

THE TRIBUNAL RESUMED ON THE 4TH APRIL, 2006, AS FOLLOWS:

OPENING STATEMENT AS FOLLOWS:

MS. O'BRIEN: In these sittings, sir, the Tribunal intends

to continue hearing further evidence pursuant to

Paragraph (j) of its Terms of Reference, which 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 Payments 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".

The Tribunal has already heard further evidence in the

course of last week and in the previous week in connection

with the taxation affairs of Mr. Charles Haughey, and in

the course of these short sittings intends to focus

primarily on the affairs of Mr. Michael Lowry. As

indicated in the course of the Opening Statement delivered

on 23rd March last, in December 2000, and again in the

early months of 2001, the Tribunal heard evidence from a

number of current and former officials of the Revenue

Commissioners.

In the case of Mr. Michael Lowry and his company, Garuda Limited trading as Streamline, this evidence pertained to their relationship with the Revenue Commissioners during the 1980s and 1990s. While the Tribunal also heard some short evidence at that time in connection with the Revenue's efforts to collect taxation from Mr. Lowry and from Garuda arising from the findings of the report of the McCracken Tribunal, as previously mentioned in the Opening Statement made on the 23rd March last, such evidence was truncated, as it appeared that the dealings between the Revenue Commissioners, Mr. Lowry and Garuda had not been concluded, and the Tribunal did not wish to interfere with or to jeopardize those dealings.

The Tribunal now intends to return to those matters, and in the course of these short sittings intends to focus its queries on the efforts made by the Revenue Commissioners to collect taxation due by Mr. Lowry and/or Garuda in respect of the following:

Firstly, the funds paid to Mr. Lowry and/or Garuda as identified in chapter 5 of the McCracken Tribunal report, and secondly, any other relevant payment or gifts identified by this Tribunal pursuant to paragraph (e) of its Terms of Reference.

In relation to the second aspect of the Tribunal's inquiries, it would be appreciated that the Tribunal has not yet made any findings, and accordingly, has not yet

identified any payments or gifts to Mr. Lowry or to Garuda pursuant to paragraph (e) of its Terms of Reference. In making inquiries at these public sittings in connection with matters of which evidence has been heard, that no findings have yet been made, the Tribunal will merely be hearing evidence on which it will ultimately report within the parameters of its Terms of Reference.

Before proceeding to detail the information which has been assembled by the Tribunal in the course of its private investigative work and to give an indication of the inquiries which the Tribunal intends to pursue in the course of these public sittings, in order to put these matters into context, it is necessary to refer initially to the payments identified at chapter 5 of the McCracken Tribunal report and to refer to the payments and financial transactions apparently involving Mr. Lowry of which the Tribunal has heard evidence to date.

Now, chapter 5 of the McCracken Tribunal report identified four relevant categories of payments by Dunnes Stores to Mr. Michael Lowry and/or Garuda. Firstly, at page 23 and 24 of the report, payments to Mr. Lowry personally were identified. It appears from the report that all of these payments were made from an account of Dunnes Stores with Bank of Ireland, Marino Branch, at the direction of Mr. Ben Dunne. And it will be recalled that the payments were as follows:

There is just a table going on the screen, sir.

Firstly, on the 20th of December, 1989, a sum of i£6,000 which was cashed by Mr. Lowry.

Secondly, on the 21st of December, 1990, a sum of i£8,500 which was lodged to Mr. Lowry's account in Bank of Ireland, Thurles.

Thirdly, on the 10 July, 1991, a payment of i£6,500 which was lodged to an account in Allied Irish Bank, Dame Street.

Fourthly, a payment on the 11 December, 1991 in the sum of i£8,000, which was lodged to an account in Allied Irish Bank, Dame Street.

And fifthly, a payment on the 15 December, 1992, in the sum of i£12,000 which the report found had been cashed by Mr. Lowry.

It will be recalled that the report found that these payments, with the exception of the payment of i£6,500 made in July 1991, were made on the instructions of Mr. Ben Dunne for the purposes of paying Christmas bonuses to the staff of Garuda.

The second category of payments found by the McCracken Tribunal and referred to at page 25 of the report were cheques issued by Dunnes Stores Group in favour of Streamline Enterprises which were either cashed by Mr. Lowry or lodged by him to his own bank accounts. The cheques which were listed in the 10th schedule to the report were as follows:

Firstly, on the 14 November, 1988, a cheque for i£6,000 which was lodged to Bank of Ireland, Thurles.

Secondly, on the 13th December, 1988, a cheque for  $\text{£}5,000$  sterling, which was cashed by Mr. Lowry.

Thirdly, on the 2 February, 1989, a cheque for sterling  $\text{£}9,945$  which was cashed by Mr. Lowry.

Fourthly, on the 25 October, 1989, a cheque for sterling  $\text{£}7,875$ , which it was found was cashed by Mr. Lowry.

Fifthly, on the 16 October, 1989, a cheque for sterling  $\text{£}7,950$  which was also found to have been cashed by Mr. Lowry.

Sixth, on the 19th of October, 1990, a cheque for sterling  $\text{£}19,730$ , which it was found was cashed by Mr. Lowry.

Seventh, on the 14th September, 1990, a cheque for sterling 15,825, which it was also found was cashed by Mr. Lowry.

8th, on the 3 September, 1991, a further cheque for sterling  $\text{£}34,100$  which the McCracken Tribunal found was included in a deposit of  $\text{£}100,000$  sterling made to an account in Allied Irish Bank, Channel Islands.

Finally, on the 15th of March, 1993, a cheque for sterling  $\text{£}55,314$  which it was found had been lodged to Allied Irish Bank, Dame Street.

In relation to the payment of sterling  $\text{£}34,100$  made on the 3rd of September, 1991, that is the second-last of the payments to which I have referred, the report found that it was lodged by Mr. Lowry to an account which he held in Allied Irish Bank, Channel Islands. This account was in the name of Mr. Lowry and his three children, and it appeared to have been opened on the 3rd September, 1991, by

a deposit of £100,000 sterling, which the Court presumed to have included the sum of sterling, £34,100.

The report recorded at page 25 that the McCracken Tribunal could not accept Mr. Lowry's evidence that these monies were paid by Dunnes Stores to him personally for work carried out by him personally, and the report further recorded that the McCracken Tribunal was satisfied that as far as Dunnes Stores were concerned, these payments were being paid to Streamline Enterprises for work carried out by that firm. The McCracken Tribunal was satisfied that Dunnes Stores at all times intended these payments to be made to Streamline Enterprises and not to Mr. Lowry personally.

The third set of payments identified by the McCracken Tribunal were bonus payments to Mr. Lowry, and they were detailed at page 26 of the report as follows:

There were four of those payments.

The first was on the 9th of October, 1990, in a sum of sterling £25,000, and it was found that that payment was lodged to an account with Bank of Ireland, Isle of Man and was subsequently transferred to an account of Mr. Lowry with Irish Permanent Building Society, Cork, on the 20th of May, 1992.

The second of these bonus payments was found to be on the 1st of August, 1991, in the sum of £40,000 sterling, and the report found that it had been transferred from an account of Tutberry Limited with Rea Brothers, Isle of Man,

to an account of Badgeworth Limited and that it was also ultimately lodged to an account with Irish Permanent Building Society, Cork, on the 18 May, 1992.

The third of the bonus payments found was on the 29 May, 1992, in the sum of i£½40,000 sterling. It was also found that this was lodged to an account with Irish Permanent Building Society, Cork.

And then the final payment, sir, was on the 27th of May of 1992 in the amount of i£½50,000 sterling, and it, too, was found it was lodged to an account with Irish Permanent Building Society in Cork.

The fourth category of payments identified by the McCracken Tribunal was for work done to Mr. Lowry's house at Holycross, County Tipperary. The evidence and findings of the report are detailed at pages 27 and 28 of the report.

The report found that the contractor who had been engaged to carry out these works had been paid IRi£½395,107.00 by Dunnes Stores on foot of certificates issued by an architect who had also been engaged for that purpose. The report did, however, record that there was a dispute between Mr. Lowry and Dunnes Stores as to the actual value of the work to Mr. Lowry's house.

Now, in addition to the payments found by the McCracken Tribunal, this Tribunal also heard evidence in relation to the following further receipts and financial transactions with which Mr. Lowry appears to have been connected, although, as indicated previously, this Tribunal has not

yet made any determination in relation to that evidence.

Firstly, the Tribunal heard evidence in connection with a further payment of  $\text{€}15,000$  to Mr. Lowry from the account of Dunnes Stores, Bank of Ireland, Marino Branch, on 13 November, 1992. Mr. Lowry informed the Tribunal that he was of the view that this was in the nature of a bonus payment by Mr. Dunne to him personally; that is, payment within the third category of payments identified by the report of the McCracken Tribunal.

Secondly, a cash payment of  $\text{€}25,000$  from Mr. Bill Maher, of Maher Meat Products, to Mr. Lowry which appears to have been lodged to his account at Allied Irish Bank, Dame Street, on the 23rd December, 1992. Mr. Lowry informed the Tribunal that this payment was in respect of refrigeration consultancy work undertaken by Mr. Lowry for Maher Meat Packers.

Thirdly, payments amounting to  $\text{€}15,000$  by Whelan Frozen Foods Limited in May 1992 lodged to Mr. Lowry's Bank of Ireland, Thurles, account. Mr. Lowry informed the Tribunal in evidence that these payments were also for consultancy services provided by him.

Now, the fourth matter on which this Tribunal heard evidence related to the sale by Mr. Lowry to Mr. Patrick Doherty of certain antiques for  $\text{€}35,000$  cash, of which  $\text{€}32,950.20$  appears to have been lodged on the 19th of May, 1995, to Mr. Lowry's account with Allied Irish Bank, Dame Street.



The fifth matter of which the Tribunal heard evidence was the course of a deposit of £100,000 sterling made by Mr. Lowry with Allied Irish Bank, Channel Islands, on the 3rd of September, 1991. This lodgement was referred to in the report of the McCracken Tribunal, and it was a conclusion of the McCracken Tribunal that of the deposit, £34,100 comprised a payment made on that date by Dunnes Stores to Garuda Limited which was listed in the 10th schedule to the report and to which I have just referred earlier.

From evidence available to this Tribunal, it appears that an account was first opened by Mr. Lowry with Allied Irish Bank, Channel Islands, in January 1991, and a sum of £55,000 sterling was deposited in that account. It appears that this may have represented the proceeds of a payment in that amount by Dunnes Stores to Garuda and listed in the 10th schedule to the report of the McCracken Tribunal.

That deposit apparently matured on the 17 July, 1991, and it appears that the £100,000 may have comprised the proceeds of the matured deposit together with the payment of £34,100 sterling and a further small sterling draft drawn on Allied Irish Bank on the 30th August, 1991.

The sixth matter of which this Tribunal heard evidence was an account opened in the name of Mr. Lowry in Irish Nationwide Building Society, Isle of Man, in October 1996 with a lodgement of £147,000. It appears that the account was closed on 7 February, 1997. From evidence heard by the

Tribunal, it appears that the source of the funds in this account was a bank draft drawn by the late Mr. David Austin on an account which he held with Bank of Ireland, Jersey.

From evidence heard by the Tribunal, it appears that that account was opened on the previous 26th of July, 1996, and that funds amounting to  $\text{€}150,000$  were lodged in that account from an account of Mr. Aidan Phelan, a close associate of Mr. Denis O'Brien, which the Tribunal was informed represented the proceeds of the sale of a property which Mr. Austin had in Spain to Mr. Denis O'Brien.

The seventh matter of which the Tribunal heard evidence related to a property at Mansfield in the United Kingdom purchased in March 1999 in the name of Mr. Lowry for the sum of  $\text{€}250,000$  sterling. According to Mr. Lowry and Mr. Aidan Phelan, this property was purchased by them in partnership, with Mr. Lowry being entitled to a 10% interest and Mr. Phelan being entitled to a 90% interest. From the evidence heard by the Tribunal, the deposit of  $\text{€}25,000$  sterling was paid from Mr. Lowry's funds, and the balance of  $\text{€}230,000$  sterling due on completion was provided by Mr. Aidan Phelan from funds held in an account in Credit Suisse First Boston in London in the name of Mr. Denis O'Brien. Mr. Phelan informed the Tribunal in evidence that he had the authority of Mr. O'Brien to draw that sum from Mr. O'Brien's account and that it represented an advance on a bonus payment which he was negotiating with Mr. O'Brien in connection with

services that he, Mr. Phelan, had rendered to Mr. O'Brien in relation to other commercial activities.

And the final matter on which the Tribunal has heard evidence to date relates to a second property in the United Kingdom located at Cheadle, which, according to the evidence of Mr. Lowry, he intended to purchase for his sole benefit. The contract was taken in the name of a limited liability company, Catclause Limited, of which Mr. Lowry and his daughter were directors. The deposit on the property in the sum of  $\pounds 244,500$  sterling was paid in September 1999 out of the surplus of funds which had been transferred to the client account of Mr. Christopher Vaughan for the purposes of purchasing the Mansfield property. The purchase was completed in late December 1999 with funds borrowed from GE Capital Woodchester. The property was not taken in the name of Catclause Limited but was taken in the name of Mr. Christopher Vaughan, the solicitor who acted in connection with the purchase of both properties. According to Mr. Lowry and Mr. Phelan, Mr. Lowry has no beneficial interest in that property.

It will be recalled that in March, 2001, Mr. Liam Liston, a Senior Inspector in the Investigations Branch of the Revenue Commissioners, gave evidence to the Tribunal in relation to dealings which he had had with Mr. Lowry and Mr. Lowry's representatives and various inquiries which he had made regarding the financial affairs of Mr. Lowry and Garuda. It appears from his evidence that in November,

1996, following the receipt of information from an informant regarding the financing of work to Mr. Lowry's house at Thurles, County Tipperary, and following disclosures made in the media, the Investigations Branch commenced inquiries into the affairs of Mr. Lowry and Garuda. It will be recalled that evidence was given that on the 2nd of December, 1996, Oliver Freaney & Co, Mr. Lowry's then tax agents, notified the Revenue Commissioners that there were possible errors in or omissions in the tax returns of Mr. Lowry and Garuda. In his earlier evidence, Mr. Liston referred to a submission which he had received on the 18th of April, 1997, from Ernst & Young, chartered accountants, disposing additional liabilities for Mr. Lowry in respect of income tax and Residential Property Tax, and for Garuda in respect of PAYE and PRSI and also in respect of Value Added Tax. With that submission, a payment in the sum of  $\text{€}100,000$  was made on it on account, and it appeared that Mr. Lowry, through his advisers, was indicating that the undeclared income amounted to approximately  $\text{€}500,000$ . Mr. Liston, in his evidence, explained that in his view and in the view of the Revenue Commissioners, the undeclared income was in or around  $\text{€}618,000$ , or possibly more. Mr. Liston raised certain queries in relation to that submission on the 20th of May, 1997, but Mr. Liston accepted that following a letter forwarded to Mr. Lowry's solicitors by the Revenue Solicitor, Mr. Lowry and his advisers may have been under

the impression that a response was not required at that time.

As regards the investigations undertaken by Mr. Liston and his associates, it will be recalled that as Mr. Lowry had availed of a tax amnesty provided for by the Waiver of Certain Tax Interests and Penalties Act of 1993, the Revenue Commissioners were precluded from inquiring into his affairs for the years prior to the tax year 1992/1993.

In order to do so, the Revenue Commissioners were obliged to make an application to the Appeal Commissioners under Section 5 of that Act to set aside the certificate issued to Mr. Lowry and to enable an investigation into his affairs for those years and for the preceding years to proceed. An order was made by the Appeal Commissioners on the 3rd of November, 1997, with the consent of Mr. Lowry.

Mr. Liston, in evidence, also referred to Mr. Lowry's attendance for interview on the 24th of February, 1998.

Mr. Liston stated that as of that time he had determined that the question of criminal prosecution had reached the point that Mr. Lowry might be adversely affected by any admissions that he made. Having informed Mr. Lowry's advisers in advance, Mr. Liston proceeded to administer a caution to Mr. Lowry at that meeting. Such a caution is given so as to warn a taxpayer that admissions that he might make could be used against him if the Director of Public Prosecutions was to decide to prosecute the taxpayer for a criminal offence. The administration of that

caution, which was undoubtedly the appropriate course for Mr. Liston to take, complicated the dealings between the Revenue Commissioners and Mr. Lowry and his advisers as far as the collection of tax by the Revenue Commissioners and as far as the payment of tax by Mr. Lowry and Garuda were concerned, and also impacted on the ability of both parties to explore the possibility of arriving at a settlement of the civil limit for tax which Mr. Lowry had clearly recognised from an early stage.

In addition to the payment of  $\text{€}100,000$  made with the Ernst & Young submission on the 18th of April, 1997, Mr. Liston informed the Tribunal that Mr. Lowry had made further payments by reference to the disclosures made in the Ernst & Young submissions, and in all, Mr. Lowry, as of March 2001, had paid a sum of  $\text{€}342,058$ , the equivalent of  $\text{€}434,324$  to the Revenue Commissioners.

Those payments on account were made as follows:

Firstly, on the 18th April, 1997, a payment of  $\text{€}100,000$ .

Secondly, on the 28th April, 1997, a further payment of

$\text{€}100,000$ . Thirdly, on the 22nd of December, 1998, a

further payment in the sum of  $\text{€}108,371$ . And finally, on

the following day, the 22nd of December, 1998, a fourth

payment in the sum of  $\text{€}18,687$ .

The position, therefore, as of March, 2001, when Mr. Liston last gave evidence, was that the following issues between the Revenue Commissioners and Mr. Lowry were live.

Firstly, the extent of the undeclared income on which tax

was due. Mr. Lowry and his advisers had contended that the undeclared income was in the region of  $\text{£}500,000$ , but the Revenue Commissioners were of the view that the correct figure was in or about  $\text{£}618,000$ , and could be even higher.

Secondly, the issue of whether Mr. Lowry, by reason of the letter from his then tax agents, Oliver Freaney & Co, dated the 2nd December, 1996, had made what is known as a voluntary disclosure to the Revenue Commissioners; in other words, whether by the contents of that letter Mr. Lowry had brought to the attention of the Revenue Commissioners information of which they did not otherwise have knowledge.

Mr. Lowry and his advisers believed that they had made such a voluntary disclosure, whereas according to Mr. Liston, the Revenue Commissioners were not accepting that a voluntary disclosure had been made, as they were of the view that by the 2nd December, 1996, such information was available to them or was ascertainable by them. As the Tribunal understands it, under the Tax Code there are significant advantages to a taxpayer making a voluntary disclosure both as regards the mitigation of penalty and the avoidance of publication in the list of tax defaulters.

And the third issue which was live as of March 2001 was the matter of criminal prosecution.

As I have already indicated, the Tribunal did not pursue its inquiries at that stage as it did not wish to interfere with or jeopardize the resolution of those issues.

The Tribunal now intends to return to these matters in the

context of Paragraph (j) of its Terms of Reference.

Further documents were recently produced to the Tribunal by the Revenue Commissioners with the consent of Mr. Lowry.

The Tribunal has also had the benefit of information provided in the form of voluntary statements by officials of the Revenue Commissioners involved.

It appears that since 2001, the Investigations Branch has continued with its inquiries into the affairs of Mr. Lowry and Garuda. It will be recalled that as of March, 2001, significant inquiries had already been made, but the Investigations Branch had been unable to access the original records of Garuda. These records had been removed from the custody of Garuda by an Inspector appointed by the Department of Enterprise, Trade and Employment to inquire into the affairs of Garuda. The Inspector, with the consent of Garuda solicitors, had furnished the documents to the Tribunal. As the Tribunal held those records to Garuda's order, the Tribunal was not in a position to permit access to those documents, otherwise than on the direction of Garuda. That matter had not been resolved as of March, 2001, but was ultimately resolved, and the Tribunal understands that the Revenue Commissioners secured access to the records in early 2002.

In the meantime, following on from the caution administered to Mr. Lowry in February, 1998, and the consequent impact which that had on the ability of the Revenue Commissioners and of Mr. Lowry to progress the civil aspects of the case,



there do not appear to have been any further developments regarding the collection of tax, the payment of tax or the resolution of the two issues which had arisen; that is, the quantum of the undeclared income and whether Mr. Lowry should be treated as having made a voluntary disclosure until April, 2002.

Following upon a number of developments, it appears that contact between the Revenue Commissioners and Mr. Lowry's advisers resumed in September 2002, and that this ultimately culminated in August, 2003, in an agreed formula to settle the case, subject to a number of conditions and subject to the approval of the Board of the Revenue Commissioners. These conditions, to which I will refer in more detail, have not yet been met, nor has the proposed settlement been formally submitted to the Board for approval. While the proposed terms of settlement have not yet been converted into a binding settlement, what is clear is as of May 2005, Mr. Lowry had paid to the Revenue Commissioners the entire of the sum payable under those proposed terms.

The developments which occurred in 2002 and which appear to have been prompted the re-opening of contact were as follows.

Firstly, following access to the records of Garuda in early 2002, the Revenue Commissioners were in a position to finalise their inquiries and to quantify their view of the undeclared income. They were accordingly in a position to

raise assessments. In April, 2002, assessments were entered in respect of Garuda Limited for Value Added Tax and for PAYE and PRSI. In September, 2002, assessments were entered in respect of Mr. Lowry. Mr. Aidan Nolan, Principal Officer in the Investigations Branch of the Revenue Commissioners, has informed the Tribunal that broadly speaking, these assessments covered the same income and that they were entered to protect the interests of the Revenue Commissioners, as they had not yet formed a final view on where the liabilities should rest as between Mr. Lowry and Garuda.

The total sum assessed for Mr. Lowry was  $\text{€}253,340.69$ , and the total sum assessed for tax on Garuda was  $\text{€}500,675.76$ .

These assessments were appealed, and as of now, the Tribunal understands that despite the payments made by Mr. Lowry, the appeals continue to be pending.

Secondly, the Standards in Public Office Act was passed in 2001, and under Section 21 of that Act, Mr. Lowry was obliged, within nine months after the date on which he was elected, to provide either a tax clearance certificate or a document referred to in the Act as an application settlement. It appears that this requirement may also have added impetus to the dealings with the Revenue Commissioners and Mr. Lowry's representatives.

Thirdly, as assessments for Value Added Tax, PAYE and PRSI had been raised on Garuda, it appears that the auditors for Garuda had not been in a position to close off the accounts

for Garuda for the year ended 2001, and it appears that there may have been a concern that if Garuda was obliged to pay the tax assessed, the company would probably be insolvent.

The initial meeting between the parties was on 2 September, 2002. This meeting, it appears from the minutes, was at the request of Mr. Denis O'Connor of Brophy Butler Thornton, chartered accountants, who were by then Mr. Lowry's tax agents. The meeting was attended by Mr. Aidan Nolan, Mr. Liam Liston on behalf of the Revenue Commissioners, and Mr. O'Connor was accompanied by Mr. Neil O'Hanlon, also of Brophy Butler Thornton, representing Garuda. The Tribunal has been informed by Mr. Nolan that apart from the issues that had arisen earlier regarding quantum and voluntary disclosure, there was a further issue to be addressed, namely, whether the undeclared income, including the payments identified in the report of the McCracken Tribunal, should be attributed for tax purposes to Mr. Lowry or to Garuda.

It appears from the minutes of the meeting that Mr. O'Connor indicated that he was aware that a caution had been given to Mr. Lowry, but that he nonetheless wished to advance the issues in relation to the civil liability for tax, if possible, to agree income figures, and then to decide to whom the income was properly attributable.

It appears that the Revenue Commissioners were anxious to obtain documents and information from Mr. Lowry's tax

agents which it had not been possible to access in the course of their investigations, such as information regarding offshore accounts referred to in the report of the McCracken Tribunal, and an offshore account of which this Tribunal had heard evidence. Mr. O'Connor agreed that he would endeavour to furnish the Revenue Commissioners with this information, and the Revenue Commissioners provided estimated income and tax figures to Mr. O'Connor for discussion purposes.

There was a further meeting between the parties in early December, 2002, and again on the 19 December, 2002, it appears that Mr. O'Connor furnished the Revenue Commissioners with a submission which included the Ernst & Young capital reconciliation, which I think, sir, had been included with the earlier submission made by Ernst & Young in April of 1997. He also furnished an analysis of all bank accounts of Mr. Lowry showing the source of lodgments and the destination of payments, insofar as Mr. O'Connor had been able to establish them, and a copy of Mr. O'Connor's submission to this Tribunal.

In the course of discussions at that meeting, it appears that Mr. O'Connor identified the following three issues as accounting for differences between his figures for quantum and the Revenue's figures for quantum of the undeclared income. Those matters which were identified by Mr. O'Connor were as follows:

Firstly, the figure of sterling  $\frac{1}{2}$ 100,000 referred to at

page 25 of the report of the McCracken Tribunal as a lodgement made by Mr. Lowry to an account in Allied Irish Bank in the Channel Islands on the 3rd September, 1991, which, Mr. O'Connor considered, had been double counted in the figures submitted by the Revenue Commissioners. And that lodgement, in fact, sir, is the one of which this Tribunal had heard evidence and which I detailed earlier in the Opening Statement.

The second matter Mr. O'Connor appears to have identified was a deduction which Mr. O'Connor considered that Mr. Lowry or Garuda were entitled to in respect of a payment that had been made to a UK supplier.

Thirdly, there were differences in the figures for the value of the renovation works to Mr. Lowry's house at Holycross.

Now, at this juncture, sir, I think it would be of assistance to put on the overhead screen a table of the income figures which were under discussion. This table is comprised in Schedule 1 to the statement of evidence furnished by Mr. Aidan Nolan. The Tribunal understands that it was this table that was under discussion between the Revenue Commissioners and Mr. O'Connor at the time.

You'll see, sir, that the table put into date order the payments identified in the Report of the McCracken Tribunal, and ascribed a number to each of the payments.

In addition, it listed some further payments of which this Tribunal had heard evidence, and it included the lodgement

of £100,000 which, in Mr. O'Connor's view, gave rise to double counting. It also included the four invoices which had been raised on Dunnes Stores in respect of the works to Mr. Lowry's house at Holycross.

And we can see that table there, sir, and the items on the table were numbered 1 to 28. And I think the first five items, sir, were payments identified as being payments by Dunnes Stores to Streamline Enterprises and listed in the 10th schedule to the McCracken Report.

You can see, sir, that they have been put in date order. I think Payment 6 was the first of the staff Christmas bonus payments referred to in the McCracken Tribunal, falling within the first category of payments identified in the Report of the Tribunal.

Then Items 7 and 8 were also 10th schedule payments, that is payments made by Dunnes Stores to Streamline Enterprises.

I think the next payments, sir, Item Number 9 on the 9th October, £25,000, was the first of the bonus payments recorded in the McCracken Tribunal Report by Dunnes Stores to Mr. Lowry.

The 10th payment, on the 21st December, of £8,500 was, again, on the list of Christmas bonus payments for the staff of Streamline.

The 11th payment, sir, that payment of £34,100 sterling was Item 8 of the 10th schedule payments.

Item 12 and 13 on the Revenue Commissioners' list were

Christmas bonus payments falling within the first category of payments recorded in the McCracken Tribunal report.

Item 14, sir, was this lodgement of sterling  $\pounds 100,000$  over which an issue had been raised by Mr. O'Connor and on which this Tribunal had also heard evidence.

The next two payments, sir, Items 15 and 16 on the Revenue Commissioners' list, 1st August 1991 and the 29th May of 1992, each for sterling  $\pounds 40,000$ , were both within the third category of payments identified in the McCracken Tribunal report, being bonus payments to Mr. Lowry.

Item 17, sir, in the sum of  $\pounds 50,000$  sterling, was similarly one of the third category payments identified in the report of the McCracken Tribunal.

And the next item, Item 18 down to Item 21, were in respect of invoices raised for works to Mr. Lowry's house at Glenrea.

Then the final of the payments identified in the McCracken Tribunal report on the 15 December, 1992, in the sum of  $\pounds 12,000$ , was the last of the staff Christmas bonus payments, falling within the first category of payments identified in the McCracken Tribunal Report.

The next item, sir, on the schedule, the 13th November, 1992, is described as post McCracken, and that is the payment of which this Tribunal heard evidence from the account of Dunnes Stores, Marino Branch.

In fact, the next item, sir, Number 24, was the final of the McCracken Tribunal Report payments in the sum of

sterling  $\pounds$ 55,314, converted to  $\pounds$ 54,078, and that was the 9th of the 10th schedule payments, the second category of payments identified in the McCracken Tribunal Report as being payments by Dunnes Stores intended to be for Streamline Enterprises.

Item 25, sir, on the schedule, on the 23rd December, 1992, was the payment, of which this Tribunal heard evidence from Mr. Bill Maher, to Mr. Lowry in the sum of  $\pounds$ 25,000.

Item 26 and 27 were, again, payments of which this Tribunal had heard evidence, from Mr. Whelan to Mr. Lowry.

And the last item was I think an additional payment which was disclosed to the Revenue Commissioners.

There were further meetings in the early months of 2003, and at one of the meetings, on the 14th January, 2003, it appears that the Revenue Officials raised queries with Mr. O'Connor regarding certain UK properties with which Michael Lowry appeared to have a connection and which had featured in evidence led at public sittings of this Tribunal.

I'm just going to refer to that portion of the minute only which relates to the discussion of the UK properties.

It's at the bottom of the first page. The persons present at the meeting were Mr. O'Connor, Mr. Liston, Mr. Nolan of the Revenue Commissioners, and also Mr. Paddy Faughnan of the Revenue Commissioners. And it was a meeting on the 14th January of 2003.

And under the heading "UK Properties" and the subheading



"Cheadle", it records as follows: "Denis O'Connor said that Michael Lowry had no interest in this property. He was a director of a company, Catclause, along with Aidan Phelan, until 2000. Catclause was the beneficial owner of Cheadle until January 2000. The land was bought in trust by a solicitor and may be registered in the name of the solicitor. The company was dissolved, and Aidan Phelan paid off a loan to Investec around January 2000, and that as far as he is aware, Aidan Phelan is now the beneficial owner of Cheadle."

In relation to Mansfield, it records that Mr. O'Connor informed the Revenue Officials that "Michael Lowry paid  $\frac{1}{2}$ 25,000 sterling for a 10% stake in this property in partnership with Aidan Phelan, who owned the balance of 90 percent. There may be a capital gains tax liability on the disposal of this property in due course, but Denis O'Connor doubts if it will realise a gain. The property does not generate any income."

Then finally, in relation to Doncaster Rovers, it records as follows:

"Denis O'Connor said that despite the news in the media recently, Michael Lowry has not, nor never had, an interest in Doncaster Rovers. This allegation arose when a letter from a UK solicitor, Mr. Vaughan, mentioned that Michael Lowry had an involvement."

It appears that significant progress was made in the course of these meetings in the early months of 2002 with regard

to specific issues which had arisen between the parties.

The Revenue Commissioners agreed that the sum of  $\pounds 100,000$  sterling, in the schedule to which I have just referred, did appear to include the sums of sterling  $\pounds 34,100$  and sterling  $\pounds 55,314$ , also included in the schedule, and that it should be excluded from the income figure for the purposes of computing the tax liability. The Revenue Officials also appear to have accepted that the payments to UK suppliers should be deducted. In addition, there were various points of detail that arose regarding the rate or rates of tax which should be applied, and these also appear to have been largely resolved in the course of these meetings.

On the 31 March, 2003, Mr. O'Connor furnished Mr. Nolan with a draft letter for discussion purposes setting out proposals for settling the liabilities of Mr. Lowry and Garuda. The Tribunal understands that in view of the criminal investigation which was continuing and in view of the caution which had been administered to Mr. Lowry, Mr. O'Connor may have felt restrained from furnishing the Revenue Commissioners with a formal letter. That draft letter set out Mr. O'Connor's computation of the tax due by Mr. Lowry and by Garuda, which he calculated at  $\pounds 1,096,184.24$ . The computations were based on the following assumptions.

Firstly, that Mr. Lowry and Garuda were entitled to be treated as having made voluntary disclosures, and that

consequently all penalties should be mitigated by 95%.

Secondly, that interest should not be levied beyond 31 March, 1998, on the assumption that the case would have been settled on the same terms at that time had a scheduled meeting between the Revenue Officials and Mr. Lowry's representatives not been cancelled.

And thirdly, that the renovations to Mr. Lowry's house at Holycross should be valued in accordance with a Report which had been submitted by Mr. O'Connor at  $\text{€}243,644$ , rather than at the figure of  $\text{€}395,107$  as identified in the report of the McCracken Tribunal.

At a meeting on the 4th April, 2003, it appears that the Revenue Officials informed Mr. O'Connor that they did not accept the position as set out in his draft letter.

Mr. O'Connor apparently indicated that neither Mr. Lowry or Garuda would be in a position to fund payments of the magnitude of  $\text{€}1.5$  million, and that if no agreement was concluded, it appeared that Garuda would have to be treated as insolvent and would have to be liquidated. There were further meetings between the parties regarding the possible source of funding, and the Revenue Officials also requested and were furnished with copies of accounts for Garuda and analysis regarding the financial capability of Garuda.

It appears that at some point prior to the 29 August, 2003, the Revenue Officials finalised their computations for tax, interest to March 2003, and full penalties payable by Mr. Lowry and by Garuda based on the agreed income figures.

The total in respect of Mr. Lowry personally was  $\text{€}173,074$ .

This, the Tribunal understands, was in respect of additional Residential Property Tax on the revaluation of his residence, and income tax on the payments received from Maher Meat Products and Whelan Frozen Foods, together with interest on bank deposits, including offshore deposits.

In the case of Garuda, the total figure including tax, interest to March 2003, and penalties, was  $\text{€}1,708,620$ .

This liability of Garuda was in respect of Value Added Tax and PAYE and PRSI in respect of the payments identified in the Report of the McCracken Tribunal. In arriving at these figures, the Revenue Commissioners did not accept the contentions in Mr. O'Connor's draft letter that Mr. Lowry and Garuda should be treated as having made a voluntary disclosure, or that the case may have been settled in 1998 had a meeting not been cancelled by the Revenue Commissioners. Nor was it accepted that the cost of renovation works should be at any figure lower than the figure of  $\text{€}395,107$  identified in the McCracken Report.

It appears that happen on the 24 August, 2003, a formula was arrived at whereby it was agreed in principle that the Revenue Officials would recommend to the Board of the Revenue Commissioners that the assessments raised on Mr. Lowry and Garuda should be settled subject to the following payments:

Firstly, in respect of Mr. Lowry, payment of the entire of the tax, interest and penalties computed by the Revenue

Officials; that is, a payment of €173,074.

Secondly, in respect of Garuda, a payment of €1,234,324, representing the entire of the tax of €706,612, and approximately 55% of the interest and penalties of €1,218,000. In other words, in consideration of these payments, the Revenue Officials were prepared to recommend that a sum of €447,000 euro should be waived in respect of the interest and penalties due by Garuda.

In agreeing to this partial mitigation of interest and penalties, it appears that the Revenue Officials accepted that Garuda did not have sufficient funds to meet the entire liability. Mr. Nolan has informed the Tribunal, and this is confirmed by the documents which have been produced, that he required the provision of accounts and financial information in respect of Garuda, and that following an examination of all of that information, he was satisfied that there was a genuine inability to pay on the part of Garuda. It is also apparent that the funds with which the payments of €1,234,324 to the Revenue Commissioners in respect of Garuda's liability were made were introduced by Mr. Lowry personally and were substantially raised by him through bank borrowings and from other sources which had been declared to the Revenue. The terms agreed in principle in August 2003 did not proceed to a concluded settlement, or even a conditional settlement at that time. It is not entirely clear to the Tribunal why that was so. It may have been because

Mr. Lowry was not in a position to raise the entire balance of the funds required, or it may have been because certain conditions that the Revenue Officials were seeking to attach to the settlement, such as the requirement of a certificate of full disclosure and the requirement that a formal letter of offer be furnished, including admissions on the part of Mr. Lowry, may have constituted an obstacle to the progress of the settlement in the eyes of Mr. Lowry and his advisers, bearing in mind that the issue of criminal prosecution remained to the forefront.

In July, 2003, and in November, 2003, further payments of  $\text{€}200,000$  and  $\text{€}136,000$  were made by Mr. Lowry in respect of the Garuda liability.

These payments cleared all outstanding tax due by Mr. Lowry and by Garuda, and indeed, all of the penalties and the interest in respect of Mr. Lowry. What remained was the liability of Garuda for interest and penalties. The full liability would have been  $\text{€}1,002,018$ , and on the basis of the figures discussed in August, when the Revenue Officials had been prepared to mitigate penalties, would have been  $\text{€}664,000$ .

It appears that there was no further progress from November 2003, when the payment of  $\text{€}136,000$  was made by Mr. Lowry until March 2005, when Mr. Lowry's tax agents and tax advisers made a fresh approach to the Revenue Officials.

Following that approach, Mr. Nolan forwarded an e-mail to Mr. O'Connor on the 5 May, 2005, in the following terms:

It's from Aidan Nolan, sent 5 May, 2005, 12.48, to Denis O'Connor, CC Neale O'Hanlon, Liam Liston and Paddy Faughnan, and the subject was Garuda.

"Denis,

"As you are aware, Garuda's liability, based on discussed figures at the end of August 2003, was

VAT: €158,603.

PAYE: €548,009.

The next figure is the total, €706,612.

Interest: €595,375.

Penalties: €406,633, with a grand total for tax, interest and penalties of €1,708,620.

"Payments to that date amounted to €570,808, leaving a balance tax due of €135,804. That amount was finally paid in November 2003. There is still the matter of interest and penalties on this debt. I am aware of the company's inability claim to pay this amount in full. I am not prepared to accept the proposed payment of €664,000 as representing a full and final settlement in respect of Garuda Limited. I would be prepared to accept the payment as a further payment on account, and should nothing further untoward arise from the Moriarty Tribunal, I would then be prepared, as discussed, to recommend to the Revenue Commissioners acceptance of a formal offer of €1,261,250 as the maximum sum Garuda Limited could now raise. This would be without prejudice to the outcome of the criminal investigation and would of course be conditional on receipt

of

"(a) present day value Statement of Affairs for Michael Lowry.

"(b) latest draft account of Garuda Limited.

"(c) further information if we deem it necessary.

"Subject to the above and pending receipt of an offer in settlement acceptable to the Revenue Commissioners, I regard the assessments as still under Appeal.

"At present the status of the SIPO certificate is proper to the Collector General. This can be discussed further at our next meeting.

"If it is the intention of Michael Lowry to issue a public statement, Revenue will have no input into the text of the statement.

"Reviewing my conversation with Neale O'Hanlon, the meeting has been arranged for next Tuesday, 9 May 2005, at 10.30, in my office.

"Regards,

"Aidan."

Following receipt of that e-mail there was a meeting on 9th May 2005, when Mr. O'Connor furnished the Revenue Officials with a cheque for €1,266,000 and provided the Revenue Officials with documentation updating them on the financial capabilities of Garuda and Mr. Lowry.

The position, therefore, is that Mr. Lowry has paid the entire of the tax, interest and penalties computed by the Revenue Officials in respect of his personal taxation.



Garuda has paid the entire of the tax liability and approximately 55% of the interest and penalties. A formal offer in settlement has not yet been made. Accordingly, the proposed terms of settlement have not been formally approved by the Board of the Revenue Commissioners. The Tribunal, nonetheless, understands that Mr. Nolan and Mr. Liston kept their Assistant Secretary apprised of developments in the case, and the Tribunal further understands that their Assistant Secretary in turn kept the Chairman of the Revenue Commissioners informed.

While the Tribunal recognises that the proposed terms are, strictly speaking, subject to the formal approval of the Board of the Revenue Commissioners, the Tribunal considers it unlikely, in circumstances where the Assistant Secretary and Chairman of the Revenue Commissioners were, at all times, kept informed and where, in fairness to Mr. Lowry, he has paid the entire debt due on foot of the proposed terms, i.e. €1,434,324, that subject to anything untoward arising, those terms would not be approved by the Board.

For all intents and purposes, therefore, the Tribunal, in inquiring into the collection of tax by the Revenue Commissioners, intends to assume that the assessments raised in respect of Mr. Lowry and in respect of Garuda have, for all practical purposes, been settled.

In pursuing its inquiries into the actions of the Revenue Commissioners in the course of these sittings, the Tribunal intends to direct its inquiries along the following lines:

Firstly, whether, having regard to the findings of the Report of the McCracken Tribunal, it was appropriate to levy tax in respect of all of the payments identified by the Report on Garuda, rather than on Mr. Lowry personally. The Tribunal will wish to explore what additional liabilities to tax, interest and penalties, if any, would have resulted had the tax been levied on Mr. Lowry personally. In this regard, the Tribunal believes that it is important to recognise that Mr. Lowry made no objection to bearing that tax personally, and on the contrary, it appears from the minutes of meetings made available to the Tribunal that it was the view of both Mr. Lowry and of Garuda that the liability should rest with Mr. Lowry personally.

Secondly, whether, having determined that the tax should be levied on Garuda, it was appropriate in all of the circumstances for the Revenue Commissioners to accept that Garuda was incapable of paying the entire of the interest and penalties due, and if so, whether it was necessary to mitigate the interest and penalties from  $\text{€}1,002,018$  to  $\text{€}664,000$ . In that regard the Tribunal will also wish to inquire into what other course might have been available to the Revenue Commissioners to recover the entire of the interest and penalties due.

Finally, the Tribunal will wish to direct its inquiries to whether the inability to pay claim accepted by Revenue Officials would or could have arisen had the liability been

attributed to Mr. Lowry personally.

And that, sir, completes the Opening Statement in relation to these short sittings. And I think, in fact, the first witness, sir, is due to attend at 2 o'clock this afternoon.

CHAIRMAN: Yes. Could I just raise one thing, Ms. O'Brien, in relation to what you informed me was in relation to the payments made amounting to some approximately  $\text{€}342,000$ , Irish punts, in 1997 and '98. Were these appropriated to Mr. Lowry or to Garuda?

MS. O'BRIEN: Are these the payments, sir, under the McCracken Tribunal Report?

CHAIRMAN: Yes.

MS. O'BRIEN: All of the payments found by the McCracken Tribunal Report in terms of computing tax were attributed to Garuda rather than to Mr. Lowry.

CHAIRMAN: I'm very much obliged, Ms. O'Brien, to you for digesting what was an immense amount of documentary information from Revenue in addition to a considerable amount from Mr. Lowry's advisers.

We'll take up the first witness at two o'clock, as you propose; and just for procedural purposes, over what I expect to be a sitting of three days, and not more, as regards the sequence of any examination in accordance with the practice here in past situations, since the primary focus of the term of reference that we are concerned with is on the Revenue Commissioners rather than the taxpayer, I think the logical sequence is that Mr. Connolly should go

after Mr. O'Donnell.

Very good. Two o'clock. Thank you.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

MR. O'DONNELL: May it please you, sir, before you take up

the first witness, I mentioned to Ms. O'Brien, there is

just a matter or two I'd like to bring to your attention.

As you know, sir, I appear with Mr. Fanning, instructed by

Kelly Noone, on behalf of Mr. Lowry. You may be aware that

we were initially informed that our presence would not be

required at this hearing because we were not the primary

indeed we were not the focus at all of its hearings. And I

accept that fully, and also we wish to say that we are only

here, as it were, to ensure that we don't inadvertently

become even a subsidiary focus of the inquiry.

You will be aware sir, that every citizen is entitled to

confidentiality in their tax affairs and in their financial

affairs. We accept that for the purposes of investigating

subparagraph (j) in respect of the Revenue, it is necessary

to deal with Mr. Lowry's affairs; but we are anxious and

we are happy that Ms. O'Brien has opened it in this

fashion we are anxious that no greater exposure of the

private financial affairs of Mr. Lowry is made than is

necessary for the Tribunal to be able to resolve the issue

that properly arises in respect of the Revenue's dealings.

I suppose there is always a prurient voyeurism when one has

the opportunity of considering the private financial

affairs and the tax treatment of it. In that sense,  
Mr. Lowry is in an almost uniquely unfavourable position  
because his affairs have been the subject of public gaze,  
and we wish merely to, I suppose, reinforce the point that  
there is no allegation being made about Mr. Lowry in this  
module. On the contrary, it is clear from and  
Ms. O'Brien has very fairly said that he himself has  
personally paid everything by way of tax, interest and  
penalty and has himself sought to pay, from his own  
resources, the amounts the Revenue were prepared to accept  
in respect of Garuda. And as Ms. O'Brien has said, there  
is effectively a settlement of all those liabilities by  
Mr. Lowry, both on his own behalf and on behalf of Garuda.  
And in investigating that matter, as I accept the Tribunal  
should, I am simply anxious that it would be under that  
the Tribunal would be careful not to unwittingly expose  
matters that are properly private and remain private in  
Mr. Lowry's financial affairs as to his source of income or  
to where those monies come from, to public gaze; because  
that would be, in my respectful submission,  
disproportionate and unfair, in the sense that no other  
member of the public, for whatever reason, would be subject  
to that type of scrutiny.

I am far from suggesting I am not suggesting at all that  
the Tribunal has done so. I am very happy with the manner  
in which Ms. O'Brien has carefully opened the case, and  
we'd be very happy if it proceeds in that manner. But I

think it's appropriate, as it were, to try and identify the peculiar personal interest that Mr. Lowry has that might sometimes get lost in the when the other parties are pursuing their own legitimate interests.

CHAIRMAN: I accept the general thrust of that, Mr. O'Donnell. I think, in the course of Ms. O'Brien's opening, she referred to a portion of the evidence of one of the senior tax officials from whom we will be hearing referring to money having been raised to fund the settlement by Mr. O'Brien from both borrowings and from other disclosed and lawful sources, and I don't see that it's necessary to go beyond that.

And in general, I accept the tenor of what you say, that the inquiry into the personal affairs of Mr. Lowry should not go beyond what the Tribunal's remit requires. So I do not envisage difficulty on that front.

MR. O'DONNELL: Thank you, sir.

MS. O'BRIEN: Mr. Adrian Nolan, please.

AIDAN NOLAN, HAVING BEEN SWORN, WAS EXAMINED BY MS. O'BRIEN

AS FOLLOWS:

CHAIRMAN: Good afternoon, Mr. Nolan. Thank you for your assistance thus far.

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

Mr. Nolan, I don't think you have appeared in the Tribunal before; I think this is the first time you have attended to give evidence. And just to familiarise you with the approach the Tribunal takes to the giving of evidence by

witnesses, what I would propose doing is initially taking you through the Statements of Evidence which you have provided. In the course of doing so, because there are a certain number of technical issues raised in them, I may ask you to expand a little bit more on what you have stated. And obviously if there is anything that you wish to clarify, you should do so. And then, having completed that, I'll go back and discuss some of the issues arising out of your statements in a little more detail, and at that stage, we may refer to some of the documents, or portions of some documents.

And I wonder, do you have both a copy of your statement and your supplemental statement with you in the witness box?

And if needs be, I can have one handed up to you.

A. I have the statement and the supplemental statement.

Q. Very good. Well, if we start with your initial statement, and I'll take you through that in the first place.

You say that you are a Principal Officer attached to the Investigations and Prosecutions Division of the Revenue Commissioners. You state that amongst other functions, you carry out investigations into taxation liabilities in respect of previously undeclared income of individuals and companies. You state that at the request of the Tribunal, you are making your statement in relation to your involvement in the investigation and liability quantification of Michael Lowry and Garuda Limited.

A. Yes, that is correct.

Q. Now, you then deal with the lead-up to the investigation, and you state that in November, 1996, Revenue received information which indicated that whilst work had been carried out on the residence of Michael Lowry at Glenreigh, Thurles, County Tipperary, an invoice of the work had been issued to Dunnes Stores, but described the work as being carried out on the Ilac Centre, Dublin. You say that officers of Investigation Branch initiated an investigation.

A. Yes, that is correct.

Q. You state that as part of that investigation, Revenue officers called to the premises of Faxhill Homes Limited, who had issued the invoice, and Peter Stephens & Associates, who had issued the quantity surveyor's certificates. You state that the information received as a result of this disclosed that the consideration paid by Dunnes Stores in respect of the work carried out on Michael Lowry's private residence amounted to  $\text{€}23,951,077$ ; is that right?

A. That is correct.

Q. Am I correct in thinking that those investigations that you made in relation to the work on Mr. Lowry's home, they were around November of 1996?

A. They were indeed.

Q. You state that on the 2nd December, 1996, a letter was received from Oliver Freaney & Co, accountants and tax agents, to the effect that there may have been possible



errors or omissions in the tax returns of Michael Lowry and of Garuda Limited. On the 18th April, 1997, following a number of meetings with Ernst & Young, accountants, who had been requested to act in relation to the investigation, they made a submission of tax irregularities in respect of Michael Lowry and Garuda Limited. This submission included draft Statements of Affairs as at the 31st March 1992, 31st March 1993, the same date in '94 and '95. You state that the cost of refurbishment of Glenreigh was first included as of 31 March, 1994, at £243,644. You state that Revenue requested further information in May 1997, but a reply was not received to this letter.

Just to pause there, you have referred to the initial contact between the Revenue Commissioners and Mr. Lowry as having been on the 2 December, 1996, when you received correspondence from Ernst & Young.

A. That is correct.

Q. So I think it's fair to say, and correct to say, that the initial contact between the Revenue Commissioners and Mr. Lowry was as a result of Mr. Lowry's letter to the Revenue Commissioners as opposed to any contact that the Revenue Commissioners made with Mr. Lowry; isn't that right?

A. That is correct, yes.

Q. And by the provision of the submission in April 1997, it would appear that Mr. Lowry and Garuda were engaging with the Revenue Commissioners and were providing information to

the Revenue Commissioners?

A. They were, yes.

Q. Now you state that Revenue requested further information in May of 1997, but that a reply wasn't received to that letter. And I think we actually referred to that in the Opening Statement this morning, and it was also formed part of Mr. Liston's evidence when he gave his evidence in March of 2001; and I think Mr. Liston accepted I'm sure you will also that a letter was sent to Mr. Lowry's solicitors by the Revenue Solicitor, and from that, it appeared that the Revenue Commissioners were not seeking a reply to that request for information at that time. Would you agree?

A. I am not too sure on that point specifically.

Q. Right. We can take it up with Mr. Liston.

A. Yes.

Q. You state that Revenue set up its own criminal investigation unit with effect from March 1997, and Liam Liston and you were two of the officers assigned to investigate possible tax offences that might have been committed under the Taxes Consolidation Act 1997. You say that the cases of Michael Lowry and Garuda Limited were two of the cases that you investigated, and during the course of the investigation, a caution was issued to Michael Lowry, who relied on his rights in that regard. I think that caution was administered by Mr. Liston; isn't that right?

A. It was indeed, yes.

Q. In February of 1998?

A. Yes.

Q. And just to clarify as well, the matter of Mr. Lowry and Garuda would have been just one of a number cases that you were investigating over those years?

A. Yes, it was indeed.

Q. You say that it is the practice generally of Criminal Investigation Unit not to deal with the civil settlement side of cases under investigation, to avoid prejudicing the outcome of a possible prosecution?

A. Yes, that is correct.

Q. Can you just tell me, in this instance you did deal with the civil side of the case, as did Mr. Liston. And could you just indicate why matters were different in this instance?

A. Well, when we got the copies or, sorry, when we got the records of Garuda Limited in early 2002, it appeared to us that there was an under-payment of tax, and we consequently raised assessments. These are the VAT and PAYE assessments that were issued in April 2002, and we it appeared to us that the full liability or there may be an outstanding liability, so as inspectors of taxes, there is an onus on us to assess tax where it is where we believe it is due.

Q. In fairness, though, to clarify, hadn't Mr. Lowry and Garuda indicated right from the very start and accepted from the very start that there was a tax liability?

A. Oh, indeed they had. But the initial submission the 18th April 1997 submission was indicating that the liability was Mr. Lowry's. Our opinion differed on that.

Q. We'll come back to that.

A. Yes indeed.

Q. You say that during the course of the investigation you called to the premises of Garuda Limited, but the records you required were not on the premises. In early 2002 you obtained the original records. This afforded an opportunity to estimate possible tax liabilities.

A. That is correct, yes.

Q. And of course the reason those records weren't on the premises is that they were in the possession of an Inspector who had been appointed by the Minister; isn't that right?

A. Initially, yes. Sorry, when we called down to the premises of Garuda, they were in the possession of an Inspector in the Department of Enterprise, Trade and Employment.

Q. Now, you state that a matter which required clarification was whether the undisclosed transactions gave rise to a tax liability, and if so, on whom the liabilities fell. You state that in later meetings with the agents for Michael Lowry and Garuda, notwithstanding that a caution had been administered, the agents indicated that they were prepared to enter discussions on the matter.

A. Yes, that is correct.

Q. And in fact, and we'll see it when we come to the minutes,

certainly, of the meeting of the 19th September, 2002, I think it was clear that as far as both Mr. Lowry was concerned, as far as Garuda was concerned, that each of them was quite prepared for the liability to rest with Mr. Lowry?

A. Indeed, yes.

Q. You say that in the course of the investigation you called to the offices of Dunnes Stores and obtained either copies or originals of cheques issued by and the backing invoices issued to Dunnes Stores in respect of payments made by them as specified in the 10th schedule of the Report of the Tribunal of Inquiry, Dunnes Payments?

A. Yes.

Q. You state that these invoices had been issued by Streamline Enterprises, a division of Garuda. You state that the invoices also bore the VAT registration number of Garuda. In view of this fact, Revenue, under the Tax Code, had to assess Garuda Limited in respect of these payments. Could you not deem Michael Lowry to be the assessable person in relation to these?

A. That is correct, yes.

Q. That was in relation to, what we refer to as the second category of payments identified in the McCracken Tribunal Report?

A. Yes.

Q. And I think in fact and we referred to it this morning in the Opening Statement the report itself concluded

that it did not accept the evidence of Mr. Lowry that these were payments to him personally, and that they were payments to Garuda; isn't that right?

A. Yes, I am aware of that, yes.

Q. But those invoices, am I correct in thinking, related solely to that category of payments, that is the 10th schedule category of payments?

A. It is indeed, yes.

Q. You state that following the issue of Justice McCracken's report and in order to identify the destination of the funds referred to in that report, Revenue obtained copies of Michael Lowry's accounts held with certain Irish financial institutions under Section 908 of the Taxes Consolidation Act 1997. This required application to the High Court for appropriate orders. These accounts did not cover all the lodgements referred to by the McCracken Report, as some of these were made to offshore accounts. During the course of various meetings with the agents, additional information was requested of the agents, and this was supplied. This included, amongst other matters, copies of the foreign bank accounts.

A. Yes, that is correct.

Q. So, am I correct in thinking, therefore, certainly as far as the law was concerned at that time, the Revenue did not have power to apply to the courts for access to offshore bank accounts?

A. That is correct.

Q. Or to documents in relation to offshore bank accounts?

A. Yes. We had no power to obtain any information in relation to a foreign bank account.

Q. Right. So in fact, when you commenced meeting with Mr. O'Connor in September, 2002, and you were furnished with the copies of the offshore bank accounts, other than the voluntary provision of them, there would have been no means available to you to compel the production of that documentation; is that right?

A. That is correct, yes.

Q. Am I correct in thinking you may not be able to assist the Tribunal on this but am I correct in my impression that the Revenue Commissioners now do have certain powers which can be used in order to secure access to offshore bank accounts and documents in relation to offshore bank accounts?

A. There is a facility now to do as you say, yes.

Q. And does that involve an application to the courts here, or does it involve an application to some other authority?

A. I believe it is an application to a court here to ask a foreign jurisdiction to assist.

Q. Do you know whether that power has yet been invoked by the Revenue Commissioners not in relation to this, but in relation to any case?

A. I am not aware of it sorry, I can't say if it has or it hasn't.

Q. Right. You say that in September, 2002 a meeting took

place between Michael Lowry's agent and Revenue Officials to clarify the position in relation to whether the tax liability fell on Michael Lowry or Garuda Limited, or both.

You state that "To advance matters, it was agreed by all parties that we would attempt to quantify the full amount of the undisclosed payments, transactions, income and then ascertain who was assessable on the income".

A. Yes, that is correct.

Q. So the first step in trying to get this civil liability sorted out was to try and endeavour to agree a figure for undisclosed income?

A. That is correct, yes.

Q. And having agreed that figure between you and Mr. O'Connor and Mr. O'Hanlon, you would then proceed to discuss who should be liable for the tax on that income.

A. Yes, that is correct.

Q. And indeed, presumably, what the heads of taxation should be on it?

A. Yes.

Q. You say that another matter that required clarification was the cost of the renovations to Glenreigh. You state that the agents were disputing that the renovations cost  $\text{€}3,951,077$ , contending that on the basis of the valuation of Olaf F. Maxwell & Associates, the value should have been  $\text{€}243,644$ , and you state that following discussions, the agents agreed to the Revenue position; is that right?

A. That is correct, yes.



Q. So that was, I think, one of the issues that had to be resolved between you before you could arrive at an agreed income figure; is that right?

A. That is correct, yes.

Q. And the figure that the Revenue were seeking to establish was the figure which had been referred to in the McCracken Tribunal Report of  $\frac{1}{2}$ 395,000-odd?

A. That is correct, yes.

Q. I think earlier in your statement you say that you had perhaps you had interviewed Mr. Stephens in relation to that, and also the contractors who had undertaken the work; is that right?

A. That is correct, yes.

Q. And Mr. O'Connor was contending that the valuation should be in the region of  $\frac{1}{2}$ 243,000 and had produced a report for that purpose?

A. Yes, that is correct.

Q. And I think, in fairness, that was an area of dispute that had already been flagged in the McCracken Tribunal Report; isn't that right?

A. That is correct, yes.

Q. But that ultimately, in the course of your negotiations, Mr. Lowry and Garuda accepted, for the purposes of a settlement, of course, that they would accept the figure, the higher figure of  $\frac{1}{2}$ 395,000?

A. Yes.

Q. You say that in addition the agents were also contending

that there was a double counting by Revenue in respect of the £100,000 sterling lodged to Allied Irish Banks in the Channel Islands in September 1991. They contended that the £100,000 sterling lodged included the payments identified in the 10th schedule of the McCracken Report, and following discussions, Revenue accepted their contention.

A. That is correct, yes.

Q. And I think, in fairness, that was probably consistent with the evidence which had been heard by this Tribunal.

You say that in the overall, the quantum of tax liability attributed to Michael Lowry and Garuda Limited was agreed.

You subsequently prepared computations of tax liability for both Michael Lowry and Garuda for agreement with the agents?

A. Yes, that is correct.

Q. You state that in the first half of 2003, meetings were held between the agents and Revenue Officials to discuss the tax liability, and during these meetings it was intimated to Revenue that Garuda Limited would be unable to finance the full liability when account was taken of the level of interest and penalties which had been calculated by Revenue. The agents contended that the company's business had declined the previous year and that it did not have the assets to meet the liability. Having served in the Investigation Branch since 1987, and discussing the matter with other colleagues, you were aware this situation could arise. You requested that the agents forward audited

accounts and other financial information to enable you to see whether there were any further funds available which could be used to meet the shortfall. You state that in relation to Garuda Limited, consideration was given to seeking to liquidate the company. However, as there was no preferential tax due, there was extreme uncertainty as to what could be recovered from such action.

A. That is correct.

Q. And also, before seeking to liquidate the company, Revenue would have required to have a quantified and legally due liability. In the present case, the assessments were under appeal. This would have involved listing all appeals for determination by the Appeal Commissioners, Circuit Court judge, and possibly high courts. In relation to the interests and penalties, they would have formed part of the ordinary debts of Garuda and ranked in the liquidation with other trade creditors. In all of the circumstances, you decided that when an offer in settlement was received, you would submit the offer to the Board of the Revenue Commissioners outlining the full facts of the matter and the available options.

A. That is correct, yes.

Q. Now, then dealing with estimated assessments raised and their present standing.

You say firstly, in March 1997, an assessment was raised on Michael Lowry for the tax year 1992/93 and is under appeal.

The appeal has been before the Appeal Commissioners, and in

late 1997, the hearing was adjourned pending the completion of the criminal investigation.

A. Yes, that is correct.

Q. Now, that was an assessment that you raised on Michael Lowry for a particular year very early on in the investigation of the case; isn't that right?

A. That is correct, yes.

Q. And in fact, there were no further assessments raised either on Michael Lowry or on Garuda until 2002; isn't that right?

A. That is correct, yes.

Q. Can you just tell me, was there a technical reason that you needed to raise an assessment for that year on Michael Lowry at that time?

A. Under the amnesty it was a position that if a person had made a payment, their liability could be restricted to 15% of the suppressed income. However, it was conditional that you had declared all the income that was appropriate to you, and also that you had made a correct 1992 and '93 income tax return. Our view at the time was that Mr. Lowry may not have made a correct return for 1992/93, and we consequently raised the assessment.

Q. But was that in some way connected with the requirement that you would have to apply to the Appeal Commissioners to set aside the certificate that had been granted to Mr. Lowry under the 1993 Act?

A. We had to do that as well, yes.

Q. And in fairness, Mr. Lowry had already indicated that it was his view that the assessment was or the return was incorrect; isn't that right?

A. Indeed, yes.

Q. And ultimately, Mr. Lowry consented to the setting aside of that certificate to enable the Revenue Commissioners to inquire into his affairs for that year and into his affairs for the preceding years?

A. Preceding years, that is correct.

Q. Now, the second set of assessments you refer to were in April 2002, when you state that Value Added Tax assessments were entered on Garuda Limited covering the period November/December 1988 to March/April 1993. You state that PAYE and PRSI assessments were also entered for the period 6 April 1988 to 5 April 1993. These assessments are presently under appeal.

A. That is correct.

Q. And then finally you state that in September, 2002, assessments were entered on Michael Lowry in respect of the years 1988/'89, 1990/'91, 1993/'94 and 1994/'95. You state that these assessments were protective, in that they included income from refrigeration services based on the known income arising as identified during the course of the Tribunal?

A. That is correct, yes.

Q. Can you just explain to me what you mean by that, "protective assessment"?

A. A protective assessment is raised where whilst we believe that in this case we believed that assessments were appropriate to be raised on Garuda Limited for the income. In the event that we were erroneous in that opinion, we raised them on Mr. Lowry. The intention with this is that whenever a liability is finally agreed, the assessments on Mr. Lowry will be discharged.

Q. Or indeed

A. Or vice versa.

Q. If those assessments had proceeded to appeal I know they are pending at the moment, so I suppose technically they could, but in reality they are not going to go to appeal; if those assessments had gone to appeal, would both sets of assessments have gone to appeal for the Appeal Commissioners, or would it be the practice of the Revenue Commissioners to withdraw one of the sets of assessments before the appeal hearing?

A. What we would probably have done is bring the two sets for hearing at the same appeal hearing.

Q. I see.

A. And a decision could have been made then by the Appeal Commissioner.

Q. I see. So you'd cover yourself either way?

A. We were covering ourselves, covering the Revenue interest.

Q. You state that in the course of the investigation and in order to protect Revenue's interest, estimated assessments were raised on both Michael Lowry and Garuda Limited.

Broadly speaking, the assessments cover the same income?

A. Indeed, yes.

Q. You say that whilst you believe that the tax liability should correctly be assessed on Garuda, until you had been supplied with further information and facts, you had to take account of statements made by Michael Lowry that the income was his. You state that as indicated earlier in this statement, this became a matter for discussion at later meetings with the agents. When the liability is finally quantified and the taxable person identified, the assessments on the other party will be discharged?

A. That is correct.

Q. I think that's what you were saying a little earlier?

A. That's right.

Q. Now, you state that in relation to the invoices on which payment was received in sterling, Items 2 to 9 of the 10th schedule, the invoices indicated that the work was carried on outside the State, and accordingly Value Added Tax would not have been chargeable in respect of this work.

A. Yes, that is correct.

Q. Now, I think that relates to, I suppose, a relatively technical aspect of the application of the law of Value Added Tax; is that right?

A. Yes.

Q. And am I correct in thinking that what that means is that where an invoice is in respect of work carried on outside the country or is raised in respect of a person who is

outside the country, that it's taxed at a zero rate of VAT?

Is that correct?

A. In general, yes.

Q. So that you were just dealing there with a matter which arises in the ordinary course in computations of VAT liability?

A. That is correct, yes.

Q. You state that in the attached schedule you have set out details of the income as disclosed by the McCracken Report and the consequential Value Added Tax liability arising.

I'm not going to refer to that, if you don't mind,

Mr. Nolan, because I think we can accept that the computations of the tax liability by the Revenue

Commissioners were correct.

A. Very well.

Q. You state that in relation to the interest charge in the Value Added Tax computations, the rate of interest charged by Revenue under Section 1080, Taxes Consolidation Act 1997, was 1.25% per month or part thereof up to March 1998, and the rate of interest subsequently was reduced to 1% per month or part thereof, and in 2002 amended to a daily rate of 0.332%?

A. That is correct.

Q. I think that was just to explain the differences in the interest computations in your work?

A. It is indeed, yes.

Q. You state in relation to the tax unpaid, there was no



computation of liability attached to the 18 April, 1997, submission. You then set forth in tabular form what the disclosures were, and you refer to a calculation of total liability based on those figures. And just to pause there for a moment, what you are talking about is the submission that was made by Ernst & Young on behalf of Mr. Lowry and Garuda in April of 1997?

A. That is correct, yes.

Q. And I think you indicated to me, before the commencement of sittings, that that computation that you set out in your statement, that there were some errors in it?

A. There are indeed errors.

Q. In fact the total figure for tax, interest and penalties, based on the disclosures that were made in Mr. Lowry's submission of April, 1997, would have been \$1,307,022?

A. That is correct, yes.

Q. Now, you then set forth, at paragraph 13, your computations of tax, interest and penalties in respect of both Mr. Lowry and Garuda. And I think these were based on the undeclared income that was agreed between you and Mr. Lowry's tax agents; isn't that correct?

A. That is correct, yes.

Q. And we have prepared an extract table that we can put on the screen, and I'll just go through it with you.

Now, the first set of computations at the top of the table relate to Michael Lowry; isn't that right?

A. That is correct, yes.

Q. And the second set of computations, from the middle down, relate to Garuda?

A. That is correct, yes.

Q. And you have shown the computations firstly in pounds; isn't that right?

A. That is correct, yes.

Q. And then you have shown the euro conversion?

A. Yes.

Q. The same applies, then, in relation to Garuda?

A. Yes.

Q. And I'd be right in thinking, would I, Mr. Nolan, that these were fairly tricky technical computations because of the fact that Mr. Lowry had made so many payments on account from a very early date?

A. They were indeed, yes.

Q. Because it wasn't simply a matter of computing the taxes so that the interest starts on a particular date and ends on a particular date, the penalty starts on a particular date and ends on a particular date?

A. It could have been done that way, but what I was looking at was the possibility when it came into the final negotiations, that for example, part of Mr. Lowry's liability may need to be included in the computation. But as it ended up, using the method you suggested there would have given the same result.

Q. But you did take account in these figures, in computing interests and penalties and so forth, of the early payments

on account that had been made?

A. I did indeed, yes.

Q. So, in the case of Mr. Lowry, your tax computation was the tax liability was  $\pounds 50,023$ ; is that right?

A. Sorry? Yes.

Q. The equivalent in euros of that was  $\pounds 63,516$ ?

A. That is correct, yes.

Q. Then you have the interest computation on that, and the penalties?

A. Yes.

Q. And the total in was  $\pounds 1,363,077$ , and the total in euros was  $\pounds 173,074$ ?

A. That is correct.

Q. And then below that you have the same computation for Garuda. And you distinguish there between VAT and PAYE and PRSI; isn't that right?

A. Yes.

Q. So that the amount for VAT in pounds was  $\pounds 124,909,086$ . The amount for PAYE and PRSI in pounds was  $\pounds 431,591.97$ ; isn't that right?

A. That is correct.

Q. And the total of the two tax liabilities in respect of Garuda was  $\pounds 556,501.83$ ?

A. Yes.

Q. And the euro equivalent of that was  $\pounds 706,612$ ?

A. Yes.

Q. Then below that you show the computation of interest,

amounting to i;½595,375?

A. Yes.

Q. And then penalties, first computed in pounds and then converted to euros, i;½406,643?

A. Yes.

Q. So that the total for Garuda, including all tax, interest and penalties, was i;½1,708,620?

A. That is correct, yes.

Q. And I just want to confirm that that was your interest computation there right up to March of 2003?

A. It was indeed.

Q. And it also included full penalties in respect of both Mr. Lowry and Garuda?

A. That is correct, yes.

Q. And both the income figures, the figures for liability to tax and the figures for interest and penalties, were all agreed by Mr. O'Connor and Mr. O'Hanlon on behalf Mr. Lowry and Garuda?

A. They were indeed, yes.

Q. And you state in your statement that the settlement terms discussed would result in Mr. Lowry paying his full liability, including 100% penalty, and due to its inability to pay the full amount, Garuda Limited would be paying approximately 55% of the full interest and penalties in addition to the tax?

A. That is correct, yes.

Q. You state that during the course of the investigation, a

total sum of ₹1,434,324 has been collected by the Revenue?

A. That is correct, yes.

Q. You state that as a formal offer in settlement has not been

made, the matter has not been referred upwards at this

point for determination. You state that the normal process

is to refer the formal offer, subject to certain

thresholds, to the Assistant Secretary or the Board of the

Revenue Commissioners for approval of the offer or

otherwise. You state that in the event that a formal offer

in settlement had been made, you would have prepared a

report on the investigation and made a recommendation of

whether to accept or reject the offer. This report would

have originally been referred to your Assistant Secretary,

who might require clarification on the report. The

Assistant Secretary would have to either agree or disagree

with your recommendation, and the report would then be

referred to the Chairman of the Revenue Commissioners for

either acceptance or rejection of the offer in settlement.

You state that in the case of negotiations I think in

the course of negotiations you kept your Assistant

Secretary abreast of developments in the cases in general

terms?

A. That is correct, yes.

Q. Now, I'd be right in thinking, would I, that you fully

accept that at some stage a formal offer will be made by

Mr. Lowry and Garuda?

A. I am expecting a formal offer, yes.

Q. And at that stage you will formally refer it to your Assistant Secretary, and in turn, your Assistant Secretary, having raised inquiries or queries from you, will then submit it to the Board of the Revenue Commissioners?

A. That is correct, yes.

Q. And I think in this instance you have indicated that you did keep your Assistant Secretary I think that's

Mr. Donnelly, is it?

A. It is.

Q. You kept him abreast of documents in the case?

A. Yes.

Q. So he knew at each stage, really, what was happening in your negotiations with Mr. O'Connor and Mr. O'Hanlon?

A. He may not have been aware of the detail minutiae, but he had an overview, yes.

Q. He had an overview?

A. Yes.

Q. He knew that on the 24th August, that you had arrived at a figure of 1.434 million, and that was the figure that you were going to recommend.

A. That I would be recommending, yes.

Q. He would have known about all the payments that had been made by Mr. Lowry on foot of those negotiations with you?

A. That is correct, yes.

Q. And I take it in your career you have arrived at settlements such as this on many occasions which were conditional on the approval of the Board of the Revenue

Commissioners?

A. All settlements are conditional on approval by the Board of the Revenue Commissioners.

Q. And is that over a certain figure, or

A. As I say there, the thresholds as a Principal Officer I am authorised to approve settlements up to  $\text{€}50,000$ .

Mr. Donnelly, the Assistant Secretary, is authorised up to  $\text{€}100,000$  sorry,  $\text{€}100,000$ . And above that it goes up to the Board of the Revenue Commissioners.

Q. And I take it you had experiences in the past of settlements that you have concluded on a conditional footing being submitted to the Board for approval?

A. Oh, yes.

Q. And can you tell me, have there been any instances where proposals that you have submitted in those terms have not been approved by the Board?

A. All settlements that I have sent up to my superior officers have been approved.

Q. Now, can I just come to your supplemental Memorandum of Intended Evidence, Mr. Nolan. Now, you state that at the request of the Tribunal, you are making this supplemental statement, and the first matter which your statement addresses is civil investigation commencing in 2002.

You state that when the investigation commenced, Revenue were initially not in a position to determine whether, in fact, there had been any under declaration of tax, or indeed by whom.

You state that the business records were not available when you called to the premises of Garuda.

A. That is correct, yes.

Q. You state that when you obtained records relating to Garuda during visits to Dunnes Stores in 1998, it appeared that there was an under declaration of tax liability by Garuda.

You state that to establish the extent of this, you needed to see the records of Garuda, and these were not available.

You state that after you obtained the records in early 2002, you examined them, and you were then satisfied that your original view was likely to be correct. You state that in an interview with Mr. Ben Dunne, who had been the Chief Executive Officer of Dunnes Stores in March 2002, you were advised that Dunnes Stores had not dealt with Mr. Lowry personally, but rather with Streamline Enterprises. This was the trading name of Garuda. You state that accordingly you decided to raise estimated assessments on Garuda, and these were subsequently appealed?

A. That is correct, yes.

Q. You state that the initial meeting on the 19th September, 2002, was averaged at the request of Mr. Denis O'Connor?

A. Yes.

Q. That was the initial meeting you had with Mr. O'Connor regarding the issue of civil liability?

A. That is correct.

Q. Under the heading "Why not recover from Michael Lowry", you



have informed the Tribunal as follows:

You say that your by that you mean, of course, the Revenue initial position was that the bulk of the tax liability was likely to be that of Garuda, but until such time as you had seen the relevant records and engaged with the tax agents, you could not finalise the position. You state that this was clarified in the interview with Mr. Dunne in March 2002 when he indicated that Dunnes Stores only dealt with Streamline Enterprises. You believe that the funds received directly by Mr. Lowry were as a result of work undertaken by Garuda and could not be assessed to tax on him. You say that in relation to making Mr. Lowry personally liable for the shortfall in the proposed figures, this matter was considered in 2003, when it was clear that this would require when it was clear that this would require a liquidation of Garuda and Revenue incurring substantial expense in funding the liquidator with the possibility of no additional recovery.

A. That is correct, yes.

Q. Can we just pause there for a moment, Mr. Nolan, in relation to this whole issue of liability for the tax arising out of the McCracken Tribunal Report.

Now, we know that there was information made available to the Revenue Commissioners in December November 1996, and as a result of that, the Revenue Commissioners commenced an investigation.

A. Yes.

Q. And we know that in April of 1997, Mr. Lowry and Garuda made a submission to the Revenue Commissioners through their then agents, Ernst & Young?

A. That is correct, yes.

Q. And we then know that the McCracken Tribunal Report was published in August of 1997; isn't that right?

A. Yes.

Q. And we opened portions of the report here this morning, and we looked at the four categories of payments that had been identified in that report. And I think you were here for that this morning?

A. I was here for that, yes.

Q. Now, what I want to do is just to give you an opportunity to explain to the Tribunal, and so that indeed the members of the public understand why it was that the Revenue appear to have had the view, from an early stage, and ultimately took the view that it was Garuda that had to be assessed for tax in respect of these payments rather than Mr. Lowry.

A. Basically all the documents that and information we received during our investigation indicated that Garuda was the taxable entity. All the documents showed that the payments had been made to Streamline Enterprises. All the documents we saw showed that. And we have to go on the basis of what information we find, and we were satisfied that Garuda was the taxable entity. In relation to the Dunnes Stores money, we had no reason to believe that Mr. Lowry was carrying on a private business with them, and

we took all the money into account in our calculations.

Q. Well, look, if we just consider each of the categories of payments in turn.

The first category of payments were the payments made in respect of staff bonuses, Christmas staff bonuses.

A. Yes.

Q. Did you uncover or unearth any documents in relation to those payments?

A. Not really, no.

Q. So there weren't any invoices, or there weren't any payments or receipts or anything like that, in relation to those bonus payments?

A. Not that we found, no.

Q. Right. Now, the second category of payments were the payments that were made by cheques to Streamline Enterprises. These are the 10th schedule payments.

A. Yes.

Q. Now, did you find documents in relation to those in the records of Garuda?

A. There was no documents in Garuda's own records. We got documents from the company's from Dunnes Stores.

Q. From Dunnes Stores. And what did those documents show?

A. They showed an invoice had issued from Streamline Enterprises quoting the Garuda Limited VAT reference number.

Q. Now, if you take the third category of payments, then. They were what the McCracken Report referred to as bonus

payments by Mr. Dunne to Mr. Lowry. And those payments some of those payments were actually made through offshore entities. Now, in the records of Dunnes Stores, did you find any documents relating to those payments?

A. No.

Q. Can you explain to me, therefore, that if you found nothing in the records of Dunnes Stores that would indicate that these were payments to Dunnes Stores, why it was that the Revenue Commissioners felt compelled to treat those payments as payments to Garuda?

A. Because our belief was the trading entity dealing with Dunnes Stores was Garuda Limited itself. We did not believe that Mr. Lowry had he was trading in his own right with Dunnes Stores.

Q. And this was even though Mr. Lowry was quite prepared to shoulder the burden of that tax personally?

A. Oh, yes, but we have to decide who is the correct person to assess to tax on that income.

Q. Well, can I ask you this: Did you anticipate that if you had assessed that income on Mr. Lowry, that you might have difficulties if those assessments were appealed to the Appeal Commissioners? That was the difficulty?

A. That was one of the difficulties, yes, and it could also be that if they were gifts from Dunnes Stores people, there may be no liability to tax on it. It was something we considered, but we were satisfied that the liability ultimately was Garuda's.

Q. Was it therefore because of technical rules in the Tax Code that you felt compelled to tax Garuda, rather than Mr. Lowry personally?

A. That is correct, yes.

Q. And then, in relation to the fourth category of payments; these were the payments in respect of the work to Glenreigh. I take it you wouldn't have found any invoices in Dunnes' records from Streamline in respect of that work?

A. No, we wouldn't.

Q. And I think it can be accepted that that was Mr. Lowry's property; it wasn't the property of Streamline or Garuda?

A. This is the Badgeworth and Tutbury money, is it?

Q. No, this was the work for the restoration of Glenreigh, for the works done on Glenreigh, Mr. Lowry's property.

A. Yes, well, again we are back to the concept that we had that the only reason that payment was being made for this work was as a result of the trading relationship between Garuda Limited and Dunnes Stores.

Q. Would it not have been open to you to make the case that Garuda Limited, as had been found in the McCracken Tribunal Report, was really equivalent to a division of Dunnes Stores, and that these were payments to Mr. Lowry for his own personal services?

A. If we had have gone down that road, we would have been looking at possibly a PAYE liability on Dunnes Stores rather than anyone else.

Q. Well, can I ask you this, Mr. Nolan, which I don't quite

understand. In an employer/employee situation, if income tax is not paid, is it always the case that the Revenue seek to assess the income tax on the employer rather than the employee?

A. Yes. We always operate it that way.

Q. Well, is that because of some provision of the Taxes Consolidation Act, that it's deemed to be a liability of the employer rather than the employee?

A. Yes. The Taxes Act and the income tax the PAYE regulations specify that the person by whom a payment is made shall deduct therefrom the appropriate tax.

Q. Well, if you then assess the employer to PAYE and PRSI and you can't recover it from the employer, say in a typical situation, a liquidation situation where the company has no funds, is it then open to the Revenue Commissioners to go after the employee?

A. No. If it can be shown that the employee received his normal salary and he did not know that it was being paid to him tax-free, Revenue would not seek to recover from the individual in that case.

Q. And if the individual did know that it was being paid to him without deduction of PAYE, would the individual taxpayer then be liable?

A. He would be liable. There is provision for recovery, but it is a circumstance that has been very rarely used by Revenue.

Q. And is that provided for under the Taxes Act, under the

Taxes Consolidation Act?

A. It's provided under the Income Tax Employment Regulations.

Q. Can you just tell me and I think in fact there is a reference to that in the minute of the meeting of the 19th September, but do you think that there would have been any difference in what the figures for tax, interest and penalties would have been, had you assessed this on Mr. Lowry personally, rather than on Garuda?

A. Basically we would have just got income tax.

Q. You wouldn't have got VAT?

A. Oh, no. These regulations only apply to the recovery of the PAYE that should have been paid over by the employer.

Q. No, I'm not specifically referring just to those regulations at the moment, Mr. Nolan. I am just making a slightly wider query. I am wondering whether the fact that this liability was attributed to Garuda rather than Mr. Lowry, whether that would have made any difference to the ultimate quantum of the liability.

A. It probably wouldn't have made that much difference in the overall.

Q. Now, you have dealt, then, with penalty rate changes in relation to Value Added Tax and PAYE, and I'm not going to go into those at the moment, Mr. Nolan. And indeed, over the page you have set out in great detail the computation of tax in respect of both Garuda and Mr. Lowry, showing how you arrived at the figures that we had on the screen a little earlier, and again I'm not going to go through those

figures in detail.

So, if we go on to paragraph 6 of your supplemental statement, you deal with liquidation position. You say that during the discussions in 2003, Revenue Officials considered the possibility of a liquidation of Garuda Limited. "However, for the following reasons, this was not regarded as a viable option".

You say, firstly: "The tax liability then outstanding would not have ranked as a preferential debt as none of the liability was in respect of the last twelve months' trading".

So, in other words, you were saying that because none of that tax liability would have been in respect of the last twelve months' trading, the debt would simply have ranked as an unsecured debt?

A. That is correct, yes.

Q. So, in a liquidation situation, the secured credit well, the costs and expenses of the liquidation would be the first thing to be paid; is that right?

A. That is correct, yes.

Q. And then I think the secured creditors, they would be creditors that had a debenture or a mortgage or some other form of security?

A. That is correct, yes.

Q. Then the preferential creditors, which might be the Revenue, but limited to tax for the last twelve months of trading?



A. That is correct, yes.

Q. Then all the various trade creditors?

A. Yes.

Q. And as regards this liability which dated from many years prior to 2003, the Revenue claim would have ranked with the unsecured creditors; is that the point you are making?

A. Yes.

Q. You say, secondly, that "Although there were estimated assessments, they were the subject of appeals and would have required determination in order to petition the courts. The process was likely to have been a long one".

A. Yes.

Q. So, in other words, are you saying that in order to petition the Court to wind up Garuda, you would have had to have what I think is referred to as a Revenue debt? Is that right?

A. That is correct, yes.

Q. That the attempt alone would not have been sufficient to enable the Court to make an order winding up Garuda?

A. That is correct, yes.

Q. So, you would issue the assessments, and they were under appeal. So the first port of call would have been the Appeal Commissioners; is that right?

A. Yes.

Q. And would there have been a possibility of an appeal then from the Appeal Commissioners?

A. Garuda or Mr. Lowry have right to appeal a decision of the

Appeal Commissioners to the Circuit Court.

Q. And is that a full rehearing of

A. It is a full rehearing of the matter, yes.

Q. And then is there another possibility of appeal to the High Court?

A. It can go up to the High Court at a later stage, yes.

Q. And then the Supreme Court?

A. Sorry?

Q. Is there a possibility of it going to the Supreme Court?

A. Well, it would go to on an point of law for the Supreme Court to look at, yes.

Q. So, in order to convert those assessments into a Revenue debt which would have entitled the Revenue to petition the Court to wind up Garuda, you certainly would have had to go to the Appeal Commissioners to get those assessments against Garuda confirmed, and there was a possibility of those being appealed by way of rehearing to both the Circuit and High Court, and then always the possibility of an appeal to the Supreme Court on a point of law?

A. Yes, that is correct.

Q. You say, thirdly, that the accounts of the company did not indicate a promising asset position, and any recovery was likely to be less than the amount assessed by Revenue.

A. Yes.

Q. So, I think what you are saying there is that it appeared to you, from the accounts with which you had been provided and from the financial information which you had been

provided by Garuda, that it appeared that the company did not have sizable assets, and that in the event of a liquidation, it's likely that Revenue would have recovered, in fact, less than even the tax assessed, much less the penalties and the interest?

A. That is correct, yes.

Q. You say that fourthly, consideration would have to be given to possibly funding the liquidation rather than recovering funds, Revenue could have incurred expense?

A. Yes.

Q. That's in terms of petitioning the Court and appointing a liquidator, the liquidator would want to be sure that his fees and his costs and expenses were going to be met by somebody?

A. Correct.

Q. Then finally you state that any recovery could have taken a considerable length of time to achieve?

A. Yes.

Q. You state that "At the meeting on the 19 September, 2002, mention was made of the possible insolvency of Garuda based on our estimated assessments". That's because you had raised assessments, I think, the previous April on Garuda; isn't that right?

A. Correct.

Q. And I think the assessment was about 1/2 500,000; was that right?

A. Yes.

Q. So having received that assessment, there was a concern on the part of the directors of Garuda and the auditors of Garuda that Garuda would not have the financial wherewithal to meet those assessments, and that could give rise to a risk of insolvency?

A. Correct.

Q. You state that the inability of Garuda Limited to pay the liability was first mentioned at the meeting on the 27th February of 2003?

A. Yes.

Q. Now, in relation to protecting Revenue's interest, you state that as you stated earlier in your statement, you did not believe that Mr. Lowry was personally carrying on any business with Dunnes Stores, and consequently a liability to tax in respect of these funds would not arise. Having received the records of Garuda Limited in February, 2002, you were satisfied that Garuda Limited was the trading entity with Dunnes Stores, and the interview with Mr. Ben Dunne copper-fastened this view in your mind. In order to protect the Revenue interest in the event that your view was incorrect, estimated assessments to income tax were raised on Mr. Lowry in September.

A. That is correct, yes.

Q. There, I think you are referring to what you described as the protective assessments?

A. Indeed.

CHAIRMAN: Presumably this would deal with the scenario

that we don't, I stress, have here: that if perhaps somebody who was an officer or an employee of a company in fact misappropriated all the money that was due, so that, in effect, the company would not have received it as income, you had the alternative fallback position of having the officer or employee being pursued under the protective assessment as well?

A. You would have, Your Honour, but in this case we were looking at protecting Revenue's interest, in that if I had only assessed Garuda Limited to tax and I was incorrect in my view, the liability would have obviously fallen then onto Mr. Lowry, and I would have then had to raise assessments, and it could be years down the road.

CHAIRMAN: Yes. Thank you.

Q. MS. O'BRIEN: Now, in relation to the Christmas bonuses, you state that Mr. Dunne, in his evidence to the McCracken Tribunal, stated that certain payments were Christmas bonuses to staff of Streamline Enterprises. If the funds were so earmarked, you could you not see any circumstances other than that they were paid to Mr. Lowry on behalf of Garuda, and a consequential liability to tax arose on the company?

A. Yeah.

Q. Now, you say that the tax returns submitted by Mr. Lowry do not mention the acquisitions of interests in the Cheadle or Mansfield properties. You state that in the meeting of the 14 January, 2003, you were advised that Mr. Lowry had been

a director of Catclause Limited, which owned the land until January 2000, when it was dissolved, and a Mr. Aidan Phelan subsequently became the owner of this land. You say at the same meeting Mr. O'Connor advised that Mr. Lowry held a 10% interest in the Mansfield property, but the property was not income-generating.

A. Yes, that is correct.

Q. Now, can I just ask you generally, that where a taxpayer is making an annual return, is there an obligation on the taxpayer to disclose in that return the acquisition of an asset which, if disposed of, might give rise to an exposure to Capital Gains Tax? What I mean by that is the acquisition of a property or shares or something of that nature.

A. Yes. If an individual acquires property, as you have suggested there, they are obliged to include that acquisition in their annual tax return. And if they acquire shares in companies, be they quoted or unquoted, they are obliged to include them.

Q. And does that extend to property both in this jurisdiction and outside the jurisdiction?

A. Yes.

Q. So strictly speaking, Mr. Lowry would have been under an obligation to disclose the acquisition, certainly, of the Mansfield property or his interest in the Mansfield property?

A. He would indeed, yes.

Q. And can you tell me in relation to the Cheadle property, where I think he was a director of a company that had entered into a contract to purchase the property, would there have been a similar obligation of disclosure in that instance?

A. There would have been an obligation to disclose the acquisition and disposal of that interest. I understand that his interest was acquired in mid-'99?

Q. Yes.

A. And on the information we had there, the disposal was in early 2000. So, there would be an obligation to disclose both events.

Q. And the acquisition would have been in the tax return for 1999, would it?

A. For the acquisition, yes well, they would have yes, they would have been in his '99 return.

Q. That's the return you'd make in November 2000; is that right?

A. Yes.

Q. And then disposal, then

A. Would be the following year.

Q. The following year, the tax return for 2000 that you make in November of 2001; is that right?

A. Correct.

Q. Does that even arise where there really hasn't been any capital gain?

A. Oh, yes. Once you acquire an asset, you have an obligation

to include it on your return in the year you acquire it.

Q. In the year you acquire it.

Now, you state that at a meeting on the 30th June, 2003, the agents advised that the maximum amount that could be raised was  $\text{€}1,000,000$ , and this would not be easy. In the event, Mr. Lowry mortgaged his home to fund part of the proposed settlement. And of course that  $\text{€}1,000,000$  is in addition to the  $\text{€}434,000$  that had been paid in '97 and '98?

A. That is correct, yes.

Q. You say that whilst it is not recorded in the minute of the meeting on the 29 August, 2003, you believe that it was at this meeting that you indicated that you would support an offer of  $\text{€}1,634,324$  in settlement. It had been indicated to the agents that the final decision on acceptance or rejection rested with the Board of the Revenue Commissioners?

A. That is correct, yes.

Q. You state that Mr. O'Connor was aware that should an offer in settlement be submitted, you doubted that the Board of the Revenue Commissioners would accept the offer until the position of Mr. Lowry's involvement in transactions of which the Tribunal may hear evidence had been determined; isn't that right?

A. That is correct, yes.

Q. And I think that concludes your supplemental statement?

A. Yes.

Q. Now, Mr. Nolan, you have already mentioned in your



statement that the matter of possible undeclared income came to the attention of the Revenue Commissioners in December of 1996?

A. That is correct, yes.

Q. And then you received, as we have said, the Ernst & Young submission in April of 1997?

A. Yes.

Q. And also, you then had, in August of 1997, the report of the McCracken Tribunal?

A. That is correct, yes.

Q. And we referred to, during the Opening Statement, and indeed when opening your own statement and supplemental statement, that the categories of payments that had been identified in the report of the McCracken Tribunal; isn't that right?

A. That is correct, yes.

Q. And we looked at the four categories?

A. Yes.

Q. Now, in the course of your statement, you have referred to various heads of tax and the possibility of liability resting with Mr. Lowry or with Garuda, and indeed in one instance, I think you refer to a possible liability resting with Dunnes Stores?

A. Yes.

Q. Now, could you just explain, so that the Tribunal could understand and the public can understand, in respect of both Mr. Lowry and Garuda, what possible tax obligations or

implications arose from those payments. So if we take

Mr. Lowry first, what were the possible taxes that he might be liable for on those payments?

A. Mr. Lowry, in a personal capacity, would have been if he had of received all these payments in a personal capacity, he would have been liable to income tax on those payments.

He would have been liable to Value Added Tax on those payments, and he would have been liable sorry, we are just talking about the four categories?

Q. Yes.

A. Yes. He would have been liable to interest and penalties in the event that they had not been included in his returns and that he was late making payment of the tax as due.

Q. Right. So if it was Mr. Lowry, it would have been an exposure to VAT, to income tax, to interest and penalties?

A. Yes.

Q. Now, in the case of Garuda, what were the potential liabilities?

A. The potential liabilities in the case of Garuda were a corporation tax assessment, or alternatively liability to pay over the PAYE tax that was payable. They would have also been liable to Value Added Tax, and they would have had an interest-and-penalty situation for late payment.

Q. Right. So that the three possible heads of tax for which Garuda might have been liable were: Value Added Tax, PAYE or PRSI, and corporation tax?

A. Yes.

Q. Now, in the event, there were no assessments raised to corporation tax, were there?

A. There were none, because all we deemed all the money that we regarded Garuda Limited as entitled to under the invoices, etc., to have been disbursed out to Mr. Lowry, and that occasioned PAYE liability arising.

Q. And that was to reflect, I suppose, in fairness to the Revenue Commissioners, the findings of the report of the McCracken Tribunal?

A. It was indeed, yes.

Q. Now, can you also explain, again for the assistance of the Tribunal and the general public, where the Revenue Commissioners want to recover tax in a situation where a return hasn't been paid and the tax hadn't been paid, am I correct in thinking that the route to do this is by raising an assessment?

A. That is correct; we would raise assessments on the company to recover the taxes due.

Q. But is that the position in relation to all taxpayers?

A. It is. Now, we are talking I assume we are talking about pre-self-assessing liability, when the obligation to make your return came in.

Q. Yes, were post self-assessment. This whole period relates to the period of self-assessment?

A. Yes. Well, in relation to just taking PAYE as an example, the employer has an obligation to send in a monthly return of the tax that has been deducted. If the employer fails

to do that, Revenue can raise estimated figures estimated tax figures on them, and they have a right of appeal against it, as happened in this case.

Q. So really assessment is the route you go by where income has not been returned for tax purposes?

A. Yes.

Q. And the way you if you raise an assessment and it is not appealed against by the taxpayer, how do you then recover the tax due on foot of that assessment?

A. We send out demand letters for payment of this tax, and this is followed by we have a couple of options. We can go for attachment, which is where we know that the person is due funds from another source; that they have a bank account or they are owed money by a person that they have dealt with. The attachment notice can be served on that bank or whatever, and the bank have the responsibility then of paying us rather than paying the money to the individual.

Q. So the attachment is one way that you can go about it?

A. That's one way. Another way is to take court action for recovery of the debt.

Q. So that would just be for a judgement debt?

A. A judgement debt, yes.

Q. Now, if the taxpayer is unhappy with the assessment, am I correct in thinking that the route the taxpayer takes is to appeal the assessment to the Appeal Commissioners?

A. Indeed, yes. And then they have right to go on to the

higher courts, yes.

Q. And ultimately, if the matter has been to the Appeal Commissioners and the assessment is upheld, can Revenue Commissioners then go and enforce payment of the tax due on foot of that assessment by the same means, by attachment or by proceeding in court?

A. Yes.

Q. Now, as you said in your statement, arising from the availability of the Garuda records which the Revenue Commissioners were able to access in January, 2002, you were in a position to raise assessments. These are the assessments that you have just referred to?

A. Yes.

Q. And these were assessments against Garuda for VAT and for PAYE and PRSI?

A. That is correct, yes.

Q. And the assessment relates solely to the tax liability; isn't that right?

A. That is correct, yes.

Q. The assessment doesn't relate to interest or penalties?

A. No, no. The

Q. Solely the tax liability?

A. It's only the tax liability, yes.

Q. And following on from that, I think contact was made by Mr. Denis O'Connor?

A. It was, yes, that was the September meeting, yes.

Q. And he requested a meeting with you?

A. Yes.

Q. In relation to the affairs of Mr. Lowry and Garuda?

A. That is correct, yes.

Q. Now, I think we have a copy of the minute, the note of that meeting, and that's at Divider 9. I don't know if you have a book of documents.

A. I have.

Q. It's at Divider 9 in the book. And I think we can put that on the overhead screen. Oh, I'm sorry, it's actually at Divider 8.

It records the date, the 19th September, 2002, the time and the persons present, Denis O'Connor and Neale O'Hanlon, partners in Brophy Butler Thornton accountants, agents for Michael Lowry; Liam Liston, Aidan Nolan, Paddy Faughnan, Prosecutions Division, Revenue.

"It was agreed at the outset of the meeting that on completion of the meeting the notes would be agreed between all parties. As Denis O'Connor requested the meeting, he began by outlining his position. He said that he was aware a caution had been issued to his client but that he was not unduly concerned with the caution at this stage. He wished to advance the issues in relation to tax liabilities and if possible agree the income figures. Matters have been delayed by the issue of the caution and other matters, and he now wished to move on.

"Denis O'Connor outlined the background to his involvement in the case. He said that while he knew Michael Lowry for

a considerable length of time, he had no involvement with Michael Lowry's business affairs until April 1996. He said that he first saw Garuda Limited records in April 1996.

They were not auditors of Garuda Limited at that time.

Michael Lowry and his company, Garuda Limited, had reached an agreement with Dunnes Stores, and this agreement was finalised around March/April 1996. They were requested to do management accounts up to April 1996 and monthly accounts from then on.

"Liam Liston at this stage said that we were in the process of raising income tax assessments and VAT assessments on Michael Lowry in addition to PAYE/VAT estimates on Garuda Limited. These assessments were protective assessments.

Liam Liston asked Denis O'Connor if there were major trading distinctions between Michael Lowry and Garuda.

Denis O'Connor quoted an extract from the McCracken Tribunal: 'So you asked yourself.' Because of the controversy generated around the 30th November 1996 by articles in the media, he advised Michael Lowry that he needed to reconstruct his records. Michael Lowry gave Denis O'Connor an envelope of incomplete records in December 1996, and Denis O'Connor agreed to draft management accounts for Garuda Limited. His firm drafted management accounts for the four-month period ended April 1996 and then drafted monthly management accounts from May 1996 onwards. From that point on, Denis O'Connor said that he was actively involved with the McCracken Tribunal, Ernst

& Young, Gareth Sheehan and others. Denis O'Connor said that he had a good knowledge of the records of Garuda Limited at that point.

"Denis O'Connor gave his views regarding the admissibility of evidence obtained from the Tribunal records and Liam Liston gave our view of the admissibility of that evidence. Liam Liston said that it was his view that any evidence he proposed to use was obtained legally.

"Denis O'Connor said that what he would like to do is agree the income figures and then decide whether the income was properly attributable to Michael Lowry or Garuda Limited.

Liam Liston replied that we had done an exercise on figures and had attributed them to both Michael Lowry and Garuda Limited, and that there was a very little material difference between the two sets of figures. He also confirmed, because we did not have the complete picture regarding all the figures, some of our figures were estimated."

That would seem to suggest that Mr. Liston had certainly done the exercise of doing two separate sets of computations, one based on a liability of Michael Lowry and the other based on a liability of Garuda, and that there seemed to be little significant difference in terms of tax exposure.

A. That is correct, yes.

Q. It records: "Denis O'Connor said that Neale O'Hanlon knew little of Michael Lowry's personal income tax, but he was



present at the meeting because he was conducting the audit of Garuda Limited. Liam Liston said that we were anxious to advance the case but that in the context of the caution, we had to be careful. Denis O'Connor again reiterated that we would agree the notes detailing the meeting at the end of the meeting.

"Denis O'Connor then pointed out a file that he had with him, which he said he had been compiling up until the beginning of last year. Then the UK dimension of the case arose in the Tribunal. He was referring to Denis O'Brien and others. Liam Liston pointed out to Denis O'Connor that we were only concerned with the period up to 5 April 1997. Denis O'Connor said that after compiling his file, he did not involve himself with any tax computations until the recent issue of estimated assessments on Garuda Limited by Revenue.

"Liam Liston said that before he got into the figures, he wished to know if Denis O'Connor had the information requested in Revenue's letter of the 20 May 1997, which was in reply to Ernst & Young's letter of the 18th April 1997. He also said that we never got the computations from Gareth Sheehan. Denis O'Connor asked if Revenue were missing a page of the submission dated 18 April 1997, and at this stage Aidan Nolan looked at Denis O'Connor's copy of the letter and confirmed that we had all the pages in that submission. Denis O'Connor said that we had only had the computations from 1992 onwards and that we did not have the

pre-1992 computations. He was of the opinion that Ernst & Young may have deliberately omitted these computations because of the amnesty and Michael Lowry's right not to self-incriminate himself.

"At this point tea and coffee were served.

It then goes on to record: "Denis O'Connor repeated that the fact that we only have four years of computations, whereas there are computations for all years. Liam Liston asked Denis O'Connor to consider if he would be incriminating his client if he gave us further computations, and Denis O'Connor said that he would have to check the matter.

"Liam Liston pointed out that the Irish Nationwide Building Society account in the Isle of Man was not included in the submission of 18 April 1997. Denis O'Connor said that the account was not there on the 21st March 1995 and that this account was in fact opened in October 1996. He thought the date was either the 10th or the 14th October. He referred to it as the David Austin account. The Irish Nationwide Building Society account was not the company's but Michael Lowry's. Denis O'Connor said that he first became aware of this account last year. He knew that interest had been earned in October 1996 and February 1997 in the sum of  $\text{£}1,000$ . He said that he had spoken to Paddy Hunt, and he was aware that this interest may be attributable to Michael Lowry.

"Denis O'Connor said that a computation had been done for

the ten-year period from 1986. He glanced at the computation and said that through the 1980s, capital movements appeared to support the amnesty declaration, but 1992/93 may cause problems with regard to the amnesty.

Denis O'Connor said that he has analysed all the accounts and done capital recomputations.

"Liam Liston asked if there were other offshore accounts (Badgeworth, Tutbury and others). Denis O'Connor replied that Michael Lowry received income from Tutbury but was not aware of who had control of the account. He considered Tutbury was a Ben Dunne company. Noel Smith set up Badgeworth. The only documentation he had seen regarding Badgeworth was a fee note from Noel Smith addressed to Michael Lowry. The fee note was not paid by Michael Lowry, and he wondered who did pay it.

"In relation to the figures, Liam Liston said that he could not discuss penalties and that the Certificate for Standards in Public Office had to be dealt with by Liam Irwin." I think that's the Collector General.

A. It is indeed.

Q. "Denis O'Connor said that he would check if he could let us have sight of the Irish Nationwide Building Society account in the Isle of Man. He said that Michael Lowry got  $\frac{1}{2}$ 148,000 and repaid it. He did not have figures with him."

I think that's the account of which this Tribunal had heard evidence?

A. It is indeed, yes.

Q. "He queried the fact that the figures issued with our letter of 19/6/02 charged VAT in respect of the Northern Ireland payments. We agreed that while we had initially applied VAT to all payments, it may be more correct to apply zero rates to Northern Ireland sales. Denis O'Connor said that the records of two suppliers would show that equipment went to Northern Ireland. He referred to one of the suppliers as being Hausmann. He said that he was aware of two payments by Michael Lowry personally from his AIB, Dame Street, account to Hausmann. He thought they were for the sum of approximately  $\frac{1}{2}$ 20,000 each."

A. Yes, that is what was said.

Q. There I think you were discussing the point that you referred to in your statement, that the VAT rate in respect of services provided outside the jurisdiction or were in invoices raised outside this jurisdiction are taxed at a zero rate of VAT?

A. That is correct, yes.

Q. And I think you did agree that, ultimately, with Mr. O'Connor in the course of negotiations?

A. It was agreed during the negotiations.

Q. In respect of those, that clearly had been raised through Newry; isn't that right?

A. Sorry?

Q. Those that had been raised through Newry, the Newry invoices?

A. The Newry payments would have had a zero VAT liability.

Q. Now, the note goes on to record: "Denis O'Connor said that he had an analysis of the AIB Dame Street and other accounts. Liam Liston asked him if he had obtained return cheques, and Denis O'Connor replied that he had received some but that he had difficulty getting records from AIB.

A brief discussion took place in which Denis O'Connor outlined his difficulties in tracing funds which found their way to the Channel Islands.

"Paddy Faughnan asked Denis O'Connor if he had an analysis of the debits and if he could make it available to us.

Denis O'Connor agreed to check if this was possible.

"Liam Liston referred to  $\text{€}395,000$  spent on the house and said there was a further  $\text{€}25,000$  paid to a landscaper which had not been taken into account in our computations. Denis O'Connor said that he thought Michael Lowry paid this sum to a gardener from Tipperary. He also made reference to the Maxwell valuation report, and he was of the opinion that the amount of work done on Glenreigh would not amount to  $\text{€}395,000$  worth.

"At this point we gave draft figures for Michael Lowry and Garuda Limited to Neale O'Hanlon and Denis O'Connor.

"Denis O'Connor referred to the payments on account that he made and said that if all the income was ultimately found to be that of Garuda's, that these payments should be deemed to be payments on account made by Garuda Limited, or if all the income in the computations was ultimately found to be that of Michael Lowry's, the payments on account

should be deemed to be those of Michael Lowry."

A. Yes.

Q. And that was fair enough, wasn't it?

A. Sorry?

Q. That would have been a fair enough approach to take?

A. Oh, yes. What had happened is funds had come into Revenue, and it was either Garuda Limited liability

Q. Yes, so whosoever liability it was, goes

A. Would get the credit for those funds.

Q. It should be credited to?

A. Yes.

Q. "Neale O'Hanlon said the directors of Garuda were adamant that the liability is not that of the company's. Liam

Liston asked if the agents are stating that the income is

Michael Lowry's and not that of Garuda Limited. Denis

O'Connor said that this is what the directors were telling

them. Neale O'Hanlon outlined their position as auditors

of Garuda and the fact that they can only base their

opinion on the facts placed before them. He outlined three

of these facts:

"1) Ernst & Young said that the income was that of Michael Lowry's.

"2) Michael Lowry's evidence before tribunals was that it was his income.

"3) They had not seen any company records showing that the income was that of Garuda."

A. Yes.

Q. Now, then it records: "Neale O'Hanlon confirmed that they had qualified the accounts on the basis that the liability did not appear to be that of the company's. Denis O'Connor also referred to the fact that he was aware of some potential witnesses which could be called on to show that the income was that of Michael Lowry's."

And I think, in fairness to Mr. Lowry and to his tax agent and to Garuda's auditors, I think that does record that they were clearly saying that they considered that this was Mr. Lowry's income and that he would bear the burden of the tax on that income?

A. That is correct. That is what they told us at the time, what they believed at the time.

Q. He then goes on to record: "Neale O'Hanlon said that the estimates raised recently by Revenue on Garuda had changed everything. They are not in a position to close off the accounts for the year ended 2001. If the company was obliged to pay the funds arising from these estimates, the company would probably be insolvent."

So that was difficulty that Mr. Lowry and Garuda found themselves in at that time?

A. At that time, yes. As the note says, Mr. O'Hanlon and it is something we had considered already that the company could be insolvent, and his reports the auditor's reports to the accounts the company could not continue to trade if it was insolvent.

Q. Now, "Liam Liston pointed out the fact that there was not

much difference in the total figures outlined in the draft calculations for Michael Lowry and Garuda Limited." So that's same point again?

A. It is, yes.

Q. The overall liability wasn't going to be very different, irrespective of whether it was the liability of Michael Lowry or Garuda?

A. That is correct, yes.

Q. Then it records: "Denis O'Connor argued that the sum of  $\frac{1}{2}$ 165,000 used to fund the construction of the warehouse should not be included as additional liability of Garuda Limited. He maintained that this sum was in fact paid back in full by means of reducing the debtor's ledger on an annual basis over four years."

Now, that's really a bookkeeping entry, isn't it,

Mr. Nolan?

A. It is, yes.

Q. And it really had no impact on the VAT calculations, and it had nothing to do with the findings of the report of the McCracken Tribunal?

A. Oh, it had nothing to do with the findings of the Tribunal, no.

Q. Then: "Denis O'Connor found details of the two Hausmann payments and gave the details as follows", and he lists those there, and both payments were made to Hausmann in the UK by Michael Lowry from the AIB Dame Street account.

"Denis O'Connor also mentioned that he thinks there were



two accounts in the Channel Islands. Initially a sum of  
i£½100,000 was lodged to the first account, and it  
accumulated approximately i£½5,000 interest, and this was  
rolled over in the second account."

A. Yes.

Q. Then it concludes: "At the end of the meeting, it was  
agreed that Denis O'Connor would check with his legal  
advisers, and if possible, he would allow us to have the  
following information:

"1. The computation compiled by Ernst & Young for all the  
years prior to 1992/93.

"2. Details of the Irish Nationwide Building Society  
account in the Isle of Man.

"3. Details of any records he has in relation to the  
Badgeworth Limited account.

"4. Details of any records he may have in relation to the  
Tutbury Limited account.

"5. Details of payments made to Hausmann.

"6. His analysis of the bank account debits.

"7. Details of the checks made out to the gardener.

"8. Details in relation to the valuation of the house at  
Glenreigh.

"9. Details of the AIB Channel Island account.

"10. His review of the draft figures presented to him  
today.

"11. He will furnish a reply to our letter of the 20th May  
1997."

And the meeting concluded at 12.15pm.

A. That is correct, yes.

Q. And all of those documents, details and information that Mr. O'Connor said that subject to legal advice he would provide to the Revenue Commissioners were in fact provided, or substantially provided over the following months; isn't that right?

A. Over the following months, all those documents came in to us, yes.

Q. And all those details that he provided in relation to offshore accounts wouldn't have been available to the Revenue Commissioners otherwise than having been volunteered by the taxpayer; isn't that correct?

A. Correct. As you say, the majority of the documents we would not have legal power to obtain.

Q. You couldn't have access to them unless they had been volunteered to you?

A. Indeed, yes.

Q. Now, I know you had a meeting in early December at which Mr. O'Connor provided some of that information, but I'm just going to jump on; I'm not going to open that, and I am going to jump on to the meeting on the 19th December, 2002, and that's at Divider 11 in the book that we are working from. It's a short note.

"Meeting Thursday, 19 December 2002.

"Present: Denis O'Connor, Liam Liston, Adrian Nolan and Paddy Faughnan.

"The meeting was held in Liam Liston's office in Lansdowne House from 10 to 11.45. Denis O'Connor handed in a submission which included the full Ernst & Young capital reconciliation, an analysis of all bank accounts with the source of lodgements and destination of payments detailed insofar as Denis O'Connor could establish them, a copy of Denis O'Connor's submission to the Moriarty Tribunal.

"He took us through some of the larger figures and agreed to do further work to establish the detail of others. We also agreed to examine the submission and to let him know what areas we needed more detail on."

And of course at this stage what you were endeavouring to do was to arrive at an agreed income figure; isn't that right?

A. That is correct, yes.

Q. That was the first step that you took in endeavouring to arrive at a settlement?

A. Yes. The September meeting, we had agreed to ascertain the income the true income first, and then subsequently to apportion it out to Mr. Lowry or the company as appropriate.

Q. So what you were focusing on at this stage, in December 2002, was seeking to arrive at an agreed income figure?

A. That is correct, yes.

Q. Now, the note goes on to record: "Denis O'Connor referred to his earlier submission of 3/12 and said that he thought the difference between his figures for liability and ours

arose from three main points:

"1) He considers that we have double-counted  $\frac{1}{2}$ 100,000 sterling.

2) He considers that Mr. Lowry and Garuda is entitled to a deduction for payments made to Hausmann in the UK, and he claims that these payments were for refrigeration equipment.

"3) He disputes the figure assessed for work done on Glenreigh.

"We agreed to meet again on the 7th January to advance matters."

A. That is correct, yes.

Q. So in that note it records that Mr. O'Connor had identified these three items as accounting for the differences between his view of the figures and your view of the figures?

A. Yes, that is correct.

Q. And would you agree with his analysis as recorded in that note of the meeting, that these

A. That they were the main disagreements they were the main points of disagreement between us, yes. And the first two points were subsequently agreed in Mr. Lowry/Garuda's favour, and the third point was agreed in our favour.

CHAIRMAN: I suppose on the third point, Mr. O'Connor, we are going to have an uphill struggle in showing that Dunnes voluntarily paid 150,000 too much for the

A. For the work, yes.

Q. MS. O'BRIEN: Now, you had a further meeting on the

7th January, 2003 I'm not going to go into that, because it primarily related to technical matters, further discussions in relation to those issues.

And if you then go on to the meeting of the 14th January, 2003, which is at Divider 14. I'm not going to open all of this, Mr. Nolan; I'm just going to open the portion of it that I referred to in the Opening Statement, which is where Mr. O'Connor furnished you with information regarding the UK properties. That's at Divider 14.

A. Yes.

Q. Again there were a number of things you were discussing, but if you go to the bottom of the page we'll have it on the screen in a moment, and it was up, in fact, in the course of the Opening Statement.

It's headed "UK property. Cheadle. Denis O'Connor said that Michael Lowry had no interest in this property. He was a director of a company, Catclause, along with Aidan Phelan, until 2002. Catclause was the beneficial owner of Cheadle until January 2000. The land was bought in trust by a solicitor and may be registered in the name of the solicitor. The company was dissolved and Aidan Phelan paid off a loan to Investec around January 2000, and that as far as he is aware, Aidan Phelan is now the beneficial owner of Cheadle."

In relation to Mansfield: "Michael Lowry paid STG $\frac{1}{2}$ 25,000 for a 10% stake in this property in partnership with Aidan Phelan, who owned the balance of 90%. There may be a

Capital Gains Tax liability on the disposal of this property in due course, but Denis O'Connor doubts if it will realise a gain. The property does not generate any income."

"Doncaster Rovers.

"Denis O'Connor said that despite the news in the media recently, Michael Lowry has not, not never had an interest in Doncaster Rovers. this allegation arose when a letter from a UK solicitor, Mr. Vaughan, mentioned that Michael Lowry had an involvement."

A. That is correct, yes.

Q. And that seems to have been the only occasion on which there were any discussions between you regarding any of those UK property transactions?

A. Yes. On those properties, yes.

Q. Now, I think we have established that in fact Mr. Lowry would have been under an obligation certainly to return his interest in the Mansfield property and possibly also his interest in the Cheadle property; is that right?

A. That is correct, yes.

Q. It would have been apparent to you, certainly as of the time of that meeting, that he hadn't made any such return?

A. It was not on his return for the year of assessment in question.

Q. Would there be any step that the Revenue might consider taking arising out of that failure to return the acquisition of these properties?

A. The supply of the information by Mr. O'Connor would probably have been deemed to satisfy the requirements.

What must be remembered is we had an investigation going on at the time, and it was covering the period where he had the obligation to

Q. That's fair enough. So you would have deemed that as being equivalent to returning it in his tax return?

A. It would, that being so, yes.

Q. Again, if we go on to the meeting of the 5th February, and I don't want to refer to all of the details in that, but we can put it up, but I'm not going to refer to it because a lot of them a lot of matters that are recorded in the minute of this meeting relate to the nuts and bolts of your negotiation on those items that we had identified earlier.

A. Indeed.

Q. And if you just go to the heading "General", towards the, I suppose, bottom third portion of the page: "Denis O'Connor said that Michael Lowry wanted to settle his tax liabilities in 1997 and had instructed Ernst & Young to compute what was due. Denis O'Connor believes that Graham Williams of Ernst & Young had computations of tax, interest and penalties prepared at the time of the appeal hearing in 1997, but prior to their submission, Michael Lowry was cautioned, and the submission was not made. Denis O'Connor made the point that Michael Lowry's interest bill is now considerably bigger. We pointed out that Michael Lowry could have made a bigger payment in 1997 to avoid interest

accumulation. Denis O'Connor said that Michael Lowry was advised at the time by Ernst & Young that the payment met his then known tax liabilities.

"Denis O'Connor said that Michael Lowry would be willing to accept that the Case 1 liability is that of Garuda Limited, except for the Case 1 in respect of the payments from Whelan and Maher, which are proper to Michael Lowry personally, along with Case III and Case IV.

"Agents said that in order to raise finance to make an offer and to pay the bill, he needs to know the full extent of tax, interest and penalties due. We gave him draft computations of Michael Lowry's liability (which need to be revised) and we agreed to contact him next week when Liam Liston returns from leave. Denis O'Connor said that he would be available to meet, given 24 hours' notice."

A. That is correct.

Q. And I think this is one of the points that Mr. O'Connor, quite fairly and quite rightly, was seeking to make in his negotiations with you and with Mr. Liston in relation to the overall liability?

A. Yes.

Q. Isn't that right? And he was saying, "Look, if you hadn't cautioned Mr. Lowry and then cancelled the meeting in March of 1998, Mr. Lowry would have come in and settled his tax bill at that stage." Isn't that what they were saying?

A. That is the gist of what he was saying.

Q. And he was saying that for that reason, Mr. Lowry shouldn't



be liable for the continuing interest which had accrued between March of 1998 and 2003, which is when you were having this meeting?

A. Yes, that is correct, that if Mr. Lowry/Garuda were in a position to settle the liability back in 1997, it would not have been costing as much.

Q. And that was an argument that Mr. O'Connor was advancing in his negotiations with you at the time?

A. Oh it was, yes.

Q. And a matter, quite properly, that he should have advanced?

A. Yes, yes. He would have had an obligation to his clients to advance that argument.

Q. But I'm right in thinking that that was not an argument that the Revenue ultimately accepted?

A. Oh, no. Like, as you can see from the note there, we said to him, "But there was nothing to stop Mr. Lowry and Garuda paying any additional amounts due."

Q. Yes, so in fact ultimately that was not a point that was accepted by you, and in your proposed settlement, you have included interest computed right up to March 2003?

A. On outstanding tax as the computations you displayed earlier show I computed interest up to the date of payment of each amount, and thereafter there was no interest payable in respect of that amount. Any amount outstanding was liable to interest up to the date of final payment, basically.

Q. Yes. Now, the note records there that "Mr. Lowry was

willing to accept that the Case 1 liability is that of Garuda, except for the Case 1 in respect of the payments from Whelan and Maher." And I think they are the payments of which this Tribunal had heard evidence; isn't that correct?

A. They are indeed, yes.

Q. And they were included in your income schedule; isn't that right?

A. They are included in the computations of liability in respect of Mr. Lowry, the personal liability of Mr. Lowry.

Q. And I take it that you never found any invoices or copy invoices in Garuda's records in relation to those payments?

A. There were none that were found, no.

Q. And also in relation to the Case III and Case IV income, they were maintaining that that should be attributable to Mr. Lowry. Now, could you explain what Case III and Case IV income is?

A. Case 3 is basically foreign or deposit interest arising which has not suffered Irish tax. For example, the deposit interest arising on the Isle of Man or Channel Islands bank accounts. That's Case III. Case 4 is basically Irish taxed income Irish tax interest income; sorry.

Q. So Case III relates to interest on offshore or foreign deposits, and Case IV relates to interest on domestic deposits?

A. Yes, yes, that's a description of it, yes.

Q. And as all these deposits were in Mr. Lowry's own name,

Mr. O'Connor was saying this is his personal tax liability?

A. That is true, yes.

MS. O'BRIEN: I'll be moving on to the offer next, sir, so perhaps

CHAIRMAN: I think with obviously a there are some matters to raise; it would be a very long shift for Mr. Nolan if we sought to complete today.

It's no great trouble for you to be back and finish your testimony at 11 tomorrow?

A. No problem.

CHAIRMAN: Thanks very much, Mr. Nolan.

So 11 tomorrow.

THE TRIBUNAL ADJOURNED UNTIL THE 5TH APRIL, 2006.