THE TRIBUNAL RESUMED ON THURSDAY, THE 23RD OF MARCH, 2006,

AT 11 A.M. AS FOLLOWS:

CHAIRMAN: Ms. O'Brien.

MS. O'BRIEN: Thank you. May it please you, sir. In these sittings, I think just to indicate, sir, before commencing the Opening Statement, that Mr. Young is here today for the commencement of the Tribunal's public sittings. I think he may wish to make an application, sir.

CHAIRMAN: Yes, good morning, Mr. Young.

MR. YOUNG: My name is Liam Young, and I represent Desmond Peelo who received the letter notifying him of the sitting of the Tribunal and of possible interest, and, from informal discussions which I have had with the solicitor for the Tribunal, I gather the concentration is elsewhere and not with us. So I felt, nonetheless, that I should come along to say that we had received the communication. Des Peelo, with the short notice, couldn't make it, but has asked me to state he is very happy to be of any assistance to the Tribunal if it's necessary, and if it's deemed necessary for the Tribunal, to let us know.

CHAIRMAN: I appreciate that, Mr. Young. You will understand that, as regards an actual application for limited representation, which I don't think you have specifically sought, these are matters that I have to weigh fairly carefully, even though such an order is in no sense a guarantee of costs.

MR. YOUNG: I would ask, formally, for the limited

representation, but, basically, our attitude is that we would only become involved if we were specifically asked.

CHAIRMAN: Yes. Can I go this far to meet you, Mr. Young; at the moment it would seem to me that an order for limited representation is not warranted in the context of the papers regarding these short sittings, insofar as I am aware of them, but, of course, you are entitled to be here on the basis of holding a watching brief for your client. If anything arises in the course of the couple of days' sittings, I will, of course, give you permission to make any representation, and, at the end of the day, perhaps the aspect of any further application can be canvassed again, but at the moment I think perhaps I will just note your interest in the matter and if something arises you can mention it to me.

MR. COUGHLAN: I should have perhaps said this before beforehand: I have had a discussion with Mr. Young, and I don't know whether Mr. Young actually wants to stay here for the whole period. If anything arises we can notify him, as I understand the situation.

CHAIRMAN: Yes.

MR. COUGHLAN: And send him the transcript. I think that would be his preferred position, as I understand it.

MR. YOUNG: That would be very much our attitude, that we felt, having received the notice, that we should say whether we got it and we were happy and willing to assist the Tribunal, but it's the understanding of both Des Peelo

and myself that we are not directly involved and therefore we would approach the matter on the basis if we are needed we will come, but otherwise we will not be involved.

CHAIRMAN: Of course, Mr. Young, I appreciate that, and I am obliged for your attendance in the matter and I think that is the sensible way to resolve it, that of course you needn't stay at this juncture and by liaison with the legal team of the Tribunal anything that arises can be brought to your attention and can be appraised at that stage, if it happens.

CHAIRMAN: Thank you very much.

MR. YOUNG: Thank you very much.

MS. O'BRIEN: Sir, in these sittings, the Tribunal intends to hear some further evidence pursuant to paragraph J of its Terms of Reference, which it will be recalled provides as follows:

"Whether the Revenue Commissioners availed fully, properly and in a timely manner in exercising the powers available to them in collecting or seeking to collect the taxation due by Mr. Michael Lowry and Mr. Charles Haughey of the funds paid to Michael Lowry and/or Garuda Limited trading as Streamline Enterprises identified in chapter 5 of the Dunnes payment Tribunal report and any other relevant payments or gifts identified at paragraph (e) above and the gifts received by Mr. Charles Haughey identified in chapter 7 of the Dunnes payments Tribunal report and any other relevant payments or gifts identified at paragraph (a)

above."

This term of reference which deals specifically with the Revenue Commissioners had already been the subject of inquiries of the Tribunal at public sittings. The Tribunal heard evidence from a number of current and former officials of the Revenue Commissioners in December 2000, and again in the early months of 2001. Evidence was heard in the case of Mr. Haughey regarding his relationship with the Revenue Commissioners during the 1970s, 1980s and 1990s, and in the case of Mr. Michael Lowry, in connection with his relationship with the Revenue Commissioners during the 1980s and 1990s. The evidence related to a number of different heads of taxation including Income Tax, Corporation Tax, Capital Taxes and residential property tax.

As regards both Mr. Haughey and Mr. Lowry, evidence was also heard in connection with the efforts of the Revenue Commissioners to collect the taxation due arising from the findings of the report of the McCracken Tribunal.

In relation to Mr. Haughey, evidence was heard in connection with the raising of assessments by the Revenue Commissioners to Capital Acquisitions Tax in December 1997, in respect of the Dunnes payments identified in the Report of the McCracken Tribunal, the appeal by Mr. Haughey against those assessments to the Appeal Commissioners, the determination of the Appeal Commissioners delivered on 15th December, 1998, reducing the assessments to nil, the Appeal

brought by the Revenue Commissioners to the Circuit Court against the determination of the Appeal Commissioners, the settlement concluded between the Revenue Commissioners and Mr. Haughey in April 2000, and the payment by Mr. Haughey of ï¿½1,009,435, the equivalent of ï¿½1.28 million, on foot of settlement on 30th August, 2000. In the course of the evidence witnesses testified in some detail about the matters and considerations which bore on the decision of the Revenue Commissioners to conclude that settlement.

The Tribunal also heard some short evidence in connection with the Revenue's efforts to collect tax from Mr. Michael Lowry and from Garuda Limited arising from the findings of the Report of the McCracken Tribunal. However, as the dealings between the Revenue Commissioners, Mr. Lowry and Garuda had not been concluded, and as the Tribunal did not wish to interfere in any way with those dealings, that evidence was truncated and was postponed to a later date. The Tribunal will be returning to that matter in very early course following the completion of these short sittings.

In these sittings, the Tribunal intends to focus its inquiries on the efforts made by the Revenue Commissioners to collect taxation due in relation to any relevant payments or gifts identified by this Tribunal on foot of its inquiries pursuant to paragraph (a) of its Terms of Reference. In other words, the Tribunal will be directing its inquiries to that portion of paragraph (j) of its Terms of Reference which requires the Tribunal to inquire into

"whether the Revenue Commissioners availed fully, properly and in a timely manner in exercising the powers available to them in collecting or seeking to collect the taxation due by Mr. Charles Haughey" in respect of "any other relevant payments or gifts identified at paragraph (a) of the Tribunal's Terms of Reference."

At this time, the Tribunal has made no findings and, accordingly, it has not yet identified payments or gifts to Mr. Haughey pursuant to paragraph (a) of its Terms of Reference. In making inquiries at these public sittings, the Tribunal will merely be hearing evidence on which it will subsequently report.

In the course of its private investigative work, the Tribunal has examined documentation provided by the Revenue Commissioners on foot of an Order For Production made by the Tribunal. I should add that this does not signify that the Tribunal encountered any unwillingness on the part of the Revenue Commissioners to assist the Tribunal voluntarily. On the contrary, the Tribunal has received the fullest of assistance from the Revenue Commissioners, from the Revenue Solicitor and from the Deputy Revenue solicitor assigned to deal with the Tribunal's inquiries.

As all of the documentation in question was subject to rights of confidentiality which the Revenue Commissioners were bound to respect, it was necessary for the Tribunal to make an Order for Production of the documentation in question. The Tribunal has also had the benefit of

statements furnished by officials of the Revenue Commissioners in connection with this matter.

Before proceeding to refer in some detail to what has transpired since the Tribunal's initial sittings in December 2000 and the early months of 2001, it is necessary to recap on some of the evidence which the Tribunal heard at those sittings in relation to the actions taken by the Revenue Commissioners in the course of the hearings of the McCracken Tribunal and following the publication of the report of the McCracken Tribunal. Those actions are material to the Tribunal's current inquiries because they did not relate solely to the assessments raised by the Revenue Commissioners in December 1997, following the findings of the report of the McCracken Tribunal, but extended to Mr. Haughey's wider liabilities to taxation.

In this regard, it will be recalled that the Tribunal heard evidence from Mr. Stephen Treacy, then Senior Inspector of Taxes in the Investigation Branch of the office of the Chief Inspector of Taxes, that on 21st July, 1997 (prior to the publication of the Report of the McCracken Tribunal), a Special Projects Group was set up in the Investigations Branch to deal with matters arising from that Tribunal and, in particular, the affairs of Mr. Charles Haughey. That Project Group was led by Mr. Treacy. It appears from Mr. Treacy's evidence that the activities of the Specials Investigation Branch in seeking to investigate Mr. Haughey's taxation affairs, were twofold:

(i) Firstly, they sought information directly from Mr. Haughey's tax agent, Mr. Paul Moore. Correspondence passed between the Special Investigations Branch and Mr. Moore between February, 1998 and May, 1999. Some information was provided to the Special Investigations Branch and consequent on that information, Mr. Treacy wrote to Mr. Moore on 4th of May, 1999, with a series of detailed queries. This letter will feature in further evidence which the Tribunal will be hearing at these sittings and will be referred to in the course of evidence.

(ii) Secondly, applications were made to the High Court pursuant to Section 908 of the Taxes Consolidation Act, 1997, for banking documents that might assist the Special Investigations Branch in their inquiries into Mr. Haughey's financial affairs and consequent tax liabilities. As a result of various orders made by the High Court and hearings before the High Court during 1998 and early 1999, documents were provided by Guinness & Mahon and Irish Intercontinental Bank.

It will be recalled that evidence was also heard from Mr. Brian McCabe, then principal in the Capital Taxes Branch. While the central focus of the inquiries of the Capital Taxes Branch in the aftermath of the McCracken Tribunal was the raising of assessments to Capital Acquisitions Tax in respect of the Dunnes payments found by the McCracken Tribunal, Mr. McCabe in his evidence also referred to other wider contacts which the Capital Taxes

Branch had with Mr. Haughey's tax advisers.

It will be recalled that Mr. McCabe gave evidence in relation to a statutory notice issued by the Revenue Commissioners on the 10th of December, 1997, pursuant to Section 36(7) of the Capital Acquisition Tax Act, 1976. This notice required Mr. Haughey to deliver within 60 days details of all other gifts or inheritances taken by him from any source during the period commencing on 2nd June, 1982, and ending in 1988. Following extensions of time sought by Mr. Moore, Mr. Haughey's tax agent, to enable Mr. Desmond Peelo, a forensic accountant who had been engaged by Mr. Charles Haughey to gather information in relation to his affairs to produce a report, on 29th June, 1998, Mr. Moore submitted a letter to the Revenue Commissioners with a memorandum from Peelo & Partners enclosed. Mr. McCabe indicated in his evidence that the position as stated in that letter was that Mr. Haughey had left the management of his finances to the late Mr. Desmond Traynor and was not in a position to offer any assistance on the source of unexplained amounts as between his income and expenditure. The letter referred to an additional payment of ï¿½80,000 the equivalent of ï¿½101,000, from Mr. Bernard Dunne and to a payment of ï¿½125,000, the equivalent of ï¿½159,000, from Mr. Dermot Desmond which was described as a loan.

Mr. McCabe also gave evidence that following discussions with their legal advisers the Revenue Commissioners agreed

to meet Mr. Moore and Mr. Terry Cooney, also representing Mr. Haughey, on the 5th of August, 1998. According to Mr. Moore, the purpose of the meeting was to further the Revenue's wider investigations into the tax affairs of Mr. Haughey. Mr. Moore indicated that the meeting added little to the Revenue's state of knowledge but that Mr. Haughey's tax agents agreed to revert with information regarding queries raised by the Revenue Commissioners. Following reminders from the Revenue Commissioners, a reply was received on the 11th of March, 1999, and Mr. McCabe stated in evidence that the reply consisted largely of information relating to Mr. Haughey's affairs that was already in the public domain as a result of the public sittings of this Tribunal and to which the Revenue already had access.

The priority of the Revenue Commissioners in the latter part of 1999 and in the year 2000 was, quite understandably, the preparation for the appeal to the Circuit Court against the determination of the Appeal Commissioners on the assessment to Capital Acquisitions Tax raised in respect of the Dunnes payments identified by the McCracken Tribunal Report and the settlement of those assessments concluded with Mr. Haughey in April 2000. The Tribunal has been informed that following the interim settlement as it is described by the Revenue Commissioners officials of the Revenue Commissioners continued to monitor the evidence emerging at public sittings of this Tribunal.

The strategy of the Revenue Commissioners was to continue with the monitoring process and to take action to secure any tax liabilities when all the relevant evidence had been heard and the findings of the Tribunal were made public.

It appears from information provided by Mr. Norman Gillanders, Assistant Secretary assigned to the Capital Taxes Division in the years 2001 to 2004, that the approach of the Revenue Commissioners began to change in approximately July, 2001 when it became evident that the "money trail" evidence of the Tribunal (as it has been described) relating to Mr. Haughey was reaching a conclusion and that it was apparent, from all of the evidence collated by the Revenue Commissioners, that Mr. Haughey would clearly have to face issues of further tax liabilities.

It will be recalled that in May, 2001 the Tribunal had read into the record of the Tribunal's public sittings the transcript of the balance of Mr. Haughey's evidence which had been taken on commission at Dublin Castle to meet Mr. Haughey's difficulties in continuing to give evidence at public sittings due to his ill health. The Tribunal had also recalled certain witnesses to give additional evidence arising from Mr. Haughey's evidence.

It appears from the documentation examined by the Tribunal and from information provided by Revenue officials, that consideration by the Revenue Commissioners as to the best means of proceeding with regard to these further

liabilities was given at the highest level and that the Board of the Revenue Commissioners was consulted both informally and formally. Mr. Gillanders has indicated that intensive analysis of the case commenced in July 2001 and that legal opinion was sought as to how the Revenue Commissioners might best proceed. The Tribunal understands that the principal issue for the Revenue Commissioners at that time was whether the funds of which the Tribunal heard evidence should be assessed to Income Tax under the Taxes Consolidation Act or to Gift Tax under the Capital Acquisitions Tax Acts.

In order to advance matters with Mr. Haughey, on 21st August, 2001 the Revenue Commissioners requested an up-to-date Statement of Affairs as of 31st July, 2001. This request, it appears, was hand-delivered to Mr. Haughey's home at Kinsealy and a copy was furnished to his tax agent. A Statement of Affairs, as the Tribunal understands it, is a detailed document in a statutory form by which the Revenue requests a taxpayer, usually a taxpayer under investigation, to furnish compendious information regarding all of his financial affairs and all of his assets and liabilities. It extends to the taxpayer's ownership of property, such as houses, buildings and land, bank balances, foreign currency holdings, stocks and shares, life assurance policies, annuities, pension policies and chattels such as works of art, jewellery antiques, yachts and so forth. On the liabilities side, it

seeks details of all borrowing, mortgages and creditors.
The power of the Revenue Commissioners to seek a Statement of Affairs is provided for by Section 909 of the Taxes Consolidation Act, 1997, which has been slightly amended by a subsequent Act. The request for a Statement of Affairs is made by means of an official form called an SA.1 form issued by the Revenue Commissioners and which provides for the swearing of a Declaration by the taxpayer before a Commissioner for Oaths. It appears to the Tribunal that it was a significant step for the Revenue Commissioners to seek a Statement of Affairs from Mr. Haughey and, indeed, under the Taxes Consolidation Act, 1997, there are penalties provided for in the event of a failure on the part of a taxpayer to furnish a Statement of Affairs within 60 days of a request or in the event of a taxpayer furnishing a misleading or inaccurate Statement of Affairs. Mr. Haughey's tax agents' initial response to the Revenue's request for a Statement of Affairs was to indicate that it was their understanding that further direct inquiries by the Revenue Commissioners of their client would be postponed until this Tribunal had completed its investigations and issued its final Report. The agents also, it appears, referred to the poor state of Mr. Haughey's health. Ultimately, on 1st November, 2001 it appears that Mr. Haughey's agents agreed that a Statement of Affairs would be prepared and the Revenue Commissioners were informed that Mr. Desmond Peelo had been instructed to

proceed. An extension of time for the completion of the Statement of Affairs was sought and this was granted by the Revenue Commissioners up to and including the 18th of January, 2002. The Investigations Branch in the interim had continued its inquiries in relation to third-party financial institutions and had requested Mr. Haughey's agents to furnish what are termed forms 62.BD and 62.BSD, in respect of a large number of financial institutions. The Tribunal understands that these are forms used by the Revenue Commissioners to facilitate the provision of financial information in relation to accounts held by a taxpayer. The Revenue Commissioners request the taxpayer or the taxpayer's agent, to arrange for the completion by the financial institutions concerned of the forms, which are then returned to the Revenue Commissioners. It is the Tribunal's impression that this is also a procedure which, like the request for a Statement of Affairs, is one which the Revenue Commissioners have resort to only where a taxpayer is under investigation. The Tribunal understands that the use of form 62.BD arises from an informal arrangement between the Revenue Commissioners and the bank's Standing Committee whereby the bank will facilitate the provision of information to the Revenue Commissioners by the use of these forms if so requested by customers. The form 62.BSD is exactly the same form, save that it relates to building societies. The Tribunal understands that while there is no formal arrangement between the

Revenue Commissioners and the building societies as there is in the case of banks, as a matter of practice building societies have facilitated the provision of information by completion of these forms but subject also, of course, to requests made of them by their customers.

The Tribunal has been informed that these forms were forwarded to Mr. Haughey's tax agent on the 11th of January 1999, and on the 3rd of February 1999, but that as of early January 2002, none of the forms had been returned.

It appears, therefore, that the position as of early 2002 was that a number of requests for information had been made by the Revenue Commissioners, some statutory and some non-statutory, of Mr. Haughey and that the following were outstanding:

(i) Information which had been requested by Mr. Treacy in his letter of the 4th of May, 1999.

(ii) The Statement of Affairs which had been requested on the 21st of August 2001.

(iii) The forms 62.BD and 62.BSD in respect of financial institutions, which dated from January and February of 1999.

Mr. Gillanders has informed the Tribunal that all of these matters were coming to a head in early 2002. The Revenue Commissioners were focusing at a very senior level on the matter of Mr. Haughey's tax affairs and there were what Mr. Gillanders has described as senior level case meetings in February and March of 2002. Mr. Haughey's tax agent had

requested a meeting with Revenue officials to explain the difficulties they had in completing the requested Statement of Affairs which, with an extension of time, had been due on the 18th of January, 2002. It was decided that the Revenue Commissioners would agree to meet the taxpayer's agents and it appears that intensive consideration was given as to how the collection of tax might be progressed. The Tribunal has been informed that at the internal senior level meeting on the 15th of March, 2002, it was agreed that the best way of proceeding with the case was to enter into discussions with the taxpayer through his agents with a view to settlement. It appears that the considerations of the Revenue officials at this juncture were primarily directed to the issue of the appropriate legal approach which should be adopted to settlement, that is, whether the approach should be from the standpoint of Income Tax or Capital Acquisitions Tax.

It is understandable that this was so central to the considerations of the Revenue officials as there were significant differences between the tax consequences of these two approaches in terms of the rate of tax and the interest and penalties applicable.

The Tribunal has been informed that prior to the first meeting with Mr. Haughey's agents, senior officials of the Revenue Commissioners met with the Revenue's legal advisers on the 11th of April, 2002 and finalised the approach that would be taken in the case. The approach agreed on was

as follows:

(i) Firstly, the Revenue Commissioners would try to reach a negotiated settlement under the Capital Acquisition Tax code.

(ii) Secondly, it was noted in that regard that it would be difficult to make a credible assessment to Income Tax under the Taxes Consolidation Act, 1997, principally because Income Tax arises under statute and case law from a source of profits or gains. It appears that Income Tax, therefore, must stem from an activity that can be labelled as such a source and that the Revenue's analysis had reached this view and that the unequivocal legal advice strongly supported that conclusion.

(iii) Thirdly, the Revenue Officials would begin to prepare detailed Capital Acquisitions Tax calculations covering all of the payments of which the Tribunal had heard evidence, and these calculations would then inform the Revenue Commissioners negotiating position.

(iv) And fourthly, it was also noted that there were possible prosecution options open to the Revenue Commissioners, including prosecuting for failure to complete the Statement of Affairs and prosecution for failure to file Capital Acquisitions Tax returns in respect of gifts received.

The first meeting between Revenue officials and the taxpayer's agents was on the 29th of April, 2002. The Revenue Commissioners were represented by Mr. Gillanders

and Mr. McCabe of the Capital Taxes Division and by Mr. Robert Harrington and Mr. Stephen Treacy of the Chief Inspectors's office. Mr. Haughey's tax agent, Mr. Paul Moore, was in attendance, and was accompanied by Mr. Terry Cooney and Mr. Des Peelo, the latter being Mr. Haughey's forensic accountant. It appears from the minutes of that meeting that Mr. Haughey's tax agents indicated that Mr. Haughey accepted that there were major tax issues arising and that he was also willing to address them. It appears from the minute, which has been provided to the Tribunal, that the Revenue officials made it clear that substantial and meaningful progress would have to be made, otherwise the Revenue Commissioners would be obliged to proceed with assessments in order to bring Mr. Haughey's tax affairs up-to-date. During that meeting it appears that Revenue officials proposed that an obvious starting point for the purposes of negotiations would be to arrive at a baseline figure in relation to Mr. Haughey's taxable receipts for the relevant years.

And the minutes are headed,

"Minutes of meeting with Agents for CJH, 9 a.m., Monday 29th April, 2002, in Stamping Building, Dublin Castle.

In attendance were:

"Mr. Paul Moore

Mr. Desmond Peelo

Mr. Terry Cooney Tax Agents

"Mr. Norman Gillanders,

Mr. Brian McCabe Capital Taxes Division

"Mr. Robert Harrington

Mr. Stephen Treacy Chief Inspector's Office.

"The meeting was initially requested by agents to discuss the issue of the Statement of Affairs requested by Revenue on 21 August, 2001, in consenting to the meeting Revenue had, with agreement of agents, widened the agenda to include all aspects of the case. At the outset, it was agreed that the discussions in relation to Section 909 (Statement of Affairs) issue would take place on a without prejudice basis. Equally, it was agreed that the discussions generally would be without prejudice to either side's position as expressed in correspondence up to now in relation to outstanding Gift Tax Returns.

"Revenue indicated that it was necessary to discuss the wider picture. From Revenue's perspective, information available to us from the Moriarty Tribunal evidence and from our own investigations has now to be followed up. This information demonstrates that the client had been in receipt of very substantial amounts of money, the proper taxation of which is now a pressing concern for Revenue.

"On the assumption that this issue is also a matter of concern to the client, two questions arose:

"First, what steps are agents taking to bring order to the client's tax affairs?

"Do agents have a full view of client's tax position - as to bring order - this would appear a prerequisite.

"It was indicated to agents that the answers to these issues would obviously influence Revenue's future handling of this case.

"Agents indicated that the most pressing issue was the Statement of Affairs (SoA). An estimated SoA as at 30 June 1998 had been submitted in 1999. Since then a portion of the Abbeville lands had been sold to meet the Revenue debt arising from the Dunne payments. This money had also been used to meet Gift Tax and CGT liabilities arising on the gift of the land from the children to the client and to discharge substantial borrowings which the client had with INBS. As far as agents were aware, nothing remained of those monies and they indicated that he was again surviving on INBS borrowings. His only assets were, therefore, the house itself and the grounds, circa 27 acres. Speculation in the media that the remainder of the Kinsealy lands were to be sold or had been sold are unfounded. The likelihood that they would be sold in the immediate future was pretty remote. In relation to the house contents, agents said that apart from one or two paintings there was little of note in terms of antiques but that there was a considerable amount of what can best be described as memorabilia. The agents felt that the sheer detail required on the SoA form would be enormous and unlikely to add significantly to the overall picture. It would require a detailed valuation of all contents and then an exercise to estimate original cost. They indicated that they were willing to submit an

SoA; the question was in what format. The fact is that client's assets are considerably below what one would expect having regard to the monies identified as having been received by the client.

"Revenue in response pointed out that while the SoA had been requested some six months previously nothing much appears to have been done in the meantime. The statutory requirement in that regard was clear and needed to be complied with. There was an issue there which, in the absence of compliance, Revenue would be expected to pursue and follow up as regards failure to deliver.

"The discussion moved on to the client's overall tax position - agents were asked

"1. If there was an acceptance on the part of the client that there were major tax issues outstanding.

2. Whether there was a willingness on his part to address these,

And 3. What, if any, proposals he had in that regard.

"Agents indicated in the affirmative in relation to points 1 and 2 foregoing. They went on to say that their understanding arising out of the settlement of the McCracken payments was that the question of addressing the next tranche (i.e. the Moriarty payments) would await the final report of the Tribunal, (note Revenue had indicated to the agents in writing and repeated at the meeting that while this had been raised by the agents in earlier discussions, no such understanding had been reached). It

appeared to the agents that it could be some considerable time before a report would now issue from Moriarty. They again repeated the uniqueness of the case and the fact that proper books and records were not required to be maintained by the client as he was not carrying on a trade or activity that required the keeping of records. This, coupled with the precariousness of the client's health, limited his ability to deal with these matters. They also indicated in relation to the figures that Moriarty had released (receipts of ï¿½8.5 million) that they had difficulties with them and they felt they were overstated due, for example, to double counting. In that regard, when asked by the Revenue whether they had succeeded in linking certain of the payments from Ben Dunne directly to expenditure for the benefit of CJH, it was indicated that that type of forensic work had not been undertaken. Equally, when asked they were unable to clarify the position of the Guinness & Mahon Cayman Trust Stgï¿½400,000 loan matter.

"Revenue indicated that they could not "sit on their hands" pending Moriarty reporting - As far as Revenue were concerned there were Income, Capital Gains and Capital Acquisition Tax issues arising that had to be dealt with so as to bring the client's tax affairs up to date.

"At this point agents indicated that Messrs. Cooney and Moore had been engaged by the client as 'settlers' of the case. Mr. Peelo had been engaged as a forensic accountant to assist the Tribunal. They had succeeded in settling the

original assessments following the Appeal Commissioner hearings. While they would prefer to have the final Moriarty Report in black and white they recognised that this was unlikely to appear in the immediate future. Nonetheless, they were still in the business of settling the case. The question was how this could be achieved in the absence of a final Tribunal report. In that regard, they were of the view that the "assessment" route was not the way to go. A possibility might be to attempt to arrive at an "interim" settlement pending the final Moriarty Report.

"Revenue indicated that if substantial and meaningful progress could be made in another way (other than the assessment route) to resolve outstanding tax issues then we would be willing to explore this avenue. It was made clear to agents that in the absence of meaningful progress Revenue would not hesitate to go down the assessment route. An obvious starting point, given agents earlier comments about veracity of figures, would be to attempt to nail down a baseline figure in relation to taxable receipts. Agents were asked whether they could come back with their view of the client's net position and the capacity of the client as regards ability to pay.

"Agents indicated that they would have to refine their view of the client's position and again pointed out the difficulties of doing that in circumstances of lack of records. They felt that this would take some time and

would require a trawl of the Moriarty transcripts, but were willing to work towards a mutual understanding of the position with a view to arriving at an "agreement" pending any findings Moriarty might arrive at.

"At this point the possibility of a substantial payment on account in respect of an agreement or interim settlement was mooted by Revenue. Agents indicated that in relation to the earlier settlement the land sold had been rezoned and therefore had achieved a substantial price. The only asset the family has now was the remaining land and while they had been actively trying to sell it, nothing had come of this to date. Also the question of the sale of the house and "gardens" with a right of residence for the client and his wife for their life time had been mooted in the past but again nothing had come of it. They therefore, couldn't readily identify a source for such a payment.

"In conclusion, it was agreed that a further meeting would take place with the agents on Thursday, 6 June to assess what progress had been made on their part in refining baseline figures.

"The agents again stressed that their instructions from day one from the client was to settle the case. In that regard, they had indicated good faith on his part in the past particularly in the manner in which the original assessments had been settled without pursuing the legal route.

"For the record the following issues also arose during the

meeting:

"It was indicated by Revenue that in the normal course in a case like this Revenue would be seeking to interview the client and agents were asked what the likely attitude to such a request would be. Agents indicated that given the man's state of health the response to such a request would be in the negative - his legal advisors would be absolutely against this.

"Agents were asked about the outstanding query letter of May, 1999 from Investigation Branch and in particular about the circulation of the forms 62.BD to the banks. Agents indicated that their recollection was that a draft reply to the queries had been prepared and that the forms had been circulated. They undertook to check the position.

"The meeting concluded around 10:30 a.m."

And the minutes are signed by Mr. McCabe and dated the 29th of April, 2002.

There were further meetings on 6th June, 2002 and 4th July, 2002, but it appears that little progress was made at those meetings in terms of proposals emanating from Mr. Haughey's agents. At the meeting on 4th July 2002, which was attended by Mr. Gillanders, Mr. McCabe and Mr. Moore, it appears that the Revenue officials furnished Mr. Haughey's agents with a draft Expenditure Schedule. This, the Tribunal understands, was designed to be an indicator to the tax agents of the Revenue's view of the order of magnitude of the tax issues that faced Mr. Haughey and to

help speed up their deliberations.

It appears that on the 6th of September, 2002,

Mr. Gillanders met with Mr. Desmond Peelo at Mr. Peelo's

request. It appears from the minute of that meeting that

Mr. Peelo indicated that his client, Mr. Haughey, was

prepared to settle the case for ï¿½2 million, the equivalent

of ï¿½2.539m. Mr. Gillanders has informed the Tribunal that

whilst he indicated to Mr. Peelo that this figure was

unlikely to be acceptable, he agreed that there was a basis

for negotiations.

The short minute of that meeting of the 6th of September is

headed:

"Minute of meeting of Friday 6 September, 2002, with

Mr. Des Peelo.

1. Haughey dying - urgent need to settle.

2. Wants negotiated settlement by end of month.

3. Children's assets will have to come into play - they

will need persuasion.

4. Problems about settling on the basis of particular

receipts. How can they negotiate when Haughey has told the

Tribunal he knows nothing about any of this?

5. So, they will offer an amount in full and final

settlement of any liabilities.

6. The amount offered will be ï¿½2 million.

7. Cash to be raised by sale of land.

8. Sale will take no longer than 18 months.

9. Interest on amount due can accrue in the meantime.

10. Some form of guarantee will be offered to Revenue.

Will be absolutely secure.

11. But needs to avoid any lien on the property as it will

frighten away developers.

12. I said we would consider and get back to him. I'd

need to consult the Board. But, this may well be a

starting point for negotiations.

13. Negotiations to be with Des Peelo. He will be working

with solicitors Gore Grimes & Co.

14. Moore and Cooney will advise Peelo on tax issues but

will not be part of the negotiations.

15. I've promised to get back to Peelo by Tuesday next.

We'll need a negotiation team, obviously."

The minute is signed "Norman Gillanders" and dated 6th

September, 2002.

Prior to a further meeting with Mr. Haughey's agents,

Mr. Gillanders prepared a detailed analysis of

Mr. Haughey's potential liability in terms of the maximum

and minimum figures that the Revenue might hope to recover

and, also addressed the possible strategies that the

Revenue might adopt in the course of such negotiations.

The Tribunal would intend exploring these matters with

Mr. Gillanders in the course of his evidence but from that

document it would appear that the thinking of the Revenue

Commissioners in advance of the meeting was that the

maximum expenditure figure which could be argued for the

years in question was ï¿½9.9 million, the equivalent of

ï¿½12.570 million, which would give rise to a potential tax liability of ï¿½6.5 million, the equivalent of ï¿½8.253 million, assuming that interest was capped at 100% of the CAT liability, which would have been computed at 40% of the value of the gifts. 40% was the rate of Capital Acquisitions Tax during the years in question. However, it appears that Mr. Gillanders and the Revenue officials did not consider that this figure of ï¿½6.5 million, that is ï¿½8.253 million was attainable, and it is clear, on the analysis contained in the negotiating document that the Revenue officials considered that a figure in the region of ï¿½3.25 million, the equivalent of ï¿½4.126 million, to ï¿½3.8 million, the equivalent of ï¿½4.825 million, was more realistically achievable.

The parties agreed to meet on 8th October, 2002, and prior to that meeting, by letter of the 4th of October 2002, Mr. Gillanders forwarded to Mr. Desmond Peelo a refined Expenditure Schedule in respect of Mr. Haughey covering the years 1977 to 1997, which he indicated that the Revenue officials saw as forming the agenda for further discussions.

The meeting on the 8th of October, 2002, was attended by Mr. Des Peelo and Mr. Paul Moore on behalf of Mr. Haughey and by Mr. Brian McCabe, together with Mr. Stephen Treacy and Mr. T.J. Cleary, on behalf of the Revenue Commissioners. Mr. Gillanders has informed the Tribunal that in advance of the meeting he spoke to Mr. Moore and

Mr. Peelo and set out the Revenue Commissioners's intended approach. He has informed the Tribunal that he indicated that the Revenue Commissioners needed to negotiate on the facts of the case as set out in the Expenditure Schedule to which I have just referred, that they would be fair and rational when it came to double counting of amounts apparently received by Mr. Haughey; and that if negotiation failed the Revenue Commissioners would begin a process of formulating and issuing assessments to Capital Acquisitions Tax.

From the minutes of the meeting of the 8th of October, 2002 which have been made available to the Tribunal, it appears that discussions spanned the entire of the day. Initially, there appear to have been certain clarifications provided by the Revenue officials regarding the Expenditure Schedule to which I have just referred, in terms of how those items were arrived at, and regarding the issue of double counting. These general topics appear to have led to discussion of specific queries which the Revenue officials had raised in the Expenditure Schedule and that, in turn, appears to have led to detailed discussions of each of the items on the Expenditure Schedule on an item by item basis. The outcome of this exercise appears to have produced what Revenue officials have described as a "core expenditure figure" of some ï¿½6.9 million, the equivalent of ï¿½8.761 million. It is important to recognise that the Revenue Commissioners, in approaching this task, of arriving at a

core expenditure figure, were doing so in the context of the following:

(i) Firstly, the technical requirements of the Capital Acquisitions Tax code; in other words, the Revenue officials were seeking to arrive at a core figure for taxable receipts; and (ii) secondly, the Revenue officials were seeking to conclude a negotiated settlement with Mr. Haughey's agents with, of itself, must have necessitated a measure of compromise.

In inquiring into this matter the Tribunal must be conscious that the task of the Revenue officials was very different from the task of the Tribunal in investigating payments or gifts to Mr. Haughey and, ultimately, making findings of fact pursuant to paragraph (a) of its Terms of Reference.

It appears that the meeting then went on to discuss the tax consequences of that core figure of ï¿½6.9 million, the equivalent of ï¿½8.761 million. The Revenue officials apparently indicated that on a rule of thumb basis, at an average tax rate of 40% (which was the appropriate rate as these liabilities dated from 1977 to 1997), this would give rise to a tax liability of approximately ï¿½2.76 million, the equivalent of ï¿½3.504 million; with interest capped at 100%, this would increase the liability to approximately ï¿½5.5 million, the equivalent of ï¿½6.98 million. It appears that the meeting then broke for lunch and that after lunch Mr. Gillanders joined the meeting. There were further

negotiations and, following these negotiations, a final offer from Mr. Haughey's tax agents was made at ï¿½3.85 million, the equivalent of ï¿½4.888 million. It was agreed that this figure would be put to the Board of the Revenue Commissioners. Mr. Gillanders has informed the Tribunal that following discussion with his superiors he contacted Mr. Peelo by telephone and indicated that the Board would not be prepared to settle the case for ï¿½3.85 million, the equivalent of ï¿½4.888 million, but would be prepared to settle for an increased sum of ï¿½3.94 million, the equivalent of ï¿½5 million, subject to the necessary legal agreements and securities being put in place.

The document containing the minutes of that meeting of the 8th of October is headed:

"Minutes of meeting with CJH agents,

Tuesday, 8 October 2002.

Stamping Building, Dublin Castle.

"In attendance:

"Mr. Des Peelo

Mr. Paul Moore, Agents.

"Mr. Brian McCabe, Capital Taxes Division

Mr. Stephen Treacy, Investigation Branch, Chief Inspector's

Mr. T.J. Cleary

"(Before the meeting proper commenced, the agents had a brief separate discussion with Norman Gillanders, Assistant Secretary CTD. Mr. Gillanders also joined the meeting for the latter stages).

"The meeting was a follow-on to earlier meetings with agents re the CJH case at which they indicated a desire by their client to settle his affairs with Revenue. An offer of ï¿½2 million had been made and rejected by Revenue.

"Agenda: The 'agenda' for the meeting was the 'Expenditure Schedule' in respect of CJH put together by Revenue. The Schedule had been forwarded to Mr. Peelo on Friday, 4th October under a covering letter.

"The following summarises the discussion and the main issues arising.

"Basis of Discussions: At the outset, Revenue indicated that the aim of the meeting was to try and arrive at a 'core expenditure figure' for CJH based on available data and expenditure estimates if required. This was necessary in the absence of complete information on the receipts which CJH had obtained over the years. Given that expenditure had to be funded from some source, once a core expenditure figure was arrived at this would be taken as a 'proxy' for receipts and form the base upon which tax would be calculated. The agents accepted this approach, indicated that they were here to settle the case and that they would not be raising technical arguments which were more appropriate to an 'assessments' route. It was also accepted by all that 'nothing was agreed until everything was agreed'.

"Clarifications: Revenue clarified for the agents what the schedule represented - they having expressed concern that

the figures in the schedule appeared to be a mix of both expenditure and receipts. Revenue explained that unless receipts could reasonably be traced to known expenditure, then such receipts were assumed, for the purposes of the schedule, to have funded 'other' expenditure which had not been identified by the Moriarty Tribunal - a case in point being the figure of ï¿½1.431m included in the schedule for Ben Dunne. In effect the schedule represented a possible 'worst case' scenario for the client.

"Double Counting: The agents indicated concern that this approach could lead to 'double counting' and would be unfair to their client. In relation to the Ben Dunne payments they felt that the schedule already included double counting insofar as the bill paying service was probably largely funded by the Dunnes payments, as was the clearance of certain bank debts. They were also of the view that there was a 'murky element' in relation to the bank accounts as Des Traynor would have appear to have been involved in 'switchings'. In addition, the agents felt that Revenue had included items in the schedule which would appear to have tenuous links to their client.

"Revenue indicated that they were conscious of possible shortcomings in the schedule and were prepared to discuss each item with a view to arriving at an acceptable overall core figure. In relation to the Ben Dunne payments, Revenue indicated that while they accepted double counting as a possibility, there was no hard evidence as to the use

of these monies, other than the clearance of the G&M and ACC overdrafts in 1987. As such, Revenue indicated that they were not prepared to exclude the receipts from the expenditure schedule at this juncture."

"Discussion of Specific Agenda Items:

Initially (from 10:30 a.m. to 11:30 a.m.), discussions centred on a number of specific items on the agenda. In summary the position on these was as follows;

"1. National Irish Bank Lodgements. These are farm account lodgements. It was felt that it should be possible to reconcile the NIB lodgements with the farm account documentation. It was noted, however, that the Ben Dunne personal cheque given to the client was included in the lodgements.

"2. Galtee Deer Care. The purchase of the deer stock came from the S9 account. The deer stock appears to have been accounted for in the farm accounts by reference to capital introduced explained by commuted pension.

"3. TriplePlan Cash ï¿½285,000 of the TriplePlan payment was used to clear a Guinness & Mahon (Ireland) Ltd overdraft. The TriplePlan figure specifically identified in the Expenditure Schedule only reflects the balance of the TriplePlan payment which was withdrawn in cash and does not appear to have gone to fund the bill paying service.

24. Dail Income. Agent's understanding was that the client cashed salary cheques from the late seventies and did not lodge them to any accounts. The income would not

have been used to fund any of the spending reflected in the schedule.

"5. IIB Bank Balances 1997. Agents indicated that these accounts were not in the client's name, that he had no control over them and that, as far as they were aware, the balance was still there. To all intents and purposes the accounts could be considered dormant.

"6. Funding of expenditure since 1997. Agents indicated that the client continued to survive on INBS borrowings secured by way of an equitable mortgage on Abbeville and on his pensions. The initial ï¿½1 million INBS loan had been repaid out of the proceeds of the first land sale and the loan was then renewed.

"7. Island/Holiday House & Boat. Agents indicated that as far as they were aware these assets had probably been funded out of the client's accounts with AIB.

"8. Interest on IIB Bank accounts. Agents indicated that their client's position was that as he was not the beneficial owner of the accounts he could not be held liable for tax on interest income arising. Agents stated that as the balance on the account (S9) exceeds the interest, an argument could be made that the client never got the interest.

"9. GMCT Loan, etc. Agents indicated that they could not throw any light on these issues and all the indications were that the client couldn't either.

"10. Other monies/gifts received since 1997/funding of

holidays, et cetera. Agents had no information on these issues but undertook to raise them with the client.

"11. Benefits received from Celtic Helicopters. Agents understood that the client ran an account with Celtic Helicopters and paid for any transport received.

"12. Expenditure 1977 to 1984. Agents' view was that up to 1979 funding came from the AIB overdraft and Guinness Mahon (Ireland) Ltd accounts. Between 1980 and 1984 it appeared to agents that there was a lot of bank borrowings and 'switchings'. This, they felt, explained Traynor's approach to Ben Dunne at the time he was leaving G&M to effectively "buy-off" the borrowings.

"The meeting broke briefly for coffee.

"Detailed discussion on Expenditure Schedule. At the resumption of the meeting a more detailed discussion took place on the 'Expenditure Schedule'. Agents put forward a number of possible scenarios to get rid of the double counting and to arrive at a taxable figure, none of which were acceptable to Revenue. Agents suggested an adjournment of the meeting to another date to allow for reflection, which Revenue resisted.

"Revenue put it to the agents that the issue of possible double counting was not being approached correctly by them and that a better approach was to work through the Expenditure Schedule 'line by line' with a view to determining which items should be retained and which could be reasonably excluded. This was accepted and the outcome

was agreement to exclude from a final schedule the items set out in the Table attached. The basis for excluding these items included probable double counting, tenuous links to the client's finances on the basis of the evidence or the inappropriateness of their inclusion in the first place.

In addition, following some discussion, it was agreed in the absence of actual data that a 'guesstimate' of ï¿½600,000 be included for the clients living expenses for the period 1980 to 1984 to include unidentified drawings on various G&M accounts. It was also agreed that credit would have to be given for 'expenditure' underpinning the initial settlement in respect of the Ben Dunne 'McCracken receipts' on which tax and interest had already been paid.

"The outcome of this exercise was to produce a possible 'core expenditure' figure of some "6.9 million - (see schedule attached for details).

"Tax and Interest Arising. Agents then sought to establish what the tax and interest would be on an expenditure figure of some ï¿½6.9 million. Revenue indicated that, while a precise figure would require detailed calculations, on a "rule of thumb" basis an average tax rate of around 40 percent would probably be fairly close to the mark. This would give rise to a tax liability of some ï¿½2.76 million interest, even if capped at 100 percent, would increase the liability to some ï¿½5.5 million. Agents indicated that their initial offer to settle this case had been ï¿½2 million

and that, in the circumstances they could not recommend a settlement sum of that magnitude to their client.

"Notwithstanding agent's earlier stance that technical issues would not be used in the negotiations, agents now argued that in relation to a significant portion of the receipts to fund their client's expenditure there was no information available as to source, which raised the issue of whether such receipts would even come within the charge to Gift Tax if the sources were all known. Equally they were of the view that a 'public purposes' case could perhaps be made in relation to aspects of the expenditure. Additionally, they were of the view that if this case was to go the legal route (while in no way suggesting that their client wished to go that route the opposite was, in fact, the position), it was clear that Revenue would be faced with significant difficulties. They were of the view that these issues in particular, coupled with the fact that they were accepting Revenue's bona fides in relation to the inclusion of some of the figures in the schedule, warranted some concession on the settlement sum. Revenue acknowledged that because of the lack of information regarding the source of all payments, the tax position could not be fully demonstrated and that in the nature of settlements the settlement sum would be based on compromise at the end of the day.

"At this stage (1:30 p.m.) the meeting broke for lunch.

"Bottom Line Settlement Figure. At the resumption of the

meeting the agents pushed to know what Revenue's bottom line figure for tax and interest would be with a view to settling the case. At this point in the discussion, the Revenue representative indicated that as they were not mandated to sign off on a settlement sum Mr. Gillanders, Assistant Secretary, might usefully join with the discussions at this stage.

"Mr. Gillanders was brought up-to-date on the state of play and the agents reiterated their position that in the light of their opening offer they could not recommend a settlement of ï¿½5.5 million to their client. Following further negotiation the agents indicated that they would not be prepared to recommend a settlement sum about ï¿½3.6 million in effect, a one-third reduction in the amount calculated. Revenue indicated that their 'guideline' from the Board was for a settlement of the order of ï¿½4 million and that the Board were unlikely to entertain a settlement sum that was not closer to this amount. The final offer from the agents was ï¿½3.85 million and Revenue agreed to put that figure to the Board.

"Other issues. A brief discussion took place on issues apart from the settlement sum that Revenue said would have to be addressed in the context of any agreement, including the question of interest pending ultimate payment. In that context, agents made the point that, like last time, any settlement would have to be funded from the sale of lands by the client's children. They anticipated that this could

take up to two years and were of the view that further interest should only be payable if payment was not made within the two-year time-frame. This was unacceptable to Revenue who felt that interest should continue to run until payment was secured. Following consideration it was agreed both sides would recommend that in the event of the lands not being sold within a year of an agreement being signed, interest at the Revenue daily rate would recommence. Agents also indicated that their side were prepared to accept a provision in the agreement to the effect that if the land was not sold within two years, Revenue would have the right to force a sale.

"It was agreed that all these issues should be the subject of further contact with the agents if the board agreed in principle to proceed with settlement negotiations in the light of the increased offer.

"Mr. Peelo agreed to convey the outcome of the discussions to the client and Mr. Gillanders undertook to contact him as soon as he had had an opportunity to discuss the outcome of the meeting with his superiors."

And it's signed "Brian McCabe, Stephen Treacy, T.J. Cleary.

Appended to those minutes, sir, is a table which, of itself, refers to the Expenditure Schedule, that is the Expenditure Schedule which was furnished on the 4th of October and which formed the basis for these discussions, and rather than refer to the Expenditure Schedule at this juncture, sir, it's intended that that Expenditure Schedule

and the various deductions that were agreed during the course of the discussions, would be explored in detail with Mr. McCabe in the course of his giving evidence.

CHAIRMAN: Yes.

MS. O'BRIEN: Now, on the 15th of October, 2002 it appears that Mr. Des Peelo telephoned Mr. Brian McCabe and confirmed that Mr. Haughey, having discussed the matter with his children, was agreeable to settling his liabilities to the Revenue Commissioners for ï¿½3.94 million, that is ï¿½5 million.

A formal agreement was concluded between the parties on the 18th of March, 2003. This agreement provided for the payment of the agreed sum of money by Mr. Haughey out of the proceeds of sale of Mr. and Mrs. Haughey's property at Abbeville, Kinsealy. There was security provided for by and Mr. and Mrs. Haughey, together with a guarantee by Mrs. Haughey and each of Mr. Haughey's four children. And we have a copy of that agreement, sir, that should be on the overhead monitor.

It's headed "Agreement."

"This agreement is made this 18th day of March, 2003 between Charles J. Haughey of Abbeville, Kinsealy, County Dublin, of the one part, and the Revenue Commissioners of Dublin Castle, Dublin 2, of the other part.

"Definitions:

In this agreement the following terms shall have the following meanings:

"Taxpayer: Mr. Charles J. Haughey, his executors, administrators, heirs and assigns.

Revenue: The Revenue Commissioners.

"McCracken Tribunal: Tribunal of Inquiry sorry - Report of the Tribunal of Inquiry (Dunnes Payments).

"Moriarty Tribunal: Tribunal of Inquiry (Payments to Messrs Charles Haughey and Michael Lowry.

"Revenue Debt: The cumulative sum hereinafter agreed to be due by the taxpayer to the Revenue.

"Interim Settlement: The Agreement in writing entered into between the taxpayer and the Revenue and dated the 3rd of April, 2000.

"The Lands: All that and those the lands, hereditaments and premises comprised in Folio 17735 Register of Freeholders, County of Dublin.

"Net Proceeds of Sale: The total proceeds of sale of the lands, less any amounts required to discharge the disclosed encumbrances on the lands securing an indebtedness of ï¿½1.5 million and the proper costs and outlays connected with the sale of the lands.

"Solicitor's Undertaking: An undertaking from Messrs Gore and Grimes, Solicitors to discharge from the net proceeds of sale of the lands all sums due to Revenue under the terms of this agreement, which said solicitor's undertaking is annexed hereto.

"Solicitor's Irrevocable Instructions: The authorisation to Messrs Gore and Grimes, Solicitors from Charles J

Haughey, dated 18th of March, 2003 and annexed hereto.

And "Disclosed Encumbrance: The equitable mortgage by deposit of the land certificates in respect of the said lands created in favour of the Irish Nationwide Building Society securing a sum of ï¿½1.5 million.

"Whereas the taxpayer is deemed by this agreement to have incurred the expenditure set out in Schedule 1 to this agreement;

"Whereas such expenditure is deemed by this agreement to have been funded by equivalent payments to the taxpayer in the form of gifts under Section 5 of the Capital Acquisitions Tax Consolidation Act, 2003;

"Whereas the taxpayer acknowledges that he has outstanding tax liabilities arising from these payments, which include those specifically identified by the McCracken and Moriarty Tribunals as set out at Schedule 2 to this agreement;

"Whereas the payments set out at Schedule 2 which were identified by the McCracken Tribunal (indicated by way of asterisk in the said Schedule) were included in the Interim Settlement;

"Whereas agreement has been reached between the Taxpayer and the Revenue for the payment by the Taxpayer to the Revenue of a sum of ï¿½5 million, in addition to the payment on 30th August, 2000 of ï¿½1,281,718 on foot of the Interim Settlement, in full and final satisfaction of all outstanding tax, interest and penalties as arise under any tax head in relation to the payments which are deemed to

have funded the expenditure set out in Schedule 1.

"Whereas the Taxpayer and Maureen Haughey are the owners of the fee simple estate as tenants in common of that part of the lands at Kinsealy (the lands) being the lands more particularly set out on the map annexed hereto and thereon coloured red.

"Whereas the Taxpayer has agreed to meet the Revenue debt from the net proceeds of the sale of the said lands.

"Whereas the Taxpayer's solicitors have provided to Revenue a solicitor's undertaking to discharge the Taxpayer's Revenue debt from the net proceeds of sale of the said lands.

"Now this agreement witnesseth as follows:

Taxpayer and Revenue agree:-

(1) That the Taxpayer's outstanding liabilities for tax, interest and penalties to the date hereof in respect of the payments which are deemed to have funded the expenditure set out in Schedule 1 are to be settled by the payment of the sum of ï¿½5 million, in addition to the payment by the Taxpayer of ï¿½1,281,718, on 30 August, 2000 on foot of the Interim Settlement.

"2. That the settlement sum shall comprise: Tax, ï¿½2,470,000; interest, ï¿½2,470,000; penalties, ï¿½60,000; total: ï¿½5 million.

"3. That the settlement sum is deemed to include Income Tax in connection with the distributions arising from the use by the Taxpayer of assets owned by Larchfield

Securities.

"4. That separate and distinct from the terms of this settlement the Taxpayer has agreed Income Tax liabilities in the amount of ï¿½10,788.16 in respect of severance payments in 1992/93 and 1993/94 which shall be handled separately by the parties and not form part of the settlement sum."

"5. That the refund of Gift Tax due to the Taxpayer in the sum of ï¿½77,935.25 (ï¿½61,379) arising from the earlier gifting of land to the Taxpayer by his children in the context of the Interim Settlement, shall be used to meet the agreed Income Tax liabilities set out at clause 4 with the balance treated as a payment on account of the Taxpayers Revenue Debt.

"6. That the taxpayer accepts that pursuant to this agreement he is liable for the payment of this Revenue Debt and undertakes to discharge this debt in full at the earliest possible date, which shall be either upon the sale of the lands as outlined in red on the map attached to this agreement or on the second anniversary of the date of signing of this agreement, whichever is the earliest in time.

"7. The Taxpayer agrees to pay interest at the statutory rate of 0.0322 percent per day, or part of a day, on the tax element of the Revenue Debt from a date 6 months after the date of the signing of this agreement until the tax has been paid in full.

"8. The Taxpayer confirms that the encumbrances affecting the lands to be sold under this agreement are the disclosed items as set out at Schedule 3 herein and that his nominated solicitors, (Messrs Gore and Grimes) have irrevocable authority to effect a sale of the said lands on behalf of the Taxpayer and Mrs. Maureen Haughey as expeditiously as possible and the Revenue Debt and Accrued Interest (if any) thereon agreed herein shall be forthwith be fully discharged from the net proceeds of sale.

"9. The taxpayer pending the sale aforesaid, irrevocably agrees not to dispose of, mortgage, pledge, waste, in any way diminish the value of the said lands or allow the indebtedness the subject matter of the encumbrance to increase to such extent as would reduce the net proceeds from the sale aforesaid to a sum below the Taxpayer's Revenue Debt, including statutory interest on the tax element of that Debt, for the period commencing 6 months after the date of the signing of this agreement and ending on the second anniversary of the date of signing of this agreement.

"10. Subject to clauses 4, 11, 12 and 13 of this agreement, the Taxpayer and Revenue accept that this agreement; is in full and final settlement of all tax, interest and penalties as arise under any tax head in respect of all outstanding matters relating to the payments deemed by this agreement to have been received by him, including payments specifically identified by the Moriarty

and McCracken Tribunals as set out as in Schedule 2, and encompasses all matters as raised in the Revenue letter dated 4th May, 1999 relating to the financial affairs of the Taxpayer.

"11. While the Taxpayer does not accept that he owns or has access to certain bank account balances in Irish Intercontinental Bank Limited, the Taxpayer acknowledges and accepts that this agreement has no application to tax liabilities, if any, that may arise, under any tax head in respect of such balances in the event that he gains access to, or beneficial ownership of, such balances in the future.

"12. The Taxpayer accepts and agrees that this agreement is entered into by the Revenue on the basis of the Revenue's actual knowledge of the Taxpayer's affairs, as of the date of the signing of this agreement.

"13. The Taxpayer accepts that Revenue reserves the right to examine any further information relating to issues in respect of which Revenue are on actual notice or new issues which may come to the notice of the Revenue at any time in the future from whatever source, with a view to determining whether any additional tax liabilities arise.

"14. The Taxpayer hereby confirms to Revenue that he has not received any taxable gifts since 1st January, 1997 up to the date of the signing of this agreement.

"15. The Taxpayer accepts that the payments included in this agreement are aggregable gifts and will be treated as

such as appropriate, in determining Capital Acquisitions Tax liabilities that may arise in respect of any other taxable benefits taken by him.

"16. The Taxpayer hereby confirms to the Revenue that to the best of his knowledge and belief he has made full disclosure to the Revenue based on his state of knowledge as of the date of signing of this agreement.

"17. The Taxpayer hereby agrees that the conclusion of this agreement between the Taxpayer and Revenue may be made public by Revenue by way of a Press Release to be agreed with the Taxpayer.

"18. It is acknowledged by the parties that this agreement comprises the entire agreement between the parties in the matter of settlement of the Taxpayer's outstanding tax liabilities.

"19. The terms hereof are to be read as being independent of each other and in the event of any one term being for any reason unenforceable the others are not to be regarded by virtue of that fact alone as being unenforceable also."

And it's "Signed, sealed and delivered by the said Charles J. Haughey," and witnessed on behalf of the Revenue by Mr. McCabe, and also witnessed, I think, by Mr. Sherlock.

It is clear, therefore, from the terms of the agreement that the payment of ï¿½5 million by Mr. Haughey was not in full and final settlement of all of his potential tax liabilities. Rather, it was expressly stated to be a settlement made on the basis of the Revenue Commissioners'

then-actual knowledge of Mr. Haughey's financial affairs and the Revenue Commissioners' reserved their right to examine further information regarding Mr. Haughey's affairs with a view to determining whether any additional tax liability arose. In other words, the Revenue Commissioners were at liberty to continue their inquiries and, if appropriate, to seek to recover additional taxation from Mr. Haughey.

Now, on the same date, there was an agreed press release issued by the Revenue Commissioners in the following terms: It's just a short document, sir, and it's headed "Media Release by the Revenue - Agreement between Revenue and Mr. Charles Haughey."

"The following statement is made with the agreement of Mr. Charles J. Haughey:

"The Board of the Revenue Commissioners wish to announce that Mr. Haughey has agreed to pay ï¿½5 million to Revenue in settlement of outstanding tax liabilities. The settlement sum comprises Gift Tax of ï¿½2,470,000 and interest and penalties of ï¿½2,530,000. The settlement follows long and complex negotiations between Revenue officials and Mr. Haughey's professional advisors.

"The settlement and the terms and conditions governing payment have been recorded in a formal written agreement signed today."

"Ends 18/03/03

"Background Note: Under an interim settlement dated 3

April, 2000 Mr. Haughey paid the sum of ï¿½1,009,435 (ï¿½1,281,718) which included interest of 501,772, the equivalent of ï¿½637,119."

The Tribunal in inquiring in whether the Revenue Commissioners availed fully, properly or in a timely manner in exercising the powers available to them in collecting tax from Mr. Haughey, must do so in the context of the following considerations:

Firstly, the sum actually recovered by the Revenue Commissioners must be viewed in the light of Mr. Haughey's potential exposure to taxation as calculated by the Revenue Officials themselves. On their own calculations, which were appended to Mr. Gillanders' negotiating document, Mr. Haughey's maximum potential liability to Capital Acquisitions Tax, based on expenditures of ï¿½9.89 million, the equivalent of ï¿½12.558 million, was ï¿½11.011 million, being the equivalent of ï¿½13,981,000. Had these expenditures been assessed by the Revenue Commissioners as being equivalent to income, the liability would no doubt have been substantially higher as the top rates of Income Tax to which virtually all of Mr. Haughey's receipts would have been subject, were, throughout those years, well in excess of the fixed Capital Acquisitions Tax rate of 40 percent.

Secondly, in their negotiations with Mr. Haughey's agents, the Revenue Commissioners appeared to have accepted, at all times, that interest on Mr. Haughey's agreed liability

should be capped at 100 percent. While the Revenue Commissioners have informed the Tribunal that this is their invariable practice in computing interest on unpaid Capital Acquisitions Tax, it does not appear to the Tribunal that there was any obligation on the Revenue Commissioners to adopt that approach from the outset. It appears from Section 44.2 of the Capital Acquisitions Tax Act 1976, which provides for the postponement, remission and compounding of tax, that the power conferred on the Revenue Commissioners to remit the payment of interest in excess of 100 percent of the tax due is a discretionary power which may be exercised by the Revenue Commissioners if they think fit.

Whether this was an appropriate case to exercise that discretion, or indeed to apply what is described by the Revenue Commissioners as the invariable rule, is a matter which warrants inquiry by the Tribunal, particularly bearing in mind that the settlement related to gifts dating back to as early as 1997. My apologies, as early as 1977, that the receipt of these gifts had been shrouded in secrecy, but not one of these gifts over the 20-year period had been subject to a Gift Tax return, and that over that period, Mr. Haughey had the benefit of the funds received, including the benefit of the increase in the capital value of his assets and primarily, the capital value of his property at Kinsealy.

Thirdly, in their negotiations on 8th October, 2002 the

Revenue Commissioners, having negotiated down the core expenditure figure from ï¿½9.9 million to ï¿½6.9 million, the equivalent of ï¿½8.76 million - in other words, having reduced that core expenditure figure by ï¿½3 million, and in computing Mr. Haughey's potential tax liability having given him the benefit of interest capped at 100 percent, thereby producing a figure for liability to Capital Acquisition Tax and interest of ï¿½5.5 million, appeared to have agreed to discount that figure by a further ï¿½1.56 million; that is, by a further approximately 30 percent.

And finally, it appears that arising from the framework in which these negotiations were conducted, that is within the framework of Gift Tax, tax-related penalties did not arise and the only scope for penalties was a small penalty for failing to make Capital Acquisitions Tax returns. The Tribunal has been informed that after the settlement figure had been arrived at it was agreed that ï¿½60,000 would be allocated for penalties for failing to make Capital Acquisitions Tax returns. In the documents which have been made available to the Tribunal, this penalty is referred to as a voluntary penalty.

Apart altogether from the monetary advantage to Mr. Haughey, the further consequence of the limitation of penalties to ï¿½60,000, was that, according to the Revenue Commissioners, Mr. Haughey's case did not meet the conditions for publication in the normal list of tax defaulters. In this regard, the Tribunal has been informed

that unless penalties payable exceed 15 percent of the tax liability, a case does not qualify for publication.

Accordingly, although Mr. Haughey's overall liability to tax, interest and penalties was ï¿½5 million, which Mr. Frank Daly, the Chairman of the Revenue Commissioners, has informed the Tribunal was the single largest tax settlement with a Taxpayer to that date, Mr. Haughey's name did not appear within the quarterly list of tax defaulters published by the Revenue Commissioners.

I should add, sir, that the Tribunal understands that Capital Acquisitions Tax law has since been changed to provide for tax-geared penalties, even where no CAT return has been made.

It cannot, however, be doubted that the Revenue Commissioners, in collecting ï¿½5 million from Mr. Haughey in tax, collected a very substantial sum of money. The Revenue Commissioners would certainly have faced considerable difficulties in assessing Mr. Haughey to tax in respect of the funds which he had received in the years in question. In terms of assessing Mr. Haughey to Income Tax, the Revenue would have faced the difficulty under statute and case law of establishing a source "of profit or gains," which difficulty might well have been insurmountable.

Similarly, on assessments to Capital Acquisitions Tax the Revenue would have had to demonstrate the legal, technical requirements of a taxable gift under the Capital

Acquisitions Tax code. In other words, they would have had to demonstrate that such gifts were taken by Mr. Haughey from a source domiciled within the State when the gift was made or of property situate in the State at the date of each gift.

Mr. Gillanders has informed the Tribunal that it was clear from evidence heard by the Tribunal that many of the payments of which the Tribunal heard evidence were at least as complex in terms of convoluted money trails as the earlier McCracken payments. The Revenue Commissioners had already been met with an adverse determination by the Appeal Commissioners on the earlier Gift Tax assessments arising out of the Report of the McCracken Tribunal and, understandably, the Revenue Commissioners believed that the outcome of contested assessments in this case, or the outcome of appeals to the Courts, was far from certain.

As of the 18th of March, 2003, being the date of execution of the formal agreement between the Revenue Commissioners and Mr. Haughey, the inquiries which the Investigations Branch had made of Mr. Haughey and which were outstanding as of January 2002, were in part, addressed.

Firstly, a Statement of Affairs as of 31st July, 2001 which had been sought on 21st August, 2001 was furnished.

Mr. Treacy of the Investigations Branch has informed the Tribunal that he examined the Statement of Affairs and found that it did not disclose any information which would have required an adjustment to the settlement figure. As

to whether this Statement of Affairs provided actually complies with Section 909 of the Taxes Consolidation Act, 1997, is a question which the Tribunal will wish to pursue with the witnesses from whom it expects to hear evidence. All of the queries raised in the Statement were either replied to in the negative or were replied to by reference to four short notes appended to the statement.

And I think we just have a copy showing the front page of the Statement of Affairs and then the four notes that were appended to the back of it.

And that shows, sir, the front page of it in the official form, SA.1, in respect of Mr. Haughey, and the statement was sought as of the 31st of July, 2001, and you can see there, sir, the signature of Mr. Haughey and the date, which was the 18th of March, 2003. And I don't intend to put it all on the screen at the moment, sir, but it extends to three pages of close-typed questions on the Taxpayer's assets and liabilities and, as indicated, all of those were replied to in the negative, or alternatively, were replied to by reference to these four notes.

CHAIRMAN: Yes.

MS. O'BRIEN: "Form SA.1, Statement of Affairs at 31 July, 2001"

"Note 1: House and lands at Kinsealy, County Dublin, were acquired circa October '69 for a consideration of approximately ï¿½120,000. Monies were expended since then on improving the property. A portion of the lands was

subsequently sold circa 1970 to Roadstone Limited and the bulk of the lands were transferred to children circa 1990. The present holding, (jointly owned with Mrs. Maureen Haughey) comprises the house and approximately 30 acres.

Note 2:"

which I believe relates to borrowings and liabilities, sir.

"(a) Amount owing to Irish Nationwide Building Society at 31 July 2001; ï¿½529,635;

(b) amount on deposit with INBS, ï¿½356,956 - (Both (a) and (b) jointly with Mrs. Maureen Haughey)

(c) a liability of unknown legal fees and

(d) a liability of unknown outstanding taxes."

And Note 3, states "There is no detailed inventory in this regard. The contents of the house, much of which comprises memorabilia of all kinds, were accumulated over a long number of years. An estimate of original cost is ï¿½150,000 (jointly owned with Mrs. Maureen Haughey)."

And then note 4 I think relates to amounts due to the Taxpayer and it refers to a loan estimated at ï¿½263,000 is outstanding from Larchfield Securities.

And apart from answers in the negative, sir, those four notes appear to constitute the entire of the information disclosed in the Statement of Affairs that was produced on the 18th of March, 2003.

And then, as regards the second matter, sir, which had been outstanding, that was the forms 62.BD and 62.BSD, which

were the forms that the Taxpayer had been asked to circulate to banks, it appears that a large portion of these forms were returned duly completed and some of those which were outstanding were furnished in the following months, although it appears that forms in relation to Allied Irish Banks may still be outstanding.

And that, sir, completes the Opening Statement.

CHAIRMAN: Thank you very much indeed for that very full opening, Ms. O'Brien. We will adjourn for lunch and take up Mr. Gillanders' evidence at five past two, if that is convenient. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH

THE TRIBUNAL CONTINUED AFTER LUNCH AS FOLLOWS:

MR. NORMAN GILLANDERS, HAVING BEEN SWORN, WAS EXAMINED BY MR. COUGHLAN AS FOLLOWS:

CHAIRMAN: Thanks, Mr. Gillanders.

Q. MR. COUGHLAN: Mr. Gillanders, I think you prepared a statement or a memorandum for the assistance of the Tribunal in the giving of your evidence. I have it here in a book form with some of the documents which are attached to it. Would you prefer it from us here or do you have it, your own copy there?

A. Well, I just have my own copy of the statement.

Q. Well, if you prefer to work from your own copy at the moment, that is fine, or you can have it.

A. I will take the book.

Q. You will take the book.

(Book of Documents handed to witness.)

Now, what I intend doing is just taking you through your statement, referring to some of the documents, coming back, and maybe you can clarify a few matters for us, if that is all right.

Now, I think you have informed the Tribunal that you are an Assistant Secretary working in the office of the Revenue Commissioners, and between April 2001 and early 2004, you were in charge of the Capital Taxes Division. In this capacity, you dealt with the tax affairs of Mr. Charles J. Haughey. In particular, you were involved in the Gift Tax settlement concluded with Mr. Haughey on the 18th of March, 2003. You were the senior Revenue official in day-to-day charge of the case, is that right?

A. That's correct.

Q. I think you informed the Tribunal that at the time you became involved in the case, Revenue had reached an interim settlement on the tax affairs with Mr. Haughey; that settlement was confined to Gift Tax assessment made by Revenue on payments that had been identified in the McCracken Tribunal report. Revenue monitored the evidence emerging at this Tribunal, which indicated that further payments appear to have been made to Mr. Haughey from various sources. Until about the middle of 2001, Revenue's approach to the case was to continue with this monitoring process and to take action to secure any tax liabilities when all the relevant evidence had been heard and the

findings of the Tribunal became public. However, this approach began to change from about July 2001 for a number of reasons. Firstly, it became increasingly clear that the work of the Tribunal would continue for some time. Secondly, equally it was evident that the evidence relating to Mr. Haughey was largely completed before the Tribunal; and finally, this evidence sorry - this evidence had been collated by Revenue and indicated clearly that Mr. Haughey would have to face issues of further tax liability?

A. That's correct.

Q. You say that following a senior case level a case meeting, case with the Revenue Board and your legal advisors on the 30th of July, 2001, an intensive analysis of the case began. Legal opinion was sought on how best to proceed. In particular you began to examine the question of the precise legal liabilities to tax on the payments identified by the Tribunal. The principal concern here was whether the payments should be assessed to Income Tax or to Gift Tax under the Capital Acquisitions Tax acts. In addition, it was agreed at the July case meeting that Investigation Branch should seek an up-to-date Statement of Affairs from the taxpayer and his spouse?

A. That was the position, yes.

Q. Yes. You have informed the Tribunal that on the 21st August, 2001, Revenue's request for an up-to-date Statement of Affairs as of the 31st of July, 2001, were

hand-delivered to Mr. Haughey's home. Copies of these requests also went to Mr. Haughey's agents. The agents replied, indicating that their client was in poor health and seeking a postponement of the completion of the statement until the Tribunal had reported. You, that is Revenue, did not agree to this, and an engagement with Mr. Haughey's agents began through correspondence, focused, initially, on the Statement of Affairs. In January 2001, Mr. Haughey's agents sought a meeting with Revenue 2002, I beg your pardon in January 2002 Mr. Haughey's agents sought a meeting with Revenue to discuss the particular difficulties relating to the Statement of Affairs. You said that the Tribunal has received copies of all the relevant papers and Mr. Stephen Treacy's statement deals with these matters in more detail.

A. Correct.

Q. I think there has been Ms. O'Brien opened this particular document, the minute of this particular meeting this morning, the 2002 one. I will come back to it in due course if that is all right with you?

A. OK.

Q. Now, just as we are going along, to clarify a few matters, because this is for the benefit of the public. The position that you were in at this stage is that the McCracken Tribunal had reported, isn't that correct?

A. Yes.

Q. You had dealt with Mr. Haughey in relation to tax which you

believed was due in respect of disclosures made at that Tribunal but you had gone to the Appeals Commissioners and at that stage you had been unsuccessful before the Appeals Commissioners, isn't that correct?

A. That's correct.

Q. The next step for you would have been to take the matter to the court, isn't that right?

A. Yes.

Q. You had looked at the payments as disclosed in the McCracken Tribunal, you were monitoring what was going on at this Tribunal and further disclosures were taking place, isn't that right?

A. That's correct.

Q. You conducted an analysis of matters to determine what exactly was happening, what were these payments; were they income, were they gifts, or were they gains or were they anything. That was what you were trying to determine?

A. That part of analysing whether they were income or gifts, would have begun around then but the first analysis that we did, and it would have been Mr. McCabe and Mr. Treacy who did this, was simply to monitor the amounts that were emerging at the Tribunal

Q. Yes.

A. to try to determine what periods of time these monies were received

Q. Right.

A. or spent by Mr. Haughey

Q. Yes.

A. and put together a schedule

Q. Yes.

A. comprehending all the expenditure and receipts that passed through Mr. Haughey's hands.

Q. Yes.

A. Insofar as we could determine it.

Q. Yes. So the first thing is you wanted to identify everything?

A. Yes.

Q. And secondly, try and determine what it was?

A. Yes, and then allocate it into year of receipt or expenditure, insofar as we could.

Q. And you were also whilst you were doing all of this, you were taking legal advice in relation to it, also, isn't that correct?

A. Yes, yes. We then began, I think somewhat later in 2001, to undertake a serious analysis of the taxing options that were before us, in particular whether these amounts were amenable to taxation under CAT law or under Income Tax law. That was a matter to be determined by the facts of the case insofar as we could determine them.

Q. Yes. Now, just to try and explain from the public's point of view here.

A. Yes.

Q. Some of these matters may seem like common sense to an ordinary member of the public when they hear something

happens at a Tribunal, that money has been paid or money has been received, and they say, 'Well, why can't we just collect the tax on it?' Could you just, without going into any great detail, just explain that tax law is determined by statute and case law, isn't that right?

A. That's correct.

Q. On occasions, what appears to be common sense may not necessarily be the true state of the tax law at the time, isn't that right?

A. That is correct, yes. Tax law is extremely detailed.

Q. Yes.

A. Circumstances are described in tax law which render monies received by a person amenable to tax under very specific headings.

Q. Yes.

A. There are numbers of, if you like, sources of income outlined in the Taxes Consolidation Act. There are conditions attached to payments that characterise them as income.

Q. Yes.

A. And then there is a separate set of conditions set out in the Capital Acquisitions Tax Act which delineate, for tax purposes, the character of a gift, what is a gift for tax purposes.

Q. Yes.

A. For Income Tax, as I set out in my statement, the determining factor is that there must be a source of

income. That, in case law - and we researched case law in Ireland and in the UK going back to the 1920s - in case law, that requires that there is a source of income; in other words, that the income arises from the carrying out of a trade or profession, the rendering of a professional service or the receipt of income from lettings and investments.

Q. Yes.

A. There is a recent addition to that in Section 58 of the Taxes Consolidation Act which refers to miscellaneous income. Miscellaneous income is income from a source that is unknown but where it's clear to the inspector that such a source exists.

Q. Yes.

A. So those are the so to be regarded as income for Income Tax purposes, the monies received by a person must fall into one of the schedules of the Income Tax Act or be regarded as miscellaneous income under Section 58.

Q. I just want to, again, so that I can follow it, I suppose

A. Yes.

Q. When you use the term "source", and you have outlined the carry-on of a trade, profession, provision of service, and then the receipts of rents or other income

A. Yes.

Q. 'Source' really means that it must pertain to a job of some type

A. Correct, yes.

Q. Or what can be designated or defined as being that?

A. That's correct, yes. And there are clear, just to add, I suppose, there are clear judgements in the Irish and UK courts

Q. Yes.

A. which say that income derives from a source and that anything that isn't earned, in effect, is not income.

Q. Yes.

A. We had researched these judgements, we had analysed them in a very long memorandum which teased out the implications of Irish and UK case law for the monies received, for taxation of the monies received by Mr. Haughey.

Q. Yes.

A. That was a very thorough analysis. We then presented that analysis to our own legal counsel.

Q. Yes.

A. And we analysed, then, the opinions we got from counsel in the light of our own view of the case.

Q. Yes.

A. And in the end, I think it was around March in 2002, we got an absolutely unequivocal legal advice from our own senior counsel to the effect that if the monies received by Mr. Haughey weren't amenable to Gift Tax, then they weren't amenable to taxation at all.

Q. At all. That is the point I want to get to.

A. Yes.

Q. And you yourself as experts in the field of taxation and tax law, did you have any reason to disagree with that opinion that was received?

A. No. We had conducted an analysis, as I said in, late 2001, in our Technical Services Unit in the Chief Inspector's Office, and that analysis, I think, tended towards that conclusion.

Q. Yes.

A. However reluctantly on the part of the

Q. Yes, I understand that, but you found yourself in the position where if the monies which had been identified in the McCracken Tribunal and at this Tribunal were not amenable to Capital Acquisition Tax

A. Yes.

Q. they probably wouldn't have been, on the advice you received, amenable to any taxation at all?

A. All I would add to that was that if the word 'probably' did not appear in counsel's advice.

Q. 'Would not be'?

A. 'Would not be'.

Q. 'Would not be'.

A. Yes. So there is no ambiguity there.

Q. Again so the public can understand, this is because one has to read the statutes very technically and follow the case law, which, again, is very technical and may not always appear to follow what the members of the public might believe to be common sense in relation to it?

A. That's correct. To the public, the view might be that Mr. Haughey received monies and should pay tax on them

Q. and why can't you

A. and from our point of view from our point of view, and indeed from the Tribunal's point of view, it's not that simple.

Q. Yes. Now, if I go to paragraph 6 now. You said that in early 2002 - this is all the matters, now, of your analysis of were coming to a head, and you attended a senior-level case meeting on the 11th of February, 2002. Those present included the Revenue Board, your legal counsel and other senior Revenue officials.

"This meeting decided to proceed on two fronts;

a) First, we would agree to meet the taxpayer's agents;

b) Second, we would begin a process of preparing tax assessments in respect of the payments to Mr. Haughey revealed at the Tribunal."

You then say that there was a further meeting of this group on the 15th of March, where it's confirmed that the best way of proceeding with the case was to enter into discussions with the taxpayer through his agents with a view to settlement. There was further analysis and discussions of the most appropriate legal approach on settlement, Income Tax or CAT?

A. Correct.

Q. That is Income Tax or Gift Tax, isn't that what we are talking about here?

A. Correct, yes.

Q. And you said that prior to the first meeting with agents - that is Mr. Haughey's agents - the senior Revenue team met with counsel on the 11th April, 2002. At that meeting you finalised your approach to the case.

a) You had tried to reach a negotiated settlement under the Capital Acquisitions Tax Code.

b) You noted that it would be difficult to make any credible assessments to Income Tax under the Taxes Consolidation Act, 1997, principally because Income Tax arises under statute and case law from a "source" of profit or gains. Income Tax, therefore, must stem from an activity that can be labelled as such a source. Your own analysis, which was very extensive, had reached this view and now unequivocal advice from your own counsel strongly backed your conclusion.

c) You would begin to prepare detailed Capital Acquisition Tax calculations covering all the Tribunal's payments. These calculations would inform your negotiating position. They would also form the basis for formal tax assessment if the negotiations failed.

d) You noted that there were possible prosecution options open to Revenue, prosecution for failure to complete the Statement of Affairs and prosecution for a failure to file CAT returns in respect of gifts received.

You then say that the meeting was well aware that of some difficulties in your position in the event of contested

assessments to CAT. Revenue had lost an appeal under the CAT code on the payment revealed by the McCracken Tribunal. The detailed investigations and research that was carried out in preparation for the Circuit Court rehearing of that appeal indicated that the evidential burden on Revenue in bringing the taxpayer within the charge to tax would be significant and the evidence extremely complex. For assessments to succeed in relation to the Moriarty payments, they would have to demonstrate legal requirements of a taxable gift under the CAT Acts. The key requirements was that there should be a gift (a) taken from a disponer domiciled in the State when the gift was made or (b) of property situated in the State at the date of the gift where the disponer was not State-domiciled.

So if I just briefly pause there and you can explain, so the public can understand the difficulty in relation to this Gift Tax

A. Yes, yes.

Q. aspect, the two requirements that were necessary?

A. Well, the Gift Tax legislation specifies that a gift has to be a taxable gift, has to come from a known disponer

Q. Yes.

A. whose home is in the State.

Q. Yes.

A. Or it can be of property situated in the State at the time of the gift when the disponer was not normally living in the State.

Q. Yes.

A. Now, in other words, you needed a disponer, in other words a giver of the gift.

Q. A giver of the gift domiciled in the State?

A. You need to know you needed to know the person's domicile.

Q. Yes.

A. You needed to know the date of the gift and, depending on the circumstances, where the property was situated at the time of the gift.

Q. Yes.

A. So given the obscure, I suppose, money trails that had been revealed at the Tribunal hearings, it was clear enough to me that demonstrating those conditions of taxability would not be an easy task.

Q. Yes.

A. And would require an extreme amount of preparation.

Q. Yes.

A. And furthermore, I suppose, that our prospects of success, if the if the case was settled by litigation, appeal and litigation, would be limited to a minority of the payments revealed by the Tribunal

Q. Yes. In other words, you had to assess

A. where we had a reasonable prospect of demonstrating the conditions of taxability.

Q. You had to assess the risk of going to court?

A. Yes, yes, very much so.

Q. And you understood that there was a risk?

A. Oh, there was clearly a risk; in fact, there had been a graphic demonstration of the risk in the McCracken hearing where we lost an appeal.

Q. Yes.

A. And the assessments that we had raised were set at zero by the Appeal Commissioners.

Q. Yes.

A. So there had been

Q. It was against that background that you were

A. Very much so, yes, yes.

Q. Yes. Now, if I may continue. You said that it was clear from the Tribunal's evidence that many of the payments involved were at least as complex in terms of convoluted and complex money trails as the earlier McCracken payments.

A. Mm-hmm.

Q. You said that this meant that the taxing conditions would be very hard to establish for most of the payments to Mr. Haughey if the case went on appeal, or to the courts following a lost appeal. It was against this background that negotiations began with Mr. Haughey's agents on the 29th of April, 2002.

Now, I think you then say that the Tribunal has the minutes of the meetings that took place between April and July of 2002, and I will open those in a few moments and run through them with you.

A. OK.

Q. You said that Revenue's approach was to impress upon the agents the seriousness of their client's tax position and the need to take steps to negotiate a settlement. To speed up the agent's deliberations you gave them a copy of your digest of the receipts and expenditures that had passed through Mr. Haughey's hands compiled by Revenue from various sources, including the Moriarty Tribunal. Evidence - sorry - the Moriarty Tribunal evidence. You say on the 6th of September, 2002, you met, at his request, with Mr. Des Peelo, one of Mr. Haughey's agents, and discussed an approach to settling the case. Mr. Peelo indicated that his client was prepared to settle the case for ï¿½2 million, and whilst you indicated to him that this figure was unlikely to be acceptable, you agreed that you did have a basis for negotiations. You subsequently sent Mr. Peelo a revised expenditure schedule for his client showing amounts of almost ï¿½10 million?

A. Correct.

Q. Now, you say on the 20th of September, 2002, you sent a document called "Negotiation Document for Haughey Case" to the Revenue senior managers involved in the case, including the members of the Board. It was discussed at a case meeting on the 23rd of September. The document set out various possible settlement outcomes. On assumptions that were entirely favourable to Revenue, it could be argued that some ï¿½9.9 million in money spent by Mr. Haughey would become liable to CAT. However, that figure, and the

associated tax calculations, clearly rested on some arguable, and you say "not to say heroic" assumptions. These were: (a) That you had data on Mr. Haughey's maximum potential expenditure from 1977 and between 1977 and 1997. You assumed that the expenditure incurred in each year was financed by a corresponding receipt of that amount on the 1st of January of each year, and you assumed that all these receipts were gifts within the meaning of the CAT Acts and all of them had been received from strangers; (d) That these calculations suggested a hypothetical settlement figure of about ï¿½6.5 million, using the normal method of capping interest of one percent of CAT liability and giving credit for the earlier McCracken settlement. You never regarded this figure as achievable; rather, it was a figure to demonstrate an outside order of magnitude, with a more realistic figure only emerging when core expenditure figures were negotiated with the tax agents. And (e), these potential problems were outlined in the paper.

I think you have included that paper, isn't that right, the negotiation document for the

A. Yes, I did.

Q. And perhaps we might just run through it, because it probably shows clearly what the thinking was, or the line of thinking was at the time?

A. OK.

Q. I think this is the document, you have it. It's in the

book, it's 1.1. I think we will just run through it.

"1. The negotiations were will start somewhere around the receipts and Expenditure Schedule we gave to Haughey's agents as an indicator of the order of magnitude. That figure came to ï¿½9.04 million. Our internal workings now indicate an 'outside' figure of some ï¿½9.9m (the primary difference being our inclusion of ï¿½0.75m for estimated expenditure on the 'bill paying' service in the period 1980 - 1984 which was shown as 'unknown' in the agent's schedule). Estimated Gift Tax and interest calculations on this figure are set out in Table A of the Appendix. In this regard, the basis for and assumptions underpinning, the calculations should be noted."

And then you say, "2. A more 'conservative' view of the expenditure position would put the figure at about ï¿½5.7m. The reduction reflects in the main possible double counting and the exclusion of receipts where the link to CJH may be more tenuous. The estimated Gift Tax and interest calculations on this lower figure are set out in Table B of the Appendix.

"3. A 'truer' position probably lies somewhere between these two extremes. In that regard we are currently undertaking a review of the items making up the gap (i.e. ï¿½9.9 million - ï¿½5.7 million), with a view to taking a view as to whether, 'on the balance of probabilities', they should form part of the 'baseline' figure.

"4. We propose to begin negotiations at the top line

figure and work our way down to seeking tax on the final 'baseline' figure - which will only emerge when the review exercise is complete.

"5. If we assume for the purpose of this paper that the baseline represents the 'conservative' expenditure figure of ï¿½5.7 million then a possible settlement scenario could unfold as follows.

6. "At the outset we would have to concede that the value of the McCracken settlement - ï¿½1.370 million in gifts resulting in tax plus 100 percent interest of ï¿½1.009 million.

"7. That leaves the true amount of 'gifts' to be taxed at ï¿½4.305 million, giving rise to tax plus full interest of ï¿½5.373 million. If interest were capped at 100 percent (same as the last time) we would then be looking for ï¿½3.183 million. (Note, of this amount, ï¿½1.283 million would be in respect of specific receipts identified by Moriarty and which are reflected in the expenditure figure of ï¿½5.7 million. To this figure of ï¿½3.183 million, however, we would have to add Gift Tax and interest of ï¿½0.628 million arising on certain other gifts identified by Moriarty but which are not reflected in the ï¿½5.7 million expenditure figure. Our first target settlement figure should be the target of ï¿½3.811 million.

"8. They have offered ï¿½2 million (the basis of which has not been indicated).

"9. What is our absolute minimum figure in these

negotiations? (Assuming we can't get to ï¿½3.811 million)?
Tax and interest (capped at 100 percent) on the amount we are reasonably sure we could assess, appeal and win comes to ï¿½1.482 million. We must also secure the tax on the amount we would have more difficulty with - the expenditures of ï¿½2.573 million where the source is essentially unknown. That would be tax of ï¿½0.956 million. We should look for as much interest as possible - if we get 50 percent interest, the tax plus interest on this sum would be ï¿½1.434 million. We should also seek tax and interest on the IIB Bank balances, which would come to an estimated ï¿½0.429 million.

"10. A possible settlement would then consist of;

Tax plus 100 percent interest - source of funds known - ï¿½1.482 million;

Tax plus 50 percent interest - funds from unknown sources - ï¿½1.434 million;

Tax plus 100 percent interest - IIB Bank Balances - ï¿½0.429 million;

Total - ï¿½3.344 million.

"11. That suggests our absolute bottom-line figure should be, say, in the range of ï¿½3.25 million to ï¿½3.5 million.

"12. There are alternative ways of reaching this figure but I propose that the negotiating team can agree to recommend a settlement to the Revenue Board provided it is ï¿½3.25 million or more. If the opposition do not rise to ï¿½3.25 million we tell them that we will seek direction from the

Revenue Board but will not recommend settlement.

"13. Other issues include:

- The need to finalise our legal agreement.

- Prosecution (in that regard should we seek to see medical certificate?) Also, papers are with the Revenue Solicitors re failure to deliver Statement of Affairs.

- Publicity - Do we want it? Do they?

- Should we seek penalties. (Penalties were excluded from the last settlement with Mr. Haughey on legal advice.)

- We need to reconcile the figures we are using with a similar Tribunal list coming to ï¿½8.6 million.

- CGT or IT issues - the settlement must include all our understanding issues with this man.

- Should we seek a composite CAT return 'for the record'.

- Current tax position - all Mr. Haughey's tax affairs must be brought up to date as part of this. We will need to confirm that there are no gifts since 1997.

- Should we seek Statement of Affairs.

- CAT/CGT arising on any transfer of land to meet the settlement.

"14. Summary - Approaching this as suggested above means pointing out that our starting point is to explore the tax implications of the full amount of ï¿½9.9 million. However, there is a basis for excluding some of the specific items making up this total. We are prepared to negotiate on this. If all these items are excluded, ï¿½6.537 million is tax plus full interest arising. Of course, we give credit

for the McCracken settlement. That leaves tax plus full interest of 5.373 million. When pressed, we agreed to come back to tax plus 100 percent interest as per the previous settlement. That gives us ï¿½3.183 million. To this we should add the Gift Tax and interest arising outside of the above - that is, the items at point 6 of Table B, totalling ï¿½0.628 million. This gives an overall figure of ï¿½3.881 million - this should be our target. If it is not possible we can consider recommending to the Board any figure from ï¿½3.25 million up. Anything lest than ï¿½3.25 million, we suspend the negotiations on the amount, pending consultation by the Revenue Board. We can continue talking about the other issues."

And that is that was prepared by you as being the bringing-together of the thinking and working out a negotiating position to deal with Mr. Haughey's tax affairs?

A. I suppose, Mr. Coughlan, it was our attempt to define a bottom line for negotiations.

Q. Yes, yes. Now, again, it's easier to pick this up as we go along so that the public, again, can understand what is going on here.

A. That is fine.

Q. I suppose one can look at the top figure that you looked at in relation to the expenditure, 9.04 million, and taking a realistic approach to that, you were taking into account there sources of funds known, sources of funds unknown,

balances in banks which you might have had difficulty with, particularly the IIB position?

A. Yes.

Q. That is that is a kind of a what you were considering at that time?

A. In fact, that figure was, I suppose, even worse than that from Mr. Haughey's point of view

Q. Yes.

A. in that, by and large, it had been arrived at by taking all of the things you have referred to

Q. Yes.

A. but also by looking at his expenditure patterns

Q. Yes.

A. to the extent that we have been able to determine them. So we added up, basically, all the money that passed through Mr. Haughey's hands in the forms of either receipts or expenditure.

Q. Yes.

A. So we added apples and oranges, if you like.

Q. Yes.

A. And we simply netted off some amounts where it was clear that what came in, on one hand, funded expenditure.

Q. Yes, I understand that.

A. Yes. So in other words, it was apart from the obvious cases of double counting, which we had excluded, it was everything that had passed through Mr. Haughey's hands, and you could say that our assumption in arriving at that

top-line figure for expenditure, was that what he got in funded expenditure that we didn't know about.

Q. Yes.

A. And what he spent was funded by gifts that we didn't know about.

Q. Yes.

A. So it was an absolutely worse case scenario for Mr. Haughey and it was intended to frame the negotiations so that we would start at a high figure and work down.

Q. Yes.

A. Rather than I never believed, for one moment, that tax on that would be tax and interest would be achievable.

Q. Yes, and I understand that

A. Given that Mr. Haughey was advised by intelligent people

Q. Yes.

A. who dealt with us already on the McCracken settlement

Q. Yes.

A. they'd see through this fairly quickly. But nevertheless, you have to have, I suppose

Q. A starting position?

A. you have to have a choreography of compromise and you have to lead people to where you really want to go, and that was the purpose of starting at such a high figure.

Q. Yes. Now and I understand, and I think the public will understand that. You then began to analyse the situation and began to look at what you understood to be a more realistic position?

A. Yes, yes.

Q. And you were setting out guidelines for negotiations whereby if you achieved a certain position, you would be comfortable recommending it to the Board, but you still had even a better position that you were trying to achieve than the minimum position of ï¿½3.25 million that you were prepared to recommend to the board, isn't that right?

A. Yes, this was in a context, I suppose, where the agents had offered 2 million.

Q. Yes.

A. On a basis that was unacceptable

Q. Without telling you, yes.

A. The gifts or the amounts on which we are confident we could proceed through litigation and appeal, would have given us maybe a little bit more than ï¿½2 million.

Q. Mm-hmm.

A. So that was the I suppose the doomsday scenario for us was that you would have to the negotiations would break down.

Q. Yes.

A. And you would have to fight for a sum that would probably come out as just over 2, 2 million, two-and-a-quarter million pounds.

Q. Right, OK. Now, if you go to paragraph number 7, I just because this is something I think that you will have to explain to the public. Do you see paragraph number 7? You say "That leaves the true amount of 'gifts' to be taxed at

ï¿½4.305 million, giving rise to tax plus full interest of ï¿½5.373 million." Do you see that?

A. I do, yes, yes.

Q. Could you just explain what you mean or what the Revenue means by "full interest"?

A. OK. That is applying interest from the date the payments were made, insofar as we could determine it, right up to the present day, without any cap.

Q. That is interest in from if it was back in 1977, you brought it the whole way up

A. All the way up.

Q. for or each year?

A. That's correct.

Q. So that is full interest?

A. Yes.

Q. Now, as it happened in McCracken and as was being developed here in this negotiation, in negotiating document, the concept of capping interest at 100 percent of the tax liability, is introduced to arrive at a figure, isn't that right?

A. Correct.

Q. Can you just explain that again so that the public again might wonder why you wouldn't be looking for full interest and why it might be capped at 100 percent?

A. Well, I suppose there was a reason grounded in our own legislation, as was brought out this morning in the Opening Statement

Q. Yes.

A. that under, I think it is, Section 44(2) of the CAT Act, Revenue are allowed to cap interest at 100 percent.

Q. Yes.

A. At the time of writing that document, and indeed up until very recently, the last few days, my understanding was that that cap had invariably been applied in CAT settlements. I have since become aware of one case where that didn't happen.

Q. I see.

A. So this was custom and practice going back to the time of Estate Duty and now legislated for in Section 44(2). So that was the, if you like, the legal framework. The reality, too, that had to be borne in mind, was that the interest bill was going to make up a substantial part of any settlement.

Q. Yes.

A. We had to be aware, I suppose, that the uncapped interest would have the potential, say, in the final settlement, to double the interest figure.

Q. Yes.

A. And whether any deal could be done on that basis was a very open question. My own feeling was that the agents would simply have left the negotiating table.

Q. That is what I am trying to I am trying to, again, understand or tease it out so that the public understand what was behind the

A. Yes. There was a primary reality here that all CAT settlements, up to then, had been based on a 100 percent cap. And it would have been difficult, especially since the previous settlement also had a 100 percent cap, to get anything else agreed with the agents.

Q. Oh, and I understand that, I don't think anyone would have any difficulty understanding. But just to tease it out; the legislation or the section you referred to allows for a discretion in the Revenue to cap the interest in relation to CAT, isn't that right?

A. That's right, yes.

Q. And I suppose the question that might be asked is that why would you exercise the discretion or how would you exercise the discretion in a case where, over a very long period of time, gifts, payments or gifts, were being made covertly or in an I think you used the expression "convoluted pattern of payment", making things difficult?

A. The circumstances were well summed up in the Opening Statement this morning, yes.

Q. Yes. So and would that be a situation where you would say that one might the Revenue might invariably exercise its discretion to cap, or there is another aspect to this; there had already been a negotiation, hadn't there, in relation to McCracken

A. Correct, yes.

Q. where the cap had come from 100 percent or where it had been capped at 100 percent

A. Yes, there is the reality that this precedent was very strongly established and was applied invariably

Q. Yes.

A. up to that point.

Q. Yes.

A. Why should we in a way, we are, I suppose, bound by our own approach of fairness and evenhandedness.

Q. Yes.

A. That this approach had been applied invariably; Mr. Haughey had benefited from it in the recent past.

Q. Yes.

A. It would be hard to devise a rationale for departing from that precedent.

Q. Yes.

A. And then there was the pragmatic reality that uncapped interest was going to make a settlement very hard to achieve.

Q. Sorry, that is the aspect which is perfectly understandable

A. I have no problems conceding that, yes.

Q. pragmatic. But do you accept that or are there were there any discussions or guidelines within the Revenue as to how that discretion might have been exercised in what might be viewed as an extraordinary situation?

A. Not that I am aware of, no. But, as I say, the cap had been invariably applied, and I suppose consistency and evenhandedness is part of the way we approached the

administration of the tax system.

Q. Well, would I be correct in perhaps trying to understand it this way: The practice, as you understood it, had been to cap interest at 100 percent of the tax liability?

A. The practice, as I understood it, and has had invariably happened.

Q. And as has happened?

A. Yes.

Q. There was a discretion to enable the Revenue to do that by virtue of the section of the Act which you had referred to?

A. Yes, correct.

Q. There had been no, as far as you know, discussion or guidelines discussed within the Revenue as to how or the how or in what circumstances that discretion might be exercised?

A. No, that's correct. The only, if you like, time I have seen this dealt with in writing is in a relatively recent letter from one of the leading CAT practitioners in the country where he complains that in a particular case we have departed from that.

Q. I see.

A. So practitioners in the area of CAT are aware of this practice, and regard it regard it as a standard feature of our administration of that tax.

Q. Right. But leaving all of that aside, over and above there was a very pragmatic reason you were negotiating a settlement: Mr. Haughey had had the benefit of that

particular cap in relation to the McCracken payment - his agents were aware of this and they were dealing it; you were dealing with the same people?

A. Yes. And to be honest, I think there was we were in a situation where compromise was called for.

Q. Oh, yes, yes.

A. And I saw it as our duty to, I suppose, convert the evidence that had appeared before this Tribunal into money in the Exchequer.

Q. Yes.

A. And that required some compromise on our part and some compromise on the part of the taxpayer. I would have seen the application of uncapped interest as a deal-breaker. And we had to be pragmatic, and I admit that.

Q. Very understandable.

A. Yes.

Q. I just have to tease this out with you in case there is criticism that, in the extraordinary circumstances of how monies were received or expended here, that the exercise of a discretion like that might not have been appropriate, but the deal-breaking aspect of the matter was a very important issue as well, isn't that right?

A. Yes, yes.

Q. We are not sure, and perhaps you can help us here; if it had been a negotiation under the Income Tax code, would a capping of interest at 100 percent arise? You may or may not know off the top of your head?

A. Well, can I answer that and perhaps elaborate a bit?

Q. Yes, indeed, please do.

A. There would be no cap generally in Income Tax on interest. The interest clock runs.

Q. Always runs?

A. Runs, yes. But I think it's important, as well, that we recognise that Revenue can't select which tax to apply to an individual.

Q. I understand that.

A. And that once we had analysed the issue out, as I mentioned earlier on, once we had decided that we had no option but to go for taxation under the CAT system, then the normal provisions of the CAT system as to interest and the statutory provisions as to publication came into play, and we had no discretion in the matter.

Q. Yes. Sorry, you did have a discretion

A. We did have a discretion, you're correct

Q. in relation to interest but you had a pragmatic reason for applying the invariable practice as you understood it at the time?

A. Yes, that's correct.

Q. You can perhaps understand that the ordinary taxpayer might wonder why the discretion would be exercised in a particular way in respect of what the ordinary taxpayer might consider again to be unusual payments. But again, I am just trying to draw it out that there was this overriding pragmatic reason to achieve a settlement?

A. Yes, I think

Q. Although consideration was not given?

A. I understand why people would ask this question, but I have no trouble with you asking it.

Q. Yes.

A. I suppose the we tried to project a strong position in the negotiations.

Q. Yes.

A. But we are conscious, as you can see from my own paper, my witness statement and the background papers

Q. Yes.

A. we were acutely aware of the weakness of our own positions

Q. Oh, yes.

A. if this went to litigation. And all of that would have covered our approach to settling the case.

Q. The reason I am teasing this out is the Sole Member has to deal with recommendations, as well, in relation to matters.

A. I have no problem at all with you exploring this, Mr. Coughlan.

Q. Now, I think if we now go back to your actual statement again, please?

A. OK.

Q. And I think it's paragraph number 13, I think, isn't that right?

A. It is.

Q. Yes. I think you say that looking at more realistic

calculations from the major 9-point-odd million pounds that you have been talking about, you felt that settlement should come out at somewhere between 3.25 million and 3.8 million. And it was clear from negotiation document that a settlement on the basis of payment which you felt would demonstrate as being gifts under the tax, might, might amount to as little as 1.5 million. That is ones where you could say that you had good evidence to establish the source, isn't that right?

A. Yes, yes.

Q. You say this is what you faced in a worst case scenario, and you were forced had you been forced down the road of contested assessments, on the assumption that the Appeals Commissioners and the court upheld those assessments, which is by no means certain. The negotiating position negotiating position outlined in the document was accepted at a meeting on the 23rd of September, 2002. I think you then said that you met with Mr. Des Peelo and Mr. Paul Moore, acting for Mr. Haughey, on the 8th of October. The Tribunal has the minute of the meeting. You spoke to Mr. Moore and Mr. Peelo before the actual negotiations began and set out your intended approach. You said that you needed to negotiate on the facts of the case as set out in the schedule you had made available to them. You will be fair and rationale when it came to double counting of amounts apparently received by Mr. Haughey. You said that if negotiations failed, you would begin a process of

formulating and issuing assessments to CAT. Revenue had no choice here. You could not ignore the Tribunal's evidence, no matter however protracted and difficult the ensuing litigation might prove. However, you said that you hoped for a negotiated outcome that would produce an agreed figure. You would then move on to work out a legal agreement on which the settlement would be secured. And I think Ms. O'Brien opened the particular minute. It shows that you had a word beforehand. Then there was fairly a day-long

A. That's correct.

Q. negotiation took place. I think you joined the meeting at the very end again, isn't that right?

A. That was it.

Q. I am not going to open that minute. You weren't there; I think Mr. McCabe can deal with that when he comes to give his evidence.

A. That is all right.

Q. You say that the negotiations continued all day. You joined the discussions to nail down a settlement figure at a point when a maximum of 3.6 million was on the table. Following some discussions, you agreed to put an offer of 3.85 million to the Revenue Board after the meeting. Having discussed it with your superiors, you contacted Mr. Peelo by phone and indicated that the Board would be prepared to settle the case for an increased sum of ï¿½3.94 million, that is ï¿½5 million, subject to the necessary legal

agreement and securities being put in place?

A. Yes.

Q. You say that the settlement sum was allocated between tax and interest by reference to the CAT settlement norms. Interest is invariably capped at 100 percent of the tax. There is a statutory provision for this and the McCracken settlement had included this feature. A small amount was subsequently allocated to penalties, ï¿½60,000. That probably should be pounds. This was calculated by reference to the fixed monetary penalties for failing to file CAT returns over a protracted period. Revenue examined the question of whether it was possible to publish Mr. Haughey in the normal list of tax defaulters, and there was no statutory basis for so doing.
Can you just again that is a kind of an issue that the public might wonder about. Can you enlighten us?

A. OK. On the publication matter?

Q. Yes.

A. Yes. Before alluding to that, could I just go back to mention something that came up this morning?

Q. Yes, please do.

A. Ms. O'Brien, in her statement, mentioned that we'd come down from a figure of 5.5 million. We were looking for 5.5 million at that point in the negotiations where I joined.

Q. Mm-hmm.

A. And the agents were offering some 3.6 and it came down from 5.5 million to, in the end, 3.85. In fact, what happened

at that point was that the negotiations switched from a line-by-line analysis of the amounts where we had conceded the double counting of the McCracken amounts in terms of Mr. Haughey's expenditure.

Q. Mm-hmm.

A. But at 5.5 million, we had not yet netted out the corresponding tax from the McCracken settlement.

Q. Right.

A. So in a way, we had money in our back pocket to come down and would have come down to the tune of the tax settlement already reached. In effect, what we were trying to do was tax all over again, ab initio, on a clean base, Mr. Haughey's expenditure from 1977 to 1997.

Q. Yes.

A. But, of course, a part of that had already been taxed under the McCracken settlement.

Q. Yes.

A. And though we had excluded the amount from the base in this line-by-line exercise that you saw in the minutes this morning

Q. Yes.

A. we hadn't yet taken off the McCracken tax amount.

Q. So he was entitled to a credit for that?

A. He certainly was, and had they asked for it, we would have given it, and we gave it to them as part of a horse trade.

Q. Yes.

A. So that explains a large part of our willingness to come

down, and I think it's important, for the record, that people would understand that.

Q. Very good, I understand, I understand.

A. OK. To move on to the

Q. Publication?

A. publication issue. There are statutory conditions governing publication and the law leaves us with no discretion. If the conditions are met, then the law says we shall publish, and if the conditions are not met, we may not publish. It's as simple as that. In this situation, the conditions for publication simply were not present. In particular, the penalty element in a settlement must exceed 15 must equal 15 percent or more of the tax. That condition was not met in this case, and the reason is that, at that point, normally in Income Tax, Corporation Tax and the other taxes, there is provision for what we call a 'tax-geared penalty' and there is a statutory formula, so that when we settle with a taxpayer, that settlement is formally said to be in lieu of proceedings for recovery of the tax. There is a formula in tax law that provides for a tax-geared penalty to be included in the settlement.

Q. Yes.

A. And normally, in any significant settlement, the tax-geared penalty formula kicks in and produces a publishable amount, unless the taxpayer has made a voluntary disclosure of this liability to us

Q. Yes.

A. before we began an investigation.

Q. Right.

A. But there was no provision in CAT law, at that point, for a tax-geared penalty. The only penalties that could be taken into account in the tax settlement were negotiated penalties for non-filing. Now, we did produce a schedule of notional offences, non-filing offences, that Mr. Haughey had deemed to have committed.

Q. Not making various returns?

A. Yes, yes. What we did was for all the gifts that we were aware of and that we were satisfied we knew the provenance of, we imposed a non-filing penalty.

Q. Yes.

A. And then I think we allocated a penalty per year for the gifts where we didn't know, and that came to just under 60,000. There is a formula. Mr. McCabe worked it out, and I am sure he will go into the detail of it with you. But that came only to 60,000 and that wasn't enough for publication. And as I said to you, that is just the way it was.

Q. All right.

A. Yes.

Q. I just wanted to ask you, in the negotiating document

A. Yes.

Q. there was discussion; 'Publicity, do we want it? Do they want it?' So it was obviously something that was there for on the table for discussion at least, anyway?

A. Yes.

Q. Would that be correct?

A. That is true. We weren't sure what the what Mr. Haughey's agents' attitude to publication would be.

Q. Yes.

A. And we were thinking about our own attitude to publication by means of, say, a press release.

Q. Yes.

A. And I think two issues weighed upon us, and we had to balance them: First of all, there is a strong tradition of confidentiality of taxpayers' affairs in Revenue.

Q. Oh, yes.

A. And to some extent, that is a cornerstone of public confidence in this system.

Q. Yes.

A. We had departed from that in relation to the McCracken settlement, but in very unusual circumstances of public and political outcry where we felt it was necessary to explain that we had reached a settlement. Indeed, I think the press the settlement in that case occurred within a day or so of the rehearing of the case before the Circuit Court judge. So there were very specific circumstances why we had issued a press statement in relation to the McCracken.

Q. Was that as a result of agreement or

A. Yes, it was, yes, as I understand it.

Q. Right.

A. I have to say, I wasn't directly involved in it.

Q. No, no, but as far as you know?

A. I think it was by agreement.

Q. It was by agreement.

A. The question was whether we should revert to our normal standards of confidentiality or whether we should publish, again, by way of press statement, this time around? On balance, in the end, we came around to the need. Had we felt the Tribunal was going to be in a position to publish its own findings relatively quickly, I think we would have waited, but we foresaw some delay, perhaps, in the Tribunal publishing its findings, and, in that situation, on balance, the Revenue Board decided that they would prefer to issue a press statement. So there were issues, I think, of public confidence in the handling of the tax system that the press statement was designed to deal with.

Q. I understand. Just Ms. O'Brien just to clarify; a press statement or a media release is not the same thing as publication of in the list of tax defaulters?

A. No, absolutely it's not, no.

Q. Yes. Now, I think if we then go to paragraph 17, and you say you say that, for most part, penalties are applied administratively in a settlement as part of a compromise agreement where I beg your pardon you said that, for most taxes, penalties are applied administratively in a settlement as part of a compromise agreement where Revenue agrees to refrain from proceedings. In return, the taxpayer agrees to pay the tax plus a compromise penalty

and interest in respect of the tax. There is a statutory basis for this approach and a standard form that can be applied to compute the penalty element in the monetary settlement. If the penalty element in the settlement exceeds 15 percent of the tax, publication is mandatory. Mr. Haughey's case simply did not meet the condition for publication as there was then no provision in CAT law for a tax-related penalty where no CAT return had been made. The only provision for penalties was for small monetary penalties for failure to file returns. These penalties did not exceed 15 percent of the tax element of the settlement. CAT law has since been changed to provide for tax-geared penalties as part of a settlement even where no return has been made. You say that between October 2002 and March 2003 you were involved in a number of meetings with senior management, your legal team and Mr. Haughey's advisors to procure a legal agreement to underpin a settlement. The main issues were how to secure Revenue's position so as to guarantee a payment of the taxpayer's Revenue debt. Other issues included the question of when the payment of the sum agreed would be made, whether there would be an interest moratorium during this period and the fact that any settlement would be based on Revenue's then current knowledge of Mr. Haughey's tax affairs. The current-knowledge clause meant that we could pursue other matters in the event of further information coming to light. In addition, the agreement acknowledged

Mr. Haughey's assertion that certain account balances in a named financial institution, apparently to his benefit, were not, in fact, his, but allowed Revenue to pursue the matter of further tax liabilities in that regard should he ever gain access to or beneficial ownership of those balances. You understand that the balances concerned have since been used largely to fund a tax liability of an unconnected taxpayer.

An agreed press release was issued on the 18th of March, 2003. On the same day, agreements were signed with Mr. Haughey and his wife giving the Revenue the right to take vacant possession of the house and lands owned by Mr. and Mrs. Haughey at Kinsealy, County Dublin, after two years, if the tax debt was not settled by then. A senior Revenue official, Mr. Brian McCabe, was granted power of attorney in this regard in a separate legal instrument. Mr. Haughey's wife and children also signed an irrevocable guarantee to pay any part of the debt due to the Revenue in the event that it was still outstanding after two years had passed. You say that on the 1st of September, 2003, a cheque in the sum of ï¿½4,932,852.71 was paid over to the Revenue. This cheque, when added to the balance of a tax refund due to the taxpayer in the amount of ï¿½67,147.09 in respect of an early tax payment, which under the terms of the agreement was treated as a payment on account, represented full and final settlement of the taxpayer's Revenue debt under the agreement. Revenue discharged its

charge on the property on the same day.

If we just look at the agreement, if you wouldn't mind.

Well, first of all, there is a document there of you took this matter you took the question of settlement to the Board, isn't that correct?

A. Yes.

Q. Appeal Board. It's in a it's in a different book now, and I am going to give you the different book here.

(Book of documents handed to witness.)

Towards the back of that book, I think it's the yes, 28th, sorry, thanks very much.

A. Yes.

Q. Now, I am not going to read all this out to you again. Ms. O'Brien read this agreement and I just wanted to if you go to page number 2. There, we have the amount that you are agreeing is ï¿½5 million, isn't that correct?

A. Yes.

Q. Second page. Then you set out the breakdown of the settlement, isn't that right?

A. Yes.

Q. The breakdown then is the taxes, ï¿½2,470,000; the interest, ï¿½2,470,000, and the penalties are included as part of the settlement, isn't that right

A. Yes.

Q. in the 5 million?

A. Yes.

Q. And I think you have explained that. You wanted to get to

a figure, isn't that right, a lump-sum figure, in the at the end of the negotiations?

A. Yes, indeed, yes.

Q. Yes. And you got a figure you wanted, you were able to allocate it as per tax, interest and put the penalties in there as well, isn't that right?

A. Yes, yes, correct.

Q. Now, there is, there is there are two schedules, isn't that right, to the or there are three schedules, in fact, to the agreement. Schedule 1 is the agreed expenditure base, and I am not going to go through it with you. Other witnesses are were the ones who hammered out the nuts and bolts in relation to this.

A. Yes.

Q. But it sets out a whole list of agreed expenditure base for the purpose of arriving at this settlement, isn't that right?

A. Yes, yes.

Q. And these were agreed between the Revenue and Mr. Haughey through his legal or through his agents in relation to this; in fact, his solicitors were involved in this as well?

A. In the agreement?

Q. Yes.

A. They were, yes.

Q. And the first one is the agreed expenditure base, and then the second one is "Certain payments to Charles J. Haughey

deemed to be reflected in Schedule 1 and encompassed in the interim or final settlement," isn't that right?

A. That's correct.

Q. And again, this was agreed between you and Mr. Haughey, through his legal advisors?

A. Yes.

Q. Then the third schedule is only the land, isn't that right, the

A. Yes.

Q. Your security in respect of the...

I think am I correct in understanding, or maybe some other witnesses may be able to deal with this, that the reason you had reached an agreement and you had the agreement, leaving aside the schedule dealing with your security, the land and that sort of thing

A. Yes, and the various signed agreements.

Q. that the purpose of these schedules in relation to expenditure and the receipts was to pin down an actual position for the Revenue if this if this settlement came unstuck, isn't that right?

A. Basically, it sets out what we were settling for.

Q. Yes.

A. And it's all couched in terms of our understanding of it's contingent, I suppose, on the fact that the settlement was based on our understanding of the affairs at that time.

Q. Yes.

A. And it leaves open the possibility that if further

information came to our attention, that the matters could be reopened.

Q. Could be reopened, yes.

A. So it was important I think

Q. It was an important position for the Revenue?

A. It was important, I suppose, to have a clear understanding of what was being settled and under what conditions.

Q. Yes.

A. Yes.

Q. I want to just now ask you to deal with just your own, three of your own documents. They are the appendices to the negotiation document. If you go back to the red book. It starts off at 1.2, Appendix 2.

A. Yes.

Q. You have the basis of calculations. You say, "Earlier in the year the board, on the basis of technical and legal advice, decided that the approach in assessing to tax the various receipts taken and expenditure incurred by or on behalf of CJH since 1980 was to effectively treat all as coming within the charge to Gift Tax. In arriving at this position, the board was aware of the serious difficulties Revenue would likely face in attempting to make Gift Tax assessments based solely on expenditure figures 'stick' before the Appeal Commissioners. These difficulties would relate to the fact that we have no knowledge as to the identity or domicile of the disponer in such cases or information as to the dates of gifts.

"The following calculations reflected the stance; that is,

a) To the extent that specific receipts/gifts taken by CJH had been identified by the Moriarty Tribunal, detailed Gift Tax and interest calculations have been prepared.

b) Where on the evidence of expenditure patterns it would appear that significant additional funding must have been received, the 'expenditure' is used as a proxy for receipts and 'Gift Tax and interest calculations' prepared.

"The figures in the Tables following should, therefore, be viewed as 'orders of magnitude' calculated for negotiation purposes, which for the most part cannot be viewed as actual Gift Tax liabilities arising on specific dates from known disponers domiciled in the State."

You set out your underlying assumptions:

"The important assumptions underlying the calculations are as follows;

"In the absence of sufficient detailed information on receipts, use expenditure incurred as a 'proxy' for receipts on the basis that it had to be funded in some way.

"Assume that CJH's Dail income, et cetera (estimated at some ï¿½600k over this period) was not lodged to any of his bank accounts or used to defray any of his expenditure. (Tribunal evidence shows that his salary cheques were cashed by him from 1979 onwards and never lodged to any account).

"Assume that all of the 'receipts' were 'gifts'.

"Assume expenditure incurred in each year was funded by a

single gift of an equivalent number on the 1st of January of each year.

"Assume that all 'gifts' were taken from Irish-domiciled disponers so as to come within the charge to Gift Tax.

"Assume that all of the disponers were 'strangers in blood' for the purposes of tax-free thresholds.

"Base Gift Tax and interest calculations on the CAT code prevailing at the relevant time."

And you produced a Table A.

You say that, "Based on potential maximum expenditure, the figure of 9.899 million," and you set out your calculations in relation to that, isn't that right?

A. Yes, I would regard those tables, basically, as planning or trying to discern what would be, I suppose, rational and defensible settlements.

Q. Yes.

A. And I suppose the material you have just read out in terms of the

Q. the assumptions?

A. the assumptions, I think is just a long way of pointing out to the board that we are on a very sticky wicket.

Q. Yes. Just very, very briefly, just running through those assumptions. You say, "In the absence of sufficient detailed information on receipts, use expenditure incurred as a 'proxy' for receipts on the basis that it had to be funded in some way."

That might seem to be a fairly rational assumption,

mightn't it, and a common-sense approach?

A. But demonstrating it in a challenged litigation scenario would be another day's work altogether.

Q. Yes, yes.

A. And it was important I know that the Board appreciated these difficulties. Nevertheless, on the eve of negotiations I hoped would settle the case, it was important that they would be reminded of how difficult our position was and why it was a difficult position.

Q. Yes. Well, the second assumption is one that you could almost work on, that there was evidence that his salary cheque was cashed and it probably wasn't lodged to any bank account, from the evidence?

A. Yes.

Q. "Assume that all of the receipts were gifts." You talk about the difficulty of establishing that?

A. Yes.

Q. "Assume that expenditure incurred in each year was funded by a single gift or an equivalent amount on the 1st of January in each year." That's a specific time or

A. That would be a date of gifts Gift Tax accrues from the date I suppose from the date of the gift, and interest would accrue from the same time. So they were on that was the necessary assumptions to calculate.

Q. Yes. And "Assume that all 'gifts' were taken from Irish-domiciled disponers so as to come within the charge of Gift Tax." That was a big jump?

A. Certainly, yes, yes.

Q. "Assume that all of the disponers were 'strangers in blood' for the purposes of tax-free thresholds."

Again, it's something you would have to establish?

A. Well, yes, that was a big assumption, yes.

Q. "Base Gift Tax and interest calculations on the CAT code prevailing at the relevant times."

That is over a period of years?

A. Yes, and behind those assumptions, and indeed behind all the schedules that the Tribunal has seen, were swathes of calculations giving effect to those assumptions.

Q. Yes.

A. There was very detailed work done based on the CAT regime in force in each of the years.

Q. Yes, and make your calculations

A. And the whole thing rolled up into the figures that you saw on the schedules.

Q. I think what is absolutely certain is you, in Gift Tax, interest and penalties, you received ï¿½5 million from Mr. Haughey, isn't that right?

A. That's correct.

Q. And you also received payments from Mr. Haughey in respect of the McCracken Tribunal?

A. Yes.

Q. And how much was that in euros? About 2.5 million, was it, or there or thereabouts?

A. It was 1.2

Q. 1.25?

A. 1.009, ï¿½1.009 million, whatever that is in euro, 1.2, -3 or -4.

Q. And this was achieved, because what we are concerned about is the Revenue exercising its powers to recover tax from a taxpayer or obtain tax from a taxpayer, this was achieved in a context where you had suffered a setback before the Appeal Commissioner in respect of what had been disclosed at the McCracken Tribunal?

A. Correct.

Q. Am I correct about that?

A. Yes.

Q. In the face of your own analysis that there were potential difficulties in pursuing matters before the Appeal Commissioners and to the court in respect of matters which were being uncovered or disclosed at this Tribunal, and you had legal you had strong legal advice to that effect?

A. Yes.

Q. You entered into negotiations and you achieved what you considered to be a significant achievement in terms of the amount you obtained from Mr. Haughey, based on the information currently available to you, isn't that right?

A. That's correct. We, I suppose, got the taxpayer up from an initial offer of 2 million to 3.94 million.

Q. But even based on the information available to you?

A. Yes.

Q. And what you believe you could have done about that

A. It would have been far in a contested assessment situation, our prospects would have been much more limited.

Q. Yes.

A. And you can see from the schedules that we would have been lucky to get 2 million if everything had gone, or just over 2 million, if everything had gone our way at appeal and in the Circuit Court.

Q. And you have achieved a situation also in relation to your settlement that if any information becomes available to you or if any other funds become apparent to you, that the door is not closed on you from going after any tax liability which may attach to those?

A. That is specifically provided for in the agreement.

Q. Yes. And dealing with matters around the side then, if I may, I would just like to bring it all together, if I possibly can?

A. Yes.

Q. That in relation to the interest, the capping of the interest at 100 percent of the agreed tax liability, that that was, as you understood it then, the invariable practice in relation to Gift Tax; it had been that which had been negotiated and agreed in respect of the McCracken test payments, if I could describe them as that?

A. Yes.

Q. And notwithstanding what might be perceived by the public as the convoluted and unusual circumstances of these particular gifts as they were accepted to be, that was

there was an overriding pragmatic reason to achieve a settlement; that if you attempted to go for more than 100 percent, you might have been told there would be no settlement?

A. That's correct.

Q. And finally, in relation to publication, you did not have the statutory basis to publish the name in the list of tax defaulters, if I could describe it?

A. I am absolutely crystal-clear that the conditions for publication under the CAT act did not arise in this case. Had they arisen, we would have had no choice but to publish.

Q. And I just want to emphasise; even though it has been stated by to be the highest single settlement to that date, you still had to have a statutory basis or a statutory authority to publish the name as a tax defaulter?

A. Absolutely. The law, Section 108(6) of the of the Taxes Consolidation Act sets out the publication criteria, and they are crystal clear. And this in this case, they were simply not met.

Q. OK. Thank you, Mr. Gillanders.

A. Thank you very much.

CHAIRMAN: Mr. Connolly?

THE WITNESS WAS EXAMINED BY MR. CONNOLLY AS FOLLOWS:

Q. Mr. Gillanders, there are just a few matters that I want to deal with that may require some elaboration or clarification on your part, but I will be brief. First of

all, in summary, the approach taken by you in relation to ascertaining what was the tax exposure, if you like, on the part of Mr. Haughey, you decided to look at all of the various expenditures that had accumulated over a period of time and say 'that is what has been paid out which must have some source and it's probably taxable'; that was your starting point?

A. Yes.

Q. Now, the next stage that was reached, as you explained to Mr. Coughlan, is you looked at it, you couldn't find any information that reflected a trade or a source where some sort of business was being carried on in selling a commodity or providing a service, so once that was out of the question, there was no there was no relevance in considering Income Tax, is that the position? You were now down to looking at Gift Tax, if anything?

A. In a nutshell, yes.

Q. Now, as far as the figures you then were looking at were concerned, you then took out of it what appeared to be double counting, and, in the course of discussions with the tax agents of Mr. Haughey, you then had a figure, when you took out the elements of double counting, and that was then the figure that you were going to apply the CAT to, isn't that correct?

A. That's correct. We worked down, I suppose, from a hypothetical maximum to an actual basis for realistic negotiations.

Q. And then when you had that figure, obviously you then had to subtract out the figure that had already been paid as a result of the what we call 'The McCracken payments'?

A. Yes.

Q. And that was a settlement that arose following the Circuit Court appeal from the unsuccessful outing before the Appeal Commissioners?

A. Correct.

Q. Was that correct?

A. Yes.

Q. Well, now, what was then left was a figure that had to have a certain amount of negotiation on your part, bearing in mind the risks that would be involved if there was no settlement achieved between you, between you and the tax agents; that was the situation that then confronted you and your colleagues?

A. That's correct, yes.

Q. And I think you have explained that, as far as you were concerned, the figures that were sorry, the amounts of money that had emerged as a result of information received from the Moriarty Tribunal, the money payments that were identified in that respect, they were just as complex as the money payments which had been unearthed by the McCracken Tribunal?

A. Yes.

Q. And as you explained to Mr. Coughlan, what would have been involved was establishing, as a matter of law, that there

was an Irish source for them - I will put it in plain man's terms without getting into the legalese - you had to establish that this was a started out as either Irish money or an Irish donor, isn't that correct?

A. Yes, that's correct.

Q. So the money that looked like it came to Mr. Haughey, we will say, from the Isle of Man or from Switzerland or from the Far East, what had to be done by the Revenue was to establish that the money started out being given by an Irish donor or as Irish money, went overseas to these various entities, whoever they may be, in Switzerland or the Far East, without any intervening valuable consideration that would look like a business transaction, and came all the way back, without any intervening and genuine money transaction that reflected some sort of a business, isn't that correct?

A. That's correct, yes.

Q. So that the money, in plain terms then, what you had to establish was that there was an Irish donor with Irish-generated money, it went overseas, there was no intervening business transactions and it came all the way back, effectively remaining as Irish money from an Irish donor?

A. Yes.

Q. And faced with all of those labyrinthine money trails, there was good reason to look at this as a reasonably attractive settlement, bearing in mind the risks that might

arise in the event that this went to the Appeal Commissioners, or, in turn, to the courts from the Appeal Commissioners?

A. That was the judgement call I had to make, yes.

Q. And one of the if this had been a case where - and I am raising another aspect of the settlement - if this had been a case where there had been an assessment raised which either wasn't appealed or had been confirmed on appeal, there then would be another day's work in terms of recovery of the money, isn't that correct?

A. Yes.

Q. And that aspect had been addressed in terms in the settlement agreement, so there now was a means by which the money was, if you like, guaranteed for payment, which normally wouldn't be the case if you had to fight it through the Appeal Commissioners and on through the courts, isn't that correct?

A. That's correct, the guarantees were the strongest and most comprehensive we could legally obtain.

Q. And that was another attractive factor to be taken into account in recommending this settlement to the Board, isn't that correct?

A. It certainly was, yes.

Q. Now, in terms of the penalties, I think it's in fairness, Mr. McCabe is going to deal with the rationale behind the penalties, isn't that correct?

A. Yes.

Q. But the 60,000 I think it's ï¿½60,000, that is not an arbitrary figure; it has been calculated with the rationale and it has taken account of the fact that there had been a number of missed opportunities in relation to possible disclosure of these payments, isn't that correct?

A. Yes, there is a schedule. I saw it the other day when I was preparing for the Tribunal hearings.

Q. Sorry

A. Mr. McCabe will be able to

Q. this wasn't a figure that was simply added on to the other figures like the interest and the amount of tax to achieve the ï¿½5 million figure; there is a rationale behind that figure, is what I am getting at, and Mr. McCabe will deal with the explanation of that?

A. There is a clear explanation for it, yes.

Q. Now, I think you used an expression, I'd better ask you to clarify it, you used the expression "negotiated penalty". I think to the man in the street that might appear to be perplexing. In Revenue terms, that means a penalty which is imposed in an appropriate amount following a negotiated settlement; it's not that someone goes and negotiates the penalty with you?

A. No, it's a penalty that is negotiated as part of a monetary settlement of a tax evasion case.

MR. CONNOLLY: Thanks very much.

CHAIRMAN: I am not going to go through everything again and you have been helpful and clear, Mr. Gillanders, but,

in an ideal world, since your job is to get the maximum tax that is feasible under the law and the taxpayer's ability to pay, the ideal scenario would have been to be able to enforce an Income Tax settlement, because obviously rates were higher in the relevant years than Gift Tax, and Mr. Haughey would, even on his public income, have been in the higher bracket, in any event?

A. Although I would have to say that it's not open to Revenue to choose which tax applies to the fact

CHAIRMAN: Oh, I am just saying, hypothetically, the biggest haul would have been if you had been able to recover the tax assessed on an Income Tax basis?

A. Yes, arithmetically, that would be the case.

CHAIRMAN: Yes. But you had your own very considerable misgivings about it in your researches, and the advice you got from senior counsel scotched it entirely, in your view, so you were left with Gift Tax or nothing?

A. Yes, that is exactly the position we were in.

CHAIRMAN: Yes. And as regards the Gift Tax on which you had already had a reversal before the Appeal Commissioners, it wasn't a situation such as might perhaps have sufficed for a court or a tribunal in which you merely had to establish a probability of a donation in the abstract. As tax collectors, you had to, as Mr. Coughlan and Mr. Connolly have developed with you, you had to be able to deal specifically with the identity and the domicile of the donor and the location of the asset?

A. Yes, there would have been considerable problems demonstrating the conditions of taxability at the Appeal Commissioners or before the Circuit Court judge.

CHAIRMAN: Yes, it might not have led to a wholly adverse situation, but you could have lost on a significant number of legs?

A. I am prepared to bet we wouldn't have got 5 million on it, in any event.

CHAIRMAN: Yes. And that, so, to some extent, might it be said that the face that you presented to Mr. Haughey's advisors, in which perhaps you alternated the faces of hard cop/soft cop, reflected the pragmatic realities and you might have been a little more preemptory if your hand of cards had been stronger?

A. No doubt.

CHAIRMAN: Yes. Lastly, before hearing your evidence, Mr. Gillanders, it had occurred to me to ask you in relation to what might then have seemed to me to be matters involving a discretion. In one instance, whilst it was a stage well prior to settlement, I think a discretion was exercised when Mr. Haughey's financial advisors expressed concerns over his health, not to carry out a personal interview with him, as might have been the norm?

A. Yes, but I felt there was no need to insist on that.

CHAIRMAN: Yes. And then there was the situation that you've dealt with as regards the question of publication. I think you agreed with Mr. Coughlan that publication is a

more acidic and stringent sanction than a press release from a taxpayer's point of view, obviously?

A. Yes.

CHAIRMAN: And it had occurred to me to ask could there have been any element in either, as regards the refraining from the personal interview or the manner in which penalties were calculated as part of the overall settlement, could there have been any element of 'Since the money is right, we will be a little bit more forebearing on the incidental aspects'; but it seems that your evidence is quite explicit on the actual penalty matter.

A. We have no discretion under the law when it comes to publication.

CHAIRMAN: Yes.

A. The law is simply couched in terms of "you shall not publish in these circumstances" and "you shall in circumstances where publication is possible."

CHAIRMAN: Yes.

A. So we have no latitude whatsoever when it comes to publication. If the conditions are present, we must publish; and if they are not, we can't. And in the state of CAT law as we found it at the time of the Haughey settlement, the conditions for publication were not present in that case. In particular, there was no provision in CAT law for what I have called a 'tax-geared monetary penalty'. There is now. We changed that in the Finance Act, 2003. But at the time, there was no scope for tax-geared penalty,

and that meant publication was simply not possible.

CHAIRMAN: It wasn't a question of being a mere thousand pounds short of the

A. It was very, very well short

CHAIRMAN: It was significantly and well short of it?

A. Yes. As to meeting the taxpayer, we'd witnessed and we'd seen his state of health when he appeared before the Tribunal.

CHAIRMAN: Yes.

A. He was advised by serious professional men, who are well able to it was clear they were well able to act on his behalf, and there was no need to interview him personally.

CHAIRMAN: Very good. Thank you very much, Mr. Gillanders, for your assistance today.

I think some other witnesses are to attend tomorrow. Because of ongoing other Tribunal work, I think an 11 o'clock rather than half ten commencement is probably preferable. Thank you very much.

THE WITNESS THEN WITHDREW.

THE TRIBUNAL THEN ADJOURNED TO FRIDAY, MARCH 24TH, 2006, AT 11 A.M.