a few questions. Before I come to the board meeting on the 14th June I shall want to put it in context. From his father's death in 1982 Mr. Ben Dunne played a leading role in the company and the expansion of Dunnes Stores?

"Answer: That's correct.

"Question: It was to have unparalleled growth for Dunnes Stores and unparalleled success. They were very successful in that period. We also have had evidence of the turnover and profits at a number of stores increased very substantially.

"Answer: That's right.

"Question: And Mr. Ben Dunne effectively devoted his entire working life to Dunnes Stores and its success?

"Answer: That's right.

"Question: And then the difficulties for the family arose, of which we have already had evidence, culminating in the board meeting of the 14th June.

"Answer: That's right.

"Question: And that was a very distressing time for all members of the family and for Mr. Dunne in particular?

"Answer: That's correct.

"Question: And here was a person faced with having devoted himself to the company, having made great success of the company, suddenly seeing his entire business and working life coming to an end?

"Answer: That's right".

I think he is talking about Mr. Ben Dunne at this stage,

Mr. Ben Dunne Junior.

A. That's right.

Q. "Question: And when Mr. Dunne phoned you on the 15th, it was clear that he was very emotionally upset?

"Answer: He was, yes.

"Question: And would it correct to say that a phrase he used during the phone call puts it in context and exemplifies his state of mind, I think he said 'if they are trying to take me out, I will take them out'?

"Answer: That's right.

"Question: And he made a number of threats in that phone call?

"Answer: He did.

"Question: And I think you have already explained in answer to Mr. Cooney that those threats didn't have any reality or any factual basis?

"Answer: Not that I was aware of.

"Question: I think that he mentioned that he had an affidavit from an accountant in Dunnes Stores about company funds, and there was no basis for that?

"Answer: I gather not, I have never seen

"Question: He mentioned some suggestion but that he and his solicitor or his solicitor would appear at Dunnes with the investigation branch of the Revenue solicitors the following day and there was no basis in that?

"Answer: It certainly didn't happen.

"Question: And we have already had the evidence that Dunnes Stores was a very compliant taxpayer?

"Answer: That's right.

"Question: And I think not alone did Mr. Dunne have phone calls or discussions with you around that time, and in

relation to his position, I think he subsequently had some conversation with Mr. Noel Fox, and that he also had a very heated conversation, and for which he subsequently apologised?

"Answer: That's right.

"Question: And what you did in relation to that phone call was you took a note and reported it to somebody else?

"Answer: That's right.

"Question: And it was quite clear to you that, as you say, Mr. Dunne was very upset, and he was basically hitting out at anybody in any way he could?

"Answer: That's right. He was reacting to events of the previous day.

"Question: Thank you.

"Sorry, just one matter. Not alone was there no change in the legislation, but there was no attempt to change any legislation affecting the trust; is that correct?

"Answer: I am not aware of any change; in fact, the surcharge and Discretionary Trust was increased".

He then deals with the increase.

I presume that is still your opinion that as far as you were aware, between the date on which you gave evidence in 1997 and today, you haven't come across any legislation or any piece of legislation which benefits the Dunnes Trustees?

A. No, I have not.

Q. Thank you, Mr. Uniacke.

CHAIRMAN: Thank you very much indeed, Mr. Uniacke, for attending today. Thank you for your assistance.

THE WITNESS THEN WITHDREW

CHAIRMAN: We'll seek to conclude the evidence of Mr. Bowen.

MR. HEALY: Yes.

MR. FRANK BOWEN CONTINUED TO BE EXAMINED BY MR. HEALY

AS FOLLOWS:

Q. MR. HEALY: Thanks, Mr. Bowen.

I think we were on the second of your two narrative statements; I think we were just about to pass on to Item Number 2. Have you got that?

A. Yes, I have it.

Q. You have headed it "Interest on Discretionary Trust Tax Payment". I think what you say is, you say you reviewed the documentation provided by the Tribunal in relation to this matter. The assessment raised by the Revenue Commissioners on the Trustees in respect of Discretionary Trust Tax was settled on the basis of an agreed valuation.

"I do not dispute that the settlement provided that all payments should be paid within 21 days from the 16th March 1987. I further accept that the final payment in respect of this settlement was not paid within that time-frame.

Having reviewed my files, I am aware that there was discussion with the Revenue Commissioners on the subject of interest on the Discretionary Trust Tax that was due dating back to 1985. In a letter dated 22nd December 1986 from me

to John Reid, I refer to interest charges in the context of delays finalising the Discretionary Trust Tax appeal."

I'll just read this whole section first. Then you refer to a letter from you to Edward Montgomery enclosing a further letter from John Reid to you dated 7th January, 1987, setting out the Revenue's position and the potential liability for interest arising on the delay in the appeal hearing.

You go on: "I have no direct recollection of the precise agreement between the Trustees and Mr. Seamus Pairceir on behalf of Revenue Commissioners in respect of the interest on the late payment, which amounted to $\text{€}62,450$. I recall that an agreement was reached between the parties whereby the Revenue Commissioners agreed not to proceed with their demand for the payment of that amount; however, having reviewed my files, I confirm that I have documentary records relating to the agreement reached between the Trustees and the Revenue Commissioners in relation to the interest payment. I would add that there was no question of interest being waived in relation to payments of the outstanding Discretionary Trust Tax. In fact, the settlement paid to the Revenue in May 1987 included a sum in respect of interest on the Discretionary Trust Tax payments which is shown on the Revenue's own calculations. I have no knowledge of any dealings or contacts with Mr. Haughey in relation to the subject matter of interest on the settlement monies."

I think I don't want to detain you on this aspect of the queries addressed to you by the Tribunal, Mr. Bowen, but if I could just refer you to documents to make sure that we are talking about the same documents, and you can confirm to me whether you accept what they convey.

I think if you go to Document Number 31, I think.

A. Yes, I have that, yes.

Q. Perhaps if I could just refer you back to Document Number 30 for a moment. Again, I am not going to delay you on it.

I think that's perhaps one of the documents you are referring to; it's your letter to Mr. Reid pointing out

A. No, I think Number 30 is

Q. I beg your pardon, 29. I think, if I could just summarise the key point, you say: "I think it is perhaps" sorry, it must be the last sentence: "While I would accept that this is in accordance with the agreement of the 16 March, I think it is perhaps a little bit unfair that the interest runs from the precise date of death, and I was wondering if a consideration could be given to a reasonable time-frame within which to complete the return and make a payment in such circumstances."

And passing on to the next document, it's a response from Mr. Reid. And in the second paragraph, he says: "The statutory position is that interest is payable from the valuation date unless tax is paid within three months of that date. As regards the tax and interest due in connection with the death of the late Norah Dunne, the

Revenue Commissioners did not consider it appropriate to depart from the statutory position which, as you point out, now forms part of the agreement of 16 March 1987."

And then if you go on to Document Number 31, which is a lengthy document setting out various dealings between the Revenue Commissioners and the Dunnes Trustees in connection with tax matters. If you go to what I think is the fourth page of that document have you read this document before, have you?

A. Yes, I have seen it, yes. I wouldn't say I am absolutely familiar with it now, Mr. Healy, but

Q. All right. I just want to make sure, I just want to be sure that you agree with the account contained in this document of the various dealings that you had, I think, mainly you with Mr. Reid.

On that page you see details of settlement of 16 March, 1987, "prior to appeal hearing fixed for that date." And this is a sort of a summary of the settlement there. I don't think anything turns on it.

If you then go on another three pages, you come to item number 4. "Recent contacts with Mr. Bowen. A summary of Mr. John Reid's contacts with Mr. Bowen as attached. Mr. Bowen's final comment may be significant."

Then there is a summary of material which I think has been read into the record all right, and I don't want to trouble you with it. Basically have you read it before? It's:

"I rang Mr. Bowen. Mr. Bowen said to me"

A. Yes, I have read through it.

Q. I take it, judging from your narrative statement, that it contains a reasonably accurate account of what happened?

Do you want me to read it?

A. No, there is absolutely no need. It's fine, it seems it's obviously a record that Mr. Reid made at the time of a series of conversations that we had, so I am quite happy with them, yes, yeah.

CHAIRMAN: In essence, you were led a bit of a dance as regards getting a cheque finalised, and you were doing your best

A. There is the comment about Mr. Dunne having the cheque in his back pocket, I think.

Q. MR. HEALY: That must presumably have been a different cheque to the cheque that was ultimately paid.

A. It was, in fact, and that's probably the relevant point here, Mr. Healy, if I may go to it.

In the middle of that it's the page headed on the top

"B. Disponer, the late Norah Dunne".

Q. Which document is that?

A. It's the same document. I think it's page 3 of that. It's segment 31, and it's page 5; do you see page 5? Do you see the totals?

Q. I see. The position as to payment of interest in respect of each charge, is it?

A. Yes.

Just to put this whole thing in context, I think it comes

if you look at the letter that Mr. Reid did to me, I think it's a letter of March of 1987 as well, the one where he sets out the 2.775 million and the 820,000. I can't give you the reference, but it's obviously I'll just keep going.

If you look in the sorry, the agreement really covered two pieces of activity, because obviously by March of 1987 Mrs. Dunne had tragically died as well. So we had settled, if you like, the two 3 percents in relation to their two estates, and then the 1% had kicked in in '86. The first 1% applied only to Mr. Dunne's portion, the late Mr. Dunne's portion. Mrs. Dunne I think died in April, which would have been after the, kind of, valuation date, so the issue in relation to Mrs. Dunne then only kicked in in relation to 1987; okay?

Q. Yes.

A. So, if you like, we so we tidied up everthing up to and including 1986; and then for 1987 on, we were into, if you like, the basic 1% Discretionary Trust Tax, which was on a 1% calculation. Again, as we are aware, the valuation was 82 million, so the annual tax was 820,000. So if you look here, you will see that in presenting this document, you'll see what he says is: "Under (C) deduct the tax chargeable to 5 April 1987, which, while due and payable, will not incurred an interest charge if paid on or before the 4 July 1987."

Do you see that point?

Q. We are looking at a different letter, but I remember

A. I am not looking at the letter. I am on 31 now here. But 31 encapsulates what was in the letter.

MR. O'NEILL: I was just pointing out, if the witness wants to refer to the letter in question, it's at Divide 57, I think.

A. Sorry, 27 or 57?

Q. MR. HEALY: 57.

A. Yeah, this is the letter of March, 20th March, 1987. And if you look at the bottom of that page, right, he says:

"The total now due in respect of 1(a) and 1(b) and 2(a) is 2 million 744 thousand and some odds, which is to be paid within 21 days of the 16 March 1987, which is presumably we are at the 6th or the 7th April, to prevent further interest accruing, right. The total due in respect of 1C and 2B, the valuation date of 5 April 1987 is 820,000; okay?

Q. Yes.

A. If you hold that thought and go back to the C and the totals on Section 31, when I wrote the cheque for payment of the Discretionary Trust Tax, the cheque I wrote in I think March of '87, which would have been the one that Mr. Dunne had, was for 2.7 million. I did not write a cheque for 3.5 million, because the fundamental issue in relation to the payment of Discretionary Trust Tax is that while it is the valuation date is the 4th April, you actually have three months to pay it.

Q. If you pay it within three months?

A. Well, exactly; if you pay it within three months, there is no interest. So, obviously, from the taxpayer's perspective, you pay it on the last day. We always pay the Discretionary Trust Tax, give or take, in around the 4th July. So in effect, what was happening here, if you like, is there were two payments involved.

Q. You were getting one of them earlier

A. In our view, the Revenue were getting the 820,000 ahead of time.

Q. I suppose that's just the way settlements go, is it?

A. Yes. But I think the point in relation to what subsequently happened in relation to the interest relief it would appear to me, anyway, but obviously you'll want to discuss it with Mr. Fox as well it would seem to me that the deal that was done or the settlement that was agreed was that we would pay the 2755, and we would pay the 820, and this technically some period of days or weeks ahead of time, and if they got that, they would be quite happy.

Q. It's quite obvious that is what was done. It's just that the agreement that was, I think as we were told, hammered out, was to a different effect.

A. I'm not sure that you know I think there is a kind of a if you look at Mr. Reid's letter

Q. In any case

A. There is a bit of doubt, I would think there is a bit of doubt in the process, in my view, that we would have seen a

situation there is 2.7 million due now; we really don't have to pay this 820 in July. It's going to be paid early, so maybe we can do a trade here or something.

Q. I suppose the only thing that's surprising is that there is no analysis of that, if you like, benefit in the Revenue papers. Somebody is simply told, "Just don't you don't have to collect the interest"; that's all. I suppose you'd expect that to be there, wouldn't you?

A. There is some there is something where they have I think Mr. Reid changed his calculation following his conversation with the Chairman. But you know, with respect, it's really in the context of us having already paid, you know, effectively, or being in the process of paying them 4 million, of which a substantial amount was interest already, it wasn't, in the nicest sense, Mr. Healy, any kind of a material number, to be honest about it.

Q. I suppose, looking at it from the other side, I suppose you were benefiting a lot, because you enjoyed that valuation right up to I think '89, wasn't it? It was obviously very attractive from your point of view.

A. Well, it was. Again, without getting into too much detail, if you look at it, because it has come up in a valuation context, I mean, the it was traded out between the senior counsel, but the fundamental analysis of it would tell you that we had conceded an 82 million valuation on the basis that we paid 3% on a slightly higher number than

we would have otherwise agreed for '84, but we were paying 1 percent on a lower figure for '87, '88, '89. So, you know, it was a classic settlement, quite honestly.

Q. I think that's precisely my point. It's a classic settlement?

A. Yes, it was, yes. But that goes on all the time. That's the way the world works.

Q. And it's just that after the classic settlement, it was resettled less 65,000?

A. Until the money is paid, Mr. Healy, the deal isn't done. You know, from the taxpayer's perspective, this is all about how much money do I have to pay. Not hugely concerned about how it's made up, to be honest with you.

Q. I suppose, speaking as a lawyer, I must say my impression is once you have reached a deal and written it down, you are stuck with it. I think that's what your letter seemed to suggest as well?

A. I think what I might interject, maybe with a fast comment, we are retailers, Mr. Healy; we trade all the time.

Q. Right. Could I ask you to look now at Document Number 27, please.

I thought it was 27.

A. We have looked at 27.

Q. That's not the one I want to look at. It's 28 I want you to look at.

Now, just go to the relevant part of your memorandum. Now, if you go to page 2 of your memorandum, you have a heading,

Number 3, "Income Tax Assessed on Trustees."

A. Yes, I have it, yeah.

Q. You say: "I say that as part of the Discretionary Trust Tax settlement in March of 1987, there was an agreement between the Revenue Commissioners and the Trustees that any distributions made to the trust for the sole purpose of discharging Discretionary Trust Tax liabilities would not be liable for any income tax. Document Number 6 confirms my understanding and recollection of the agreement, which was that there was no additional liability to income tax on the payment of such dividends. This position was confirmed for the Revenue in Document Number 7, which is a letter from me to Mr. Tadhg O'Connell dated the 3rd February, 1988, and Document Number 8, which is a further letter to the Chief Inspector of Taxes dated 4th March 1998. This conversation was again provided in Document Number 9, which was a letter from me to Mr. Brian Eason dated the 13th July 1988, and in Document Number 10, which is my further letter to Mr. Tadhg O'Connell dated the 22nd September, 1998. I have no knowledge of any dealings with Charles Haughey in relation to this matter."

Now, I just want to go through the documents, but because there are other documents I want to refer you to, I am going to go back to the large book, Book Number 67.

Now, in March of 1987, on 16th March, when the Discretionary Trust Tax appeal was settled, and you were present, and who else was present from Dunnes, as far as

you were concerned, from the Dunnes side?

A. Well, there was myself, there was Mr. Fox, Mr. Uniacke was there, and Mr. Eddie Montgomery was there. I have always thought up to very recently that Mr. Horgan was there as well, but he has obviously indicated in his evidence that he wasn't there; and again, while I am totally convinced that he was, he obviously says that he wasn't, so I have to accept that he wasn't.

Q. Yes. You are probably aware that recently when looking for other documents, I came across a document that this was indicated, that it was certainly envisaged that he would be there as a result of some phone conversation which I found in the documents, and I have drawn to your counsel's attention. I think it was thought that he was definitely going to be there, but I am afraid

A. Something must have happened, because, as I explained earlier, he was the real tax expert. And while it was a valuation area, it wouldn't have been his particular area of expertise, I find it hard to believe that we were at a tax appeal and Liam wasn't with us, do you know what I mean, but obviously he wasn't there.

Q. And we are aware of the settlement that was reduced into writing concerning the details of the payments, how much would be paid, what rates of interest would be paid, and the dates from which they'd be paid, and so forth. But in addition to that, the question of the impact of the Trust paying this tax, and specifically the impact that might

have or the implication that might have for other tax

charges was also raised; is that right?

A. Yes, that's right.

Q. Now, I don't know whether you'd prefer to look at the documents first or tell me what you can remember about it.

A. Well, I have it's one of those things that I seem to have a kind of a decent memory was in terms of the events, and I'll take you through it, if you like.

Q. It might be the best way to start.

A. The appeal hearing and I think maybe Dr. Thornhill gave kind of a similar context, but the appeal hearing was heard in St. Stephen's Green. And when we arrived our counsel, obviously, were Mr. Peter Maguire, and I think in fact Mr. Nesbitt was with us as well. When we arrived, you go up the stairs and you come into a big hall, and the meeting in which the appeal was to be held was kind of slightly down the corridor and in on the right. I think it was the same room we were in a year later for the Capital Gains Tax.

And when we arrived, the Revenue were already ensconced, if that's the word, in the room where the appeal hearing was going to take place. So we actually stood in the hall, and the senior counsel were in a room, if my memory is right, again on the right-hand side. I think Mr. Maguire had come with us, so maybe he had arrived, so he went off to do what senior counsel do, himself and Mr. Fennelly obviously got together, and I remember Mr. Maguire coming back to us and

saying, "Look, they want to settle".

Now, whether he had suggested or not, I don't know, but what he told us is they wanted to settle. And a problem then of to-ing and fro-ing went on. We were out in the hall and the Revenue were inside in the main office, and out of that came the settlement. And then Mr. Fox and Mr. Uniacke and I went into the room and we met I must admit again that my memory is of meeting John Reid, and in various correspondence I have always addressed John Reid as being the person we spoke to, but I actually have no memory of Dr. Thornhill being there at all. But obviously he was.

Q. Would you know John Reid personally?

A. I think maybe we had met in the earlier process. Now his name hasn't come up in any of the meetings and I know we dealt with for quite a few years after in terms of the 1990 settlement and all that, so maybe I am pushing the memory around, if you like, but I have a sense that we might have known him beforehand, but maybe we didn't. But we got to know him quite well in subsequent years.

Q. Were you aware that there were more than that there was more than one official?

A. Oh, there were. There was a group of people; there were two or three people there. And I think it's then exactly as what Dr. Thornhill has said. We had I think I might have mentioned this earlier in my evidence we were always concerned about the payment of the Discretionary Trust Tax, how it would be treated. And I think, as I

said, we had been discussing again, way prior to March of '85, this had been on our agenda. Again, because, if you think about it, the as we have said, again, the only source of funding was the Dunnes Stores Group of Companies.

The profits in Dunnes Stores at that time were liable to tax at I think the corporation tax rate was either 50 or maybe 45%.

Again going back to one of the points we made to Alan Dukes, because of the lack of capital allowances on the bulk of our capital expenditure, the effective rate of tax was very close to 50%, even though the standard rate was 45. So if you factor in, then, that what we have to do is take another chunk of money out of the business to pay Discretionary Trust Tax, we were effectively pushing the taxable entity, or putting the tax rate on Dunnes Stores to over 50%.

So we were very much mindful that "Look, we'll pay the tax, but please don't ask us to pay any more tax on top of that", because we felt, quite simply, we were paying enough. And again, as I have said earlier, we were getting no benefit from this Discretionary Trust Tax anyway. It was really a levy.

So that would have been our position, and again, I think Liam would remember, probably, a process where you had discussed this, because obviously, while I had done the Capital Gains Tax or, sorry, the wealth tax settlement, I am not sure I would have known about this surcharge

concession; so I would assume that Liam had briefed us on that at some stage.

So when we went to meet, or when we met the Revenue afterwards, our basic premise was, "Look, we'll pay you the tax. We do not want to find that we have an income tax liability on top of the Discretionary Trust Tax".

And by the way, a similar-type concession was granted in 1976, when the wealth tax arose. And that was I think I am on foursquare with Dr. Thornhill; that's exactly what happened.

Q. Just looking at his memo, which is the one I have asked you to open a moment ago, Number 28, he says: "During the negotiations on the 16 March, Mr. Bowen inquired as to the likely income tax treatment of any income passed up to the trust in order to pay Discretionary Trust Tax liabilities.

Initially he sought an assurance that any such income would not be subject to income tax payable by the Trustees. He also mentioned that when similar circumstances had arisen in respect of payment of wealth tax, the trust income had not been subjected to income tax."

So he is conveying there, I think correctly, your query?

A. Yes.

Q. And then he says: "Following consultation with my colleagues, including Mr. Sean O'Cathain, Senior Inspector of Taxes, I told Mr. Bowen that I was unable to give him my assurance on this issue. It related to another area of Revenue. I did say that the Revenue would be reasonable,

and that we had noted what he had said in respect of wealth tax."

Now, I just want to clarify something here. This would seem to suggest, and I think Mr. Thornhill agrees with this, that he, not being an expert in tax, although he did, as an economist, know a lot about obviously how to value companies or how to approach that question, he went to speak to his the pure technical tax experts. And he then says, he obviously went back to you, according to himself, and that he told you that he was unable to give you any assurances on the issue, and that he did say that Revenue would be reasonable, and that you note that he noted what you had said about wealth tax.

Now, from that, I inferred that he discussed it with the experts, he came back to you and says, "Look, I can't give you an assurance; at least I can't give you an assurance now, in any case", and

A. I don't think it's that, actually, Mr. Healy, because I think that consultation took place on the 16th March, because I think wasn't Mr. O'Cathain there?

Q. Yes, according to himself, he was there.

A. So I think that consultation what Dr. Thornhill is conveying there is the tenor of the discussion that he had on that day. This is not because again, I think

Q. We are ad idem on that.

A. Okay. That's fine.

Q. You had a discussion with Mr. O'Cathain that day?

A. They were both Capital Taxes people, and we didn't have our tax person with us, obviously.

Q. It appears on that day he wasn't able to give you a definitive answer?

A. But he did obviously say, and this is an interesting word, that they would be reasonable. I don't know what "reasonable" actually means in that context, you know.

Q. It doesn't mean that a deal has been done for sure, anyway; isn't that right?

A. I suppose one could interpret it optimistically.

Q. Well, I just want to be very clear about this. And perhaps if I could just digress for one moment. You say that you had the impression that Mr. Reid was present, but you couldn't remember Mr. Thornhill. Is it possible you are mixing Dr. Thornhill and Mr. Reid up? In other words, did you speak to one person only?

A. No, there was I can remember Mr. Uniacke, Mr. Fox and myself going into the room, and there were at least three of them there, would be my view at this stage. But in fairness, Mr. Healy, it is March of 1985, and

Q. I appreciate that.

A. I am doing my best to help you, but I don't want to be tied down on that level of specifics as to who I spoke to.

Q. I am particularly taking up something you said earlier which I thought might solve the whole issue, in that if you didn't have a clear memory of Dr. Thornhill, that it's possible, you did, as we know, convey this to somebody.

Somebody in the Revenue has a record of you having conveyed it to them and that person who has that record is Dr.

Thornhill and I am just suggesting, putting two and two together, that the person you spoke to must have been Dr. Thornhill, whatever you may have thought.

A. Whatever I feel about it, he obviously and this is a note I think he put in place in a couple of days later, so I think we have to accept his record as being the record of record, as it were.

Q. Now, I want to be clear about one other thing. Are you saying that as of that moment, you believed you had a firm agreement with him based on simply the exchange we have just discussed, or was there a further dealing?

A. The problem that I have, Mr. Healy, is fairly straightforward. I know that on the 16th March, 1987, we had that conversation, right, and it's there is an agreement between Dr. Thornhill and myself about that.

Q. There is absolutely no doubt about that?

A. Absolutely no doubt about that. I know that in September of 1988 I wrote the memo to Brian Eason, who was the tax manager dealing with the Dunnes affairs in Touche Ross, I think, as we then were. Whether I thought it from the 16th March or whether it was in some intervening time period, I cannot I mean, I'd love to have a long memo on it, Mr. Healy, but I actually don't.

Q. I appreciate that.

A. But I have always believed, and certainly, until I saw all

the notes that are in the Revenue files, that in somewhere in the process, whether it was on the 16th March or some date in between, that we had got a sense from the Revenue that yes, they would take one payment and there wouldn't be an income tax liability.

And we again, in fairness to us, we operated on that basis. And the essence of it, as we understood it, was that as long as we only took a dividend from the holding company to pay the Discretionary Trust Tax, that no liability, no further liability would arise. So I mean, I can't be more straightforward with you than that.

Q. I appreciate that, and I fully appreciate the case that Dunnes made.

You do know about this other tax, this surcharge on undistributed income?

A. Yeah, well, again, I think if you the situation there, as I understand it, is that the surcharge the wealth tax, in the sense that it was a concession related to the allowing of a tax on capital to be perceived as a charge on income. That's how I understand it was. So what we were asking for in March of '87 was that a comparable charge on capital, effectively the same 1% rate, would actually be allowed as a charge on income. That's what we were asking.

Q. I am not actually drawing attention to that point, but the fact that there were two issues. One was income tax on any income that the trust had

A. Yes.

Q. for any purpose at all, just like any other taxpayer.

But secondly, there is this surcharge on undistributed income. The reason I mention that is that we do know from other documentation we have that an allowance was made at a later point in relation to the surcharge, I mean, within I think a month or so. Were you aware of that?

A. Yes, I mean, I have gone through the

Q. Are you aware that it's a separate matter?

A. Oh, yes, I am indeed, I am, yes, yeah.

Q. I just want to make sure we are not at cross-purposes.

A. The surcharge related to undistributed income.

Q. Yes, to undistributed income?

A. Yes, but obviously we didn't have any undistributed income.

So in the context of our particular circumstances, that wasn't particularly relevant, if you know what I mean.

Q. I think the surcharge on undistributed income could include income that you might use to pay income tax?

A. No, but we were allowed the Discretionary Trust Tax, so we didn't have a surcharge. We wouldn't have had a surcharge liability. But if the second concession, if you like, wasn't the general concession wasn't given, we would have had an income tax liability and also a potential surcharge liability.

Q. Correct.

A. Yes, that's right.

Q. I just want to put that out of the way so there is no confusion about it.

Could I ask you to look now at Document Number 78, I think.

This is a letter from Oliver Freaney & Co to Mr. Michael O'Grady, Assistant Secretary of Capital Taxes Division, Dublin Castle.

This is a letter from Mr. Noel Fox to Mr. Michael O'Grady.

And it's a return, a tax return for 1994/1995, and the tax return in general is not what I'm interested in. But the final paragraph of the letter, or penultimate paragraph of the letter, in which Mr. Fox says: "To maintain the integrity of the form 1, we have included an amount of $i_{\frac{1}{2}}2.2$ million, being the dividend paid by Dunnes Holding Company to the Trustees in June 1994 to enable the Trustees 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."

Now, there are just a few aspects of that letter I want to draw to your attention.

It's obviously a letter from Mr. Fox. Presumably you have seen this letter before, because this matter has already or had become an issue long before you heard anything about it here.

A. Yes, I am long familiar with it, yes.

Q. Are you aware of that letter being sent out at the time?

A. I was, yes.

Q. Would it have been copied to you, and so on?

A. Yes, I would have, yes. It would have been agreed between us, I'd imagine, before it went out.

Q. I see. And it would have been completely in accordance with or consistent with your view that you had an agreement?

A. Yes, that's right.

Q. Just to draw one thing to your attention. It says in the second last line that "This was agreed by Mr. Pairceir."

A. That's right, yeah.

Q. Did you have the impression that therefore there must have been some communication to Mr. Pairceir, because he was certainly not present, and then a communication back from him at some point?

A. I think that's kind of that's a difficult one, Mr. Healy. Because obviously, during the settlement process there was obviously, and I think it has been confirmed, while we would have been discussing with our principals the concept of a deal and what it would cost, obviously the Revenue were in contact with Mr. Pairceir as well, so I think that's a given in the process. I think, in fairness to Mr. Pairceir, and I think you have probably even identified it yourself, in some of the subsequent correspondence we reprised a bit from saying it was Mr. Pairceir I think, because, and I think some of those letters are probably Deloitte & Touche letters, are they?

Q. We'll be coming to them.

A. We'll come to those, but I think when we started to really

try and focus on this thing, because we certainly felt

"Well, we don't really know; we cannot point to any single event, if you like, at this stage that we can say, yes,

Mr. Pairceir rang us, or Mr. Pairceir did anything for us".

What we all remember and I don't know if you asked

Mr. Uniacke, but we all remember what Dr. Thornhill has described in his letter. So I think the word is reprised a

bit from

Q. Maybe Mr. Fox will be able to throw some light on it.

A. Yes.

Q. In any case, one thing is clear, and that is that you had no response to that saying "That's not correct at all"?

You had no response to that letter at that time?

A. No, well

Q. You had a response subsequently, but you had no response, you had no letter back saying, "You are completely mistaken; there was no such agreement", or anything like that?

A. Yeah.

Q. And

A. I think the letter, again in fairness to everybody, the letter wasn't really about that. You know, that was a subset. The main letter was the Capital Gains Tax and other issues that were in it.

Q. I appreciate that. I suppose it was making it clear that you weren't paying interest, or you weren't paying tax on the income passed up to the Trustees?

A. Again it goes back to what I said to you earlier, if you like, the reason we hadn't made returns or anything in relation to it was because as long as we felt that as long we took, you know, 2 million of a dividend and pay 2 million of Discretionary Trust Tax, they matched, and we had no further liability. This was the first time we actually had to make a formal return of this nature to the Revenue, and our tax people at the time felt, look, as we say, to maintain the integrity of the form, we felt we should put in the 2.2 million because it was a different it was a set of circumstances that hadn't arisen before; therefore, it required to be reported to the Revenue that here was a new situation. And we were reporting it, if you like, accordingly.

Q. Now, as I say, there was no response to that letter until I think the date of that letter is the 22nd January, is it, 1996, and there was no response to it until the 14th July, 1997, and that document is what I want to refer you to now. It's at Leaf 86.

In the interval now, I think there has been evidence of and the report of the McCracken Tribunal, and a lapse of approximately, obviously about 18 months, and the Revenue wrote to Mr. Fox, saying: "I am writing to you in your capacity as Trustees of the above-mentioned trust, and with reference to your letter of 22 January 1996..."

Second paragraph: "Because the income tax standard rate and 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 date.

"An income tax assessment for 1994/95 based on the return for that year is being made, and notice of it will issue shortly." Then there is details and various calculations.

"My records show that apart from the 1994/95 return, the Trustees have not submitted any returns for the years 1988/'89 and following years. Please forward all outstanding income tax returns without delay."

Now, Deloitte & Touche then responded to this by letter of the 8th August 1997. And whereas the last letter came from Mr. Noel Fox, this letter is from I think there is no reference from somebody in Deloitte & Touche in Dublin.

You don't happen to know who would have been responsible for it, do you?

A. Sorry, when are we talking about? 1997. It would have been dealt with, obviously, in the tax Department, in 1997, Mr. Pdraig Carr would have been the partner.

Q. There is a reference in other letters to a "TOS".

A. The manager who would have dealt with all of this was Tom O'Sullivan.

Q. Okay. And in this letter, Deloitte & Touche say:

"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

Discretionary Trust Tax annual inheritance tax.

"2. The dividend of 2.933,333 million was used solely for the purpose of discharging the annual inheritance tax.

"Should the dividend be subject to income tax, it would be necessary to obtain further dividend 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 assessment to nil and advise that you agree."

Then the next document is a response of the 15th September from Mr. O'Connell to Deloitte & Touche, Document Number 88, I think.

"I note your appeal against the above assessment. As regards the grounds of appeal" I think the only one I need to refer to is the first one: "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."

Then if you go on to Document Number I think it's 91 I am sorry, there is an intervening document, Number 90, that was in 1989 it's from Deloitte & Touche.

A. 89?

Q. Yes. This is from Mr. O'Sullivan. For the attention of Mr. Tadhg O'Connell in the Revenue Commissioners.

"Dear sir,

"Thank you for your fax.

"We regret the delay in responding which was due to not having received the original letter. We'd suggest that our reference is quoted in correspondence as it helps to ensure delivery to the individual dealing with the case.

"We confirm that referring to the settlement of the Discretionary Trust Tax appeal in 1987, the agreement reached at that time was that if the trust had no 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 that have been used to discharge the annual Discretionary Trust Tax liability.

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

Then if you go to Document Number 91 of the Revenue response, second paragraph of the letter of the 20th February, 1998, from Mr. O'Connell.

"You appear to be mistaken as regards events that 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 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 surcharge provisions contained in Section 13 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 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", and so on.

Now, that was the Revenue writing back saying that, "Look, it may be that there was a confusion with the other matter" that we discussed moment ago, the separate matter of the surcharge. And then Mr. O'Sullivan responds to that on the

4th March, 1998. And I think we can pass to the third paragraph of the letter, which is the key paragraph.

This is in document number 92, where Mr. O'Sullivan says:

"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 Commissioners concurred 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 the 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 the trust are comprised of funds to discharge Discretionary Trust Tax, no surcharge would arise under Section 13 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, there would have been no need to seek an assurance that a surcharge would not

apply."

Now, I think that may not be correct, in fact, because I think from other files the Tribunal has seen, other tax advisers were seeking assurances that the surcharge would not apply, and as far as we know, a decision was made in the case of the Dunnes Trust not to charge it either.

Now, obviously the part of that letter I want to draw your attention to is the reference to Mr. Horgan, because, as you probably know, he has given evidence that A) that he wasn't there, and B) that even if he had been, he wouldn't for a moment have imagined that the Revenue would ever agree not to charge income tax

A. I read Mr. Horgan's evidence, and as I said to you earlier, Mr. Healy, I think he mentions that I spoke to him sometime around then or sometime after that.

Q. No, he says he spoke to you sometime within, I suppose, about five years prior to

A. Which I think was probably the time when we were going to appeal I'd say it was probably when the whole appeal process was underway.

Q. You may be right.

A. I imagine that's when I rang him, because Mr. Horgan had retired in 1988, and I think he hadn't been well on and off, that kind of thing. So in the nicest sense, I wouldn't have said, "Let's ring Liam and check all of this".

Because, as I say to you, my memory was he had been at the

appeal hearing, and I would have I would also accept, I would propose, that he our whole approach to this was a tax issue, so it wouldn't be something I'd have thought up or Mr. Fox would have thought up. He would certainly have been a party to the process in the eighties, if you like, in terms of certainly pre-the settlement in March of '85.

And, like, we wouldn't have brought this up as an issue, I think, without, you know, discussing it in great detail with him. So I always have worked on the assumption, up to the time I spoke to him, that not only was he there, but he would have agreed to us and again, Brian Eason, whom I would have written to in 1988, would have been reporting directly to Mr. Horgan as well.

So memory is a strange thing in this particular situation, but you know, if that's what Liam says, then that's what he has said. It just wasn't my memory of what had happened.

Q. I suppose it's of some relevance, at least, on one side of the story. Can we just deal with it step by step.

This letter was written in 1998, and it states that the Trustees and Mr. Horgan are all willing to testify that it's their understanding of the settlement at the appeal hearing. Now, you didn't write this letter. Would you have known it was going out at the time?

A. Yes, I mean, Tom O'Sullivan would not have written that letter without a detailed discussion with myself. So I would accept total responsibility for what if a letter went out from Deloitte & Touche in that context, it would

be absolutely with my approval. He wouldn't have had an authority to sign it without my approval, in fact.

Q. The only part of the letter that I am concerned about is the sentence that Mr. Horgan is willing to testify that that's his understanding of the settlement. And the reason I say that to you is twofold: firstly, on the basis that he has testified that he was not present, and we have dealt with that; and secondly, on the secondary basis that he seemed to suggest, I am sure I'll be corrected if I am wrong that he wouldn't for a moment have imagined that the Revenue would ever have agreed to deprive themselves of the right to tax this income to the Trustees.

A. Maybe this is where the whole kind of misunderstanding, if you like, in this whole area seems to have arisen. Because I would presume, without repeating myself too often, that Liam was an integral part of this process. If he is saying that he wasn't an integral part of this process, then it was basically being run by me, or the proposition was being developed by me or being run by me in circumstances where maybe I completely misunderstood what the situation was. Because as I understood Liam to say, and I think other Revenue witnesses have given the same evidence, that really what would never have been agreed is something like that for Dunnes Stores specifically or the Dunnes Trust specifically, but also the Revenue would never tie themselves in to an agreement that you know, could last, if the trust had lasted, you know, another 70 years or 50

years, that it could actually last for that time-frame. I think that's where Liam was coming from, based on his long experience in the Revenue himself.

So I mean, while I accept total responsibility for saying that he would have he was prepared to give evidence, because I always assumed and thought but I wouldn't have spoken to him on that matter for over ten years, so I have to accept that

Q. We can take it that you didn't speak to him at that time?

A. No, I hadn't spoken to him at that time. And again, as I think we said earlier, in one of the earlier pieces of correspondence, we didn't have any documentation to support our position.

Q. Except I suppose the fact that nobody had asked you for the tax down through all the years?

A. Well, we had made no returns, either. That, again, has been identified; it was a self-assessment era, and we didn't make returns. Certainly if you look at the evidence so far, obviously the Revenue seemed to have worked in fairly distinct pockets in terms of Capital Taxes people and Income Tax people, and obviously people changed their jobs as well, I think, as the time went on, because we weren't dealing with the same people, obviously, over this whole extended period.

In fact, Mr. Healy, if I look at that letter of the 4th March, 1998, actually that Deloitte & Touche is signed by me.

Q. Is it?

A. Yes.

Q. Oh, I see, you recognise that as your writing?

A. I do, yes, that's my handwriting, yes.

Q. I just want to refer to one of your own notes. It's Leaf Number 7, behind your second narrative statement Leaf Number 6, behind your second narrative statement. And I can refer you to the part that I want to ask you about. I don't think you need even turn it up. I am not going to delay you on it.

You refer to the fact that yourself, Mr. Fox and Mr. Uniacke were present at the meeting in April. You call it 1988, but that's obviously a mistake; it must have been 1987. And you say "We have believed all the time". And I take it that you all discussed it with one another as the issue developed between yourself and the Revenue Commissioners, you were all

A. There is absolutely no disagreement between Mr. Fox

Q. You were all satisfied you reached that agreement?

A. We all have the same memory that I have described of going into the appeal hearing room, if you like, and having that conversation.

Q. I see.

Just one last matter. Do you have Book 64?

A. I don't think so. I think I have 65 here, is it? I have only one book here at the moment, anyway.

Q. I'll arrange for you to get it. I want to refer you to a

document that's at Divider 6 of Mr. Uniacke's documents,
which are in Leaf 12 of Book 64. You may have been present
when

A. Yes, this came up with Mr. Uniacke, yes.

Q. It's just the last aspect of it, that Ms. O'Brien drew up
with Mr. Uniacke. Do you know what that was about,
Mr. Horgan's undertaking or the note that Mr. Horgan was to
meet Mr. Pairceir in any case?

A. I honestly don't, Mr. Healy.

Q. You don't?

A. I mean, the meeting was obviously about a couple of other
obviously fairly significant matters, if you like; this is
in at the end of it. I have no idea.

Q. I see. And Mr. Horgan would have been there solely to deal
with tax matters, I suppose; that would have been his
particular purview?

A. Yes. I mean, if you look at it, without going into the
detail, you know, there are obviously two major issues
being discussed under A and B. Well, A is particularly
significant; B is looks like some idea or something we
were looking at at the time. And then C is "LKH is to meet
S. Pairceir", and it's my note of the 27th November 1987.

Q. Thank you very much.

CHAIRMAN: It's likely, Mr. Bowen, there will be some
further questions from other counsel. I am conscious it's
in everybody's interests, not least your own, to finish
today, so I certainly think we should sit on a little bit.

A. That's fine, Chairman.

CHAIRMAN: Would you like to take a five- or ten-minute break?

A. No, I am absolutely fine. I'll keep going.

CHAIRMAN: I think should take Mr. Nesbitt first, and then you, Mr. Connolly, and then Mr. O'Neill.

MR. NESBITT: I have no questions, Mr. Chairman.

CHAIRMAN: Mr. Connolly so.

THE WITNESS WAS EXAMINED BY MR. CONNOLLY AS FOLLOWS:

Q. MR. CONNOLLY: My name is James Connolly. I want to ask you some questions on behalf of the Revenue Commissioners.

Mr. Bowen, you fairly set out, in questions put to you by Mr. Healy, what in fact was your genuine understanding of what the situation was in March of 1987 concerning any possible continuing liability for income tax for dividends received by the Trust to meet Discretionary Trust Tax at that stage. And am I to understand that you had some words with Mr. Thornhill at the time of the negotiations which took place in Stephen's Green?

A. Yes, well, that obviously the memo is a Dr. Thornhill memo. As I said, my memory is of talking to John Reid, but I think fundamentally there were three people there. My memory is John Reid, but obviously Dr. Thornhill was leading the team, and obviously he put the note in the the file note in place.

Q. And these discussions took place before there was a document signed up by counsel for both sides that reflected

the settlement of the Discretionary Trust Tax issues?

A. Oh, I would say it was after that, really, Mr. Connolly. I mean, in the sense that we had them we were having the discussions, you know, the to-ing and fro-ing was going on. My memory is and again I think it's probably on file there is a handwritten memorandum written by one of the, you know, written and signed by the two senior counsel.

Q. What I am probing with you is a matter of timing. Had the agreement in relation to Discretionary Trust Tax that was signed by the two barristers, had that been put in place before you had this chat, or was it after you had the chat?

A. I would have thought it was signed, sealed and delivered if you like, the whole thing, the process was over. Now, the process was over; we just we went into the room to talk to the Revenue people with this specific agenda on our minds, if you like, yes, so the agreement was settled, yes.

Q. The agreement, as we know, doesn't refer to this issue at all?

A. It doesn't, no, no

Q. So in effect what you think happened was there was a separate or side agreement entered between the Revenue Commissioners and yourselves in relation to continuing income tax liability on the dividends?

A. Yes.

Q. Well if it was, as you say, a separate and side agreement, it would have been better housekeeping on both sides if this had been recorded in writing between you, or else

confirmed in a letter to pass between the parties; would you agree with that?

A. Yes, it obviously would, yes.

Q. And I have to suggest to you that whatever was agreed or not agreed, as the case may be, whatever was agreed, everything took place between the parties in the particular context of that time, that there was a parity of rate between the income tax and the Discretionary Trust Tax that allowed them readily to be set off against one another as a matter of administrative convenience?

A. That's absolutely true, yeah, yes.

Q. And it was some years later, we know now that it was a good many years later, that the misunderstanding began to emerge between the parties; isn't that the position?

A. That's quite right, yes, yeah.

Q. So that both of you may well have understood that there was going to be no income tax liability in the situation as it stood at that time, but subsequent pieces of amending legislation under the Finance Act caused a change to arise in relation to the income tax rates, so that there was then a slippage between one rate and the other; that's what happened?

A. And again, as you'll know better than I would, Mr. Connolly, it reflected the position in the early 1980s where there was this slippage, as you call it, or this difference between the tax credit and the income tax rate. So it had pre-existed 1985, so that's why we would have

been aware of it, and that's why we would have had it on our agenda, if you like, as an issue to raise.

Q. In 1987

A. There was no liability in 1987.

Q. Exactly. In 1987 the two rates were the same?

A. They were, yes.

Q. And it was 1988 when you had self-assessment; if there was to be something that was to be addressed by the Trustees, it was in the Trustees' court from 1988?

A. Yes, it was, yes.

Q. But I don't mean this as a criticism: You took the view that there was nothing that needed to be addressed, and it was, as we have seen in the correspondence that's been opened, and I don't want to go back over it, the correspondence opened by Mr. Healy, the issue was raised by the Trustees, and it was countered in firm terms by the Revenue in their letters?

A. It was, yes.

Q. And they were taking a strong line in relation to their position; isn't that correct?

A. That's right.

Q. There was no concessions being given on this matter?

A. We have never had a concession by the Revenue, Mr. Connolly, to be honest.

Q. There was no question they were favouring the Dunnes in any way in any of this matter. There was a misunderstanding between the two sides. There was no special treatment of

Dunnes; that's what I am getting at.

A. Certainly, if I follow through the process that went on within the Revenue, it does seem that it moved from a consideration of an income tax thing into the surcharge issue, and you know, that seems to have been what was considered by the Revenue in April, May of 1987.

Q. You have seen the letter from Mr. O'Connell. It's Tab 91.

This is the letter. He is saying, "Look, the surcharge situation is a stand-alone issue. You are confusing one with the other. But we are firmly of the view that you have to pay income tax, and you can't set it off". That was the position that have being taken?

A. That was precisely the position, yes, yeah.

Q. And can I put it this far, between you, what emerged at this stage was that both parties were now looking at the situation in a different way to that which everyone thought was the situation back in 1987, when there were discussions between you and the Revenue after the Discretionary Trust Tax matter was resolved?

A. I am not sure exactly what you mean by that. It was the first time the issue was being confronted, shall we say, and being tested.

Q. Can I put it this way: In 1987, when there were discussions between you and I don't know whether it was Mr. Reid or whatever.

A. It was Don Thornhill.

Q. There was discussion between you and officials from the

Revenue after the Discretionary Trust Tax matter had been resolved, it does appear that both parties were at cross-purposes at that time; you had a genuine belief that you were going to have no income tax liability, come what may. The Revenue were looking at it that there would be income tax liability that would not be assessed while the two rates were the same, but that other considerations would come into play later if there was slippage?

A. I think that's a fair assessment, yes.

Q. And there was there would appear to be what lawyers refer to as a mutual mistake as to what was being discussed between the parties?

A. I think the evidence is there, if you like, that that does seem to have been the position. But it was a genuine certainly from where we were sitting, we had a genuine view and we behaved with very much within the context of what we understood to be our agreement, and when it was tested, we couldn't support it, and that was the end of it.

Q. That's it, because subsequently there was no corroborating documentation that would give you backup on what you genuinely believed was your position?

A. Yes.

Q. And that's how matters subsequently came to be resolved between you and the Revenue, because you had no backup documentation?

A. Exactly, yes, yeah.

Q. And in fairness, I think you used an expression when you

were asked the question by Mr. Healy that appears to apply to this: You said that you had interpreted this matter optimistically; is that a

A. I mean, it's Dr. Thornhill's own words, that he said the Revenue would be reasonable; and, you know, what does "reasonable" mean? You either pay tax or you don't, you know.

Q. In relation to how matters were confronted by the Revenue in 1998 and subsequent years, you know quite well that they were interpreting it in a different way when matters emerged in the way of changed circumstances?

A. Yeah.

Q. And that was the lack of meeting of minds that had become apparent years later?

A. Yes, that's right.

Q. Thank you.

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

MR. O'NEILL: Thank you, Mr. Chairman.

Q. Mr. Bowen, I want to ask you first in relation to the settlement of March of 1987 of the Discretionary Trust Tax valuation and liability. And it may have been suggested, or the impression may have been given that the terms of the agreement reduced to writing this is at Divide Number 25 of the booklet.

A. Yes.

Q. This is the first page is a covering letter, then the second page is the terms of the agreement itself. In case

there is any misunderstanding, that agreement doesn't require the Trustees to pre-pay the 1% Discretionary Trust Tax payable for April 1987, I think? If you look under the heading "Bernard Dunne," further 1% Discretionary Trust Tax payable for '87 on same valuation of 41 million", and then under "Norah Dunne", the last paragraph under her name, "1987 to make statutory return and payable in April 1987 on a valuation of 41 million."

A. That's right.

Q. So the payment that was ultimately made in May of 1987 included a voluntary or prepayment, so to speak, in the context of interest of the 800-odd thousand pounds payable in respect of the 1987 Discretionary Trust Tax?

A. Yes, I think I hope I wasn't as clear as I thought when I spoke to Mr. Healy, but that would be if you look at the wording that and I think it's also when you look at Mr. Reid's letter of the 20th March 1987, there is a clear distinction between the 2.7 million and the 820 heading up to the 3.5, do you know what I mean, so there is certainly, in our view, a reasonable presumption that in fact the 820 wasn't due until the 4th July.

Q. I appreciate that you have no recollection of any or recollection of any involvement in the context of the negotiation of the reduction in the interest?

A. No, but I would have known it was obviously something that was done on a particular day in May of 1987, but I would have known that the cheque that was finally issued

was the cheque for the 3 point, you know, 3.5 million as against the 2.7. That's what I would have known.

Q. And you have said, I think, it was part of the ethos of Dunnes to be traders not only trading in retail goods, but traders generally, I suppose, in terms of

A. I didn't want to sound that facetious, but as I said to Mr. Healy, a deal, you know, a deal is only a deal when it's signed sealed and the money is paid; do you know what I mean? And if there is an opportunity to improve it in a buying situation, or in any other situation, obviously you'll look to improve it. I mean, that's the kind of thing you do. And I think any professional acting for his client will try and do the best possible deal that he can do.

Q. Now, I want to turn to the other issue, or another issue; that's the issue in relation to the agreement in respect of the income tax on the distributions. And can I ask you, first, there was nothing, as far as you were concerned, unusual or improper about the approach to the Revenue seeking clarification or a concession in respect of the income tax on the distributions?

A. Well, I would have thought absolutely not. We had gone through a process in open well, not in open forum, but a settlement had been agreed between the counsel. We had, as I said to Mr. Healy and I think to Mr. Connolly as well, we had always had this as an issue; this was always on our agenda. The issue I mean, we didn't like Discretionary

Trust Tax anyway; we didn't like paying it. But certainly to have to pay income tax on top of the payment was always something that was an issue for us. And I would see it, I think we would have had an obligation, in fact, to raise it.

Q. And it wasn't as if you were suggesting that income received by the trust shouldn't be subject or income received by the trust shouldn't be subject to the normal tax laws; I think what you were suggesting was that in the context that the only money you ever received was to pay tax, and that that money had already been subjected to tax, corporation tax, that it was a little bit inequitable that that should be subjected to tax yet again in the guise of income tax?

A. Yes, I think that's the fundamental position, because the trust had been in existence from 1964 to 1987; we had never paid a dividend. No income had ever been received by the trust in the previous 20-something years, so that and that was because all the money was being within the trading company, was being retained to expand and develop the business. So that this was the only reason we were paying a dividend was because of the imposition of the Discretionary Trust Tax, and we needed money to pay the tax. If we didn't need the money to pay the tax, there would never have been a dividend.

Q. And if this insofar as the money to pay the Discretionary Trust Tax was coming from the Dunnes trading

organisation, if that could have been paid directly by the Dunnes trading organisation to the Revenue Commissioners, a question of income tax would not have arisen? I know it's hypothetical

A. That's basically true, but if you look at that from an accounting perspective

Q. I appreciate, an accounting perspective, it wouldn't quite work?

A. No, you couldn't do it.

Q. But it was a further potential imposition of tax in circumstances where the reality of the matter was that the money was coming from the trading company?

A. Yes. The only source of money was the trading company, yes.

Q. Now, can I ask you to turn to Tab 92, and this is a letter that you wrote to or that's signed by you, on behalf of Deloitte & Touche, to the Revenue, of the 4th March, 1998.

And you say in the bottom of the first page of that letter, "During the settlement discussions contact was made with the Chairman of the Revenue Commissioners, Mr. Pairceir, to confirm that agreement was in order."

Mr. Healy asked you, during the course of your evidence, as to when you believed the agreement was reached. And I think your answer was that you believed it was you couldn't be too precise, but you believed it was either the 16th or at some stage later, but it was at some stage during the process?

A. Sorry?

Q. I just want to see if you can tie down, insofar as you can, when you thought the agreement was reached. In 1988, in March of 1988, you are suggesting that the agreement was reached at St. Stephen's Green, as a result of a number of conversations or one or more conversations?

A. I think I might have said to Mr. Healy, I mean, the appeal hearing was on the 16th March 1987. We met the Revenue officials after the appeal hearing. We had the discussion which is on the record with them. I issued a memo in 1988 to the tax manager dealing with the affairs of Dunnes Stores, and all I can say, I think it's what I said earlier, that sometime between the 16th March 1987, maybe on the 16th March '87, or subsequent to that, but sometime before I wrote the memo in September of 1988, the Trustees individually and collectively felt they had an agreement to the extent that Mr. Uniacke and Mr. Fox are also of the same mind, if you like, that we did have an agreement, then, if you like, there is a presumption that it was something that was said to us on the 16th March, 1987.

Q. And indeed, when you tie down not when you tie down, but when you identified individuals as far as possible, that's either Mr. Pairceir or Mr. Reid; Mr. Reid of course was at the hearing in St. Stephen's Green?

A. Yeah.

Q. And Mr. Pairceir was, we have learned, was at the end of a telephone?

A. Yes, yeah.

Q. So in March of 1998, you seem to have been of the view that the agreement was reached on that date?

A. Yes, yeah.

Q. And it's apparent also that the from Dr. Thornhill's note, that the discussion he had with Mr. O'Cathain took place in St. Stephen's Green; in other words, on the same day?

A. Yes, yeah.

Q. And that the statement that the Revenue would be reasonable or words to that effect, was a statement made on that day.

A. Yes.

Q. Was it as a result of that statement, or something equivalent to that, that you believed that you had an agreement?

A. I think that has to be the you know, if you were to go through it as logically as you have, Mr. O'Neill, I think the presumption has to be we took away from that meeting a belief, maybe an optimistic belief or whatever term you might qualify it with, but a belief that we had an agreement not only to settle the tax, but we had an agreement on the income tax as well.

Q. And I think you were of the view and I think the other Trustees were of the view that that agreement was in place. I think you accept now, having recently received the papers from the Tribunal and indeed the statements that have been made by the various witnesses, that and indeed, you have

told Mr. Connolly that you appear to have been at cross-purposes?

A. Yeah. I think that's a reasonable interpretation of what happened. I mean, I'd have to say on my own behalf that I certainly was relieved to find that kind of correspondence on the Revenue files, because at least it confirmed my understanding that a process that questions had been raised at the appeal hearing and that you know, that the issue had actually been raised.

It's obvious enough, I think, if you read the sequence of the documents in that kind of Section 30, there, that there was a dialogue going on in the Revenue that started perhaps with references to income tax but moved into the surcharge.

And certainly what Mr. Pairceir decided in whatever it was, May of 1987 was quite simply the surcharge issue.

The income tax issue, certainly on the Revenue papers, was never discussed or decided within the Revenue.

Q. And indeed Dr. Thornhill's note at Divide Number 28, this is his typed note, it starts off with income tax and slips into surcharge. Surcharge is income tax as well, but it's a different form of income tax?

A. It's a different issue in the same context, yes, yeah.

Q. Thank you, Mr. Bowen.

A. Thank you, Mr. O'Neill.

CHAIRMAN: One matter that just occurs in conclusion, Mr. Bowen; I think it came up in the course of Mr. Horgan's evidence, and obviously we don't want other clients of the

practice named, but have you any recollection of this issue arising with any other clients who had created trusts?

A. I wouldn't really, Chairman. I mean, I was, I think as Mr. Uniacke explained, we were really audit partners; we were not you know, and generally those kind of situations would have been dealt with in the practice, I think, again as Mr. Healy said, with much more specialisation, so trusts and those kinds of things would be much more in Mr. Horgan's area of interest than really than mine. We were really audit partners doing audit work, and our initial work with the Dunnes was all on the audit side of the business and gravitated to other things over time.

CHAIRMAN: There is nothing you wanted to raise in conclusion?

MR. HEALY: Just one matter.

THE WITNESS WAS EXAMINED FURTHER BY MR. HEALY AS FOLLOWS:

Q. MR. HEALY: Mr. Bowen, I think in answer to Mr. O'Neill a moment ago, you were saying that this issue of the tax which was a sort of a bugbear, was always on the agenda?

A. Yes.

Q. And what I am just concerned about is, if it was always on the agenda, do I take it Mr. Horgan was involved in discussions about it?

A. Yes, I would absolutely presume so, yes, yeah.

Q. Thank you very much.

CHAIRMAN: Thank you very much for your very balanced and

helpful evidence.

Tuesday at 11:00.

THE HEARING ADJOURNED UNTIL THE 28TH JUNE, 2005.