1 THE TRIBUNAL RESUMED ON THE 6TH APRIL, 2006 AS FOLLOWS:

MS. O'BRIEN: Mr. Tony Barnes, please.

CHAIRMAN: We'll be able to put this matter in context, Ms. O'Brien, as it's a slight break in sequence.

MS. O'BRIEN: During inquiries last week and the previous week in relation to the collection of tax from Mr. Charles Haughey, the evidence evidence was heard in relation to a contract concluded between Mr. Haughey and the Revenue Commissioners in March of 2003. And that contract expressly excluded from its application the balances in what was known what were known as the S8 and S9 accounts, and they were accounts which the Tribunal had heard evidence that payments were made for the benefit of the bill-paying service operated by Haughey Boland, and subsequently by Mr. Stakelum, to defray Mr. Charles Haughey's day-to-day expenses.

The provisions of that agreement expressly excluded, as I said, the S8 and S9 balances, and from evidence given by Mr. Gillanders; and on the basis of that evidence, it appeared that the balances in the S8 and S9 accounts, which were included within the Hamilton Ross accounts held in Irish Intercontinental Bank Limited, had been used to defray the tax liabilities of what Mr. Gillanders described as an unconnected taxpayer. And Mr. Barnes, who was Programme Officer of Irish Intercontinental Bank Limited, has agreed to come here today, sir, to give evidence in

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relation to his knowledge of the application of those

balances.

CHAIRMAN: Quite so.

Thank you for your attendance again, Mr. Barnes. You are

of course already sworn from earlier sittings.

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TONY BARNES, PREVIOUSLY SWORN, WAS EXAMINED BY MS. O'BRIEN

AS FOLLOWS:

Q. MS. O'BRIEN: Good morning, Mr. Barnes. You have given

evidence on a number of previous occasions, although some

time ago.

A. Some time ago, yes.

Q. You've provided the Tribunal with a memorandum of

information?

A. That's correct.

Q. What I propose doing is just taking you through that

memorandum, asking to you confirm that its contents are

correct, and as we go through it, there may be one or two

matters that I might ask you to clarify.

A. Fine.

Q. You have informed the Tribunal that the accounts referred

to as S8, S9 memorandum accounts were accounts held by

Hamilton Ross with Irish Intercontinental Bank. Those

accounts were issued with Irish Intercontinental Bank

account numbers under the name of Hamilton Ross, and Irish

Intercontinental Bank never used any other account

reference. Irish Intercontinental Bank was only advised of the S8, S9 reference during the investigation of the McCracken Tribunal.

A. That's correct, yes.

Q. And I think these were accounts in various currencies. I think the principal account was a sterling account that was held by Hamilton Ross with Irish Intercontinental Bank; isn't that right?

A. That's right.

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Q. And I think the accounts were opened in or about early 1991, am I correct in that?

A. The Hamilton Ross accounts were opened in September '92.

Q. September '92. I think the Ansbacher Cayman accounts were opened sometime earlier?

A. Yes, January 1991.

Q. I think the Hamilton Ross accounts really were an offshoot of the Ansbacher Cayman accounts; is that correct?

A. That's correct.

Q. I think instructions in relation to those accounts were received by the bank from the late Mr. Traynor from his offices in CRH in Fitzwilliam Square?

A. That's correct.

Q. Now, you have informed the Tribunal that Hamilton Ross recently entered into settlement discussions with the Revenue Commissioners in relation to its outstanding tax liabilities, and Hamilton Ross also entered into

negotiations with Irish Intercontinental Bank in relation to a liability which was being imposed by the Revenue Commissioners on Irish Intercontinental Bank in respect of deposit interest retention tax which the Revenue Commissioners alleged was due and payable on Hamilton Ross's accounts with Irish Intercontinental Bank?

A. That's correct.

Q. So it appears from what you have informed the Tribunal that the Revenue Commissioners claimed tax both from Hamilton Ross itself and from Irish Intercontinental Bank.

A. That's correct.

Q. And I take it the tax from Irish Intercontinental Bank, as you have said, would have been deposit retention interest

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tax?

A. That's correct.

Q. You have informed the Tribunal that Irish Intercontinental Bank denied that DIRT was payable on these accounts in circumstances where those funds were nonresident funds held by Hamilton Ross with IIB. However, IIB decided to reach a settlement with the Revenue Commissioners on the basis that it would hold Hamilton Ross liable for any such DIRT liability, and Hamilton Ross agreed with IIB that it would make the payment to the Revenue Commissioners on behalf of IIB for the actual DIRT liability imposed on IIB on foot of an assessment by Revenue of ï¿½200,000?

A. That's correct.

Q. You say: "Following on from negotiations between Hamilton Ross and the Revenue Commissioners, and separately between Hamilton Ross and IIB, the following payments were made on the instructions of Hamilton Ross from the remaining accounts of Hamilton Ross held with Irish Intercontinental Bank".

A. That's correct.

Q. And I think you set out then in your memorandum a table showing the payments, the date of the payment, the payee and the amount of each payment, and I think we can put a copy of that table on the screen.

You can see there that there were five payments in all.

The date of the first payment was the 31st December, 2005.

That was a payment to the Revenue Commissioners of a sum of ï¿½700,000. Isn't that right?

A. That's correct.

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Q. And am I correct in thinking that that was the payment by Hamilton Ross in respect of its own tax liability?

A. That's correct, yes, it was.

Q. The second payment was on the same date, also to the Revenue Commissioners, in the sum of ï¿½200,000?

A. That's correct.

Q. And was that the IIB liability?

A. Yes.

Q. That was the IIB liability which Hamilton Ross had agreed to meet on behalf of IIB?

A. That's correct.

Q. The third payment was to Hamilton Ross itself on the 21st December, 2006, of ï¿½100,000. Then on the 10th February, 2006 also to Hamilton Ross of ï¿½3,055.07, and then a final payment, also on the 10th February, 2006, to Irish Intercontinental Bank in the sum of ï¿½3,005.07?

A. There is one small correction on that. The actual payments of 100,000 and the 305,507 that were paid, they were actually paid to the order of Hamilton Ross. I'm not sure exactly if it went to Hamilton Ross or to their order, but just for correcting.

Q. But it was to the order of Hamilton Ross?

A. It was, yes.

Q. You have informed the Tribunal that the payments referred to on the I think you say the 25th January, 2006, and the 10th February, 2006, both to Hamilton Ross, were the return to Hamilton Ross of the remainder of its funds held with Irish Intercontinental Bank?

A. That's correct.

Q. So all accounts of Hamilton Ross with Irish

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Intercontinental Bank were closed as of the 10th February, 2006; is that right?

A. That's correct.

Q. And just that final payment there to Irish Intercontinental Bank, would that have been in respect of bank charges, or

A. Costs which we had incurred.

Q. Costs that you had incurred?

A. Yes.

Q. So that would have been legal costs or other costs in connection with your dealings with the Revenue Commissioners?

A. Principally legal costs, yes.

Q. And that, therefore, was the position in relation to Hamilton Ross. Now, we know from evidence heard by the Tribunal, and indeed by the McCracken Tribunal, that there were also far more substantial Ansbacher Cayman deposits held with Irish Intercontinental Bank than the Hamilton Ross deposits; isn't that right?

A. That's correct.

Q. And can I take it that there were similar arrangements entered into between the Revenue Commissioners and Ansbacher Cayman and between the Revenue Commissioners and Irish Intercontinental Bank in respect of those Ansbacher Cayman deposits?

A. Well, as far as I am aware, there was a settlement reached with Ansbacher sometime, I think, in late 2003, of which I have no knowledge other than what I read in the papers. And there were a balance of funds which were retained in IIB which have subsequently been repaid to Ansbacher.

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Q. I see. So there are, as of now, there were no Ansbacher Cayman or Hamilton Ross accounts with Irish

Intercontinental Bank?

A. No.

Q. Now, the attitude and the approach that the Revenue Commissioners took to this was that these deposit accounts in the name of Hamilton Ross with Irish Intercontinental Bank were in fact resident accounts; isn't that right?

A. That's correct.

Q. So they were effectively treated as being accounts of taxpayers resident within this jurisdiction?

A. That was the way the Revenue treated it, yes. IIB didn't accept that.

Q. And as they were holding Hamilton Ross liable, they were effectively treating Hamilton Ross as being the operators of the accounts?

A. Yes.

Q. Or, in other words, that they were conducting a banking operation here in this country?

A. Well, I'm not sure exactly what the Revenue were claiming Hamilton Ross were doing, but from a tax point of view

Q. From a tax point of view, they are operating the accounts here in this country?

A. Yes.

Q. Thank you very much.

MR. CONNOLLY: I have no questions, sir.

CHAIRMAN: You have nothing to raise with your witness, Mr. Denning?

Thank you very much for your assistance, Mr. Barnes.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. Frank Daly, please.

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

CHAIRMAN: Good morning, Mr. Daly. Thanks for your attendance.

Q. MR. HEALY: Thank you, Mr. Daly.

You are the Chairman of the Revenue Commissioners. And can you tell me when you were appointed to that position?

A. I was appointed on the 7th March, 2002.

Q. And prior to that, were you one of the members of the Revenue Commissioners, the ordinary Commissioners reporting to a then Chairman?

A. That's right. I was a Revenue Commissioner since September 1996.

Q. So you have a reasonably extensive experience of the overall operation of the Office of the Revenue Commissioners during that period of time?

A. Yes, I have a total period of about ten years on the Board and prior to that, I think I was three years as an Assistant Secretary, and in overall terms, over 40 years in Revenue.

Q. So you have perhaps a more distant past now. You would have had a grasp of a lot of technicalities of the operation of the Revenue Commissioners that have been

referred to here in evidence over the past few days, and indeed on other occasions as well, while your more recent responsibilities would have kept you away from those detailed technicalities, and you'd have had to take a more

overall view of the operations of the Revenue Commissioners; is that right?

A. Yes. I think in the past I would have had more contact with the technicalities, but perhaps to emphasise that most of my earlier experience was on the Customs and Excise side rather than the tax side.

Q. I see.

A. But you are quite correct, in recent years as a member of the Board, I would have been looking at the broader strategic general management issues.

Q. And it's essentially in that capacity that you are giving evidence to the Tribunal here today; isn't that right?

A. That's correct.

Q. Your grasp of the broader realities of what it was was being handled by the Revenue Commissioners in relation to the matters referred to in this Tribunal's Terms of Reference; isn't that right?

A. Absolutely.

Q. Now, you have provided the Tribunal with two witness statements dealing separately with the affairs of or with the conduct, rather of the Revenue Commissioners' activities in relation to the affairs of Mr. Haughey and

Mr. Lowry, insofar as that's relevant to the Tribunal's Terms of Reference; isn't that right?

A. That's correct.

Q. And very briefly, what I propose to do is to take you as quickly as I can through those two statements. Do you have copies of them in front of you?

A. I do.

Q. The first one is contained in Book 71, Tab 4.

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You say that you are the Chairman of the Revenue Commissioners since March, 2002. Up to then you had served as a Revenue Commissioner, with effect from September 1996, having previously been an Assistant Secretary in the Office of the Revenue Commissioners. You say that at the request of the Tribunal you are making this statement in relation to the settlement dated 18 March, 2003, which the Revenue Commissioners made with Mr. Charles Haughey arising out of certain payments made to him, including those identified during the course of the evidence given to the Moriarty Tribunal. In April 2000 the Revenue Commissioners agreed an interim settlement with Mr. Haughey under which he paid, on the 30 August, 2000, an amount of IRï¿½1,900,435, in respect of payments that had been identified in the McCracken Tribunal Report. That agreement made it clear that the settlement was confined to the payments to Mr. Haughey identified in the McCracken Tribunal Report. "Revenue monitored the evidence emerging at the Moriarty

Tribunal during 2000 and 2001, where it became evident that further payments appear to have been made to Mr. Haughey from a number of sources. Revenue's approach to dealing with the cases at this time was to continue to monitor the evidence emerging at the Tribunal and to deal with the tax liabilities when the Tribunal had completed its work and published its finding. We decided to reconsider this approach, however, in mid-2001, as it was clear that Mr. Haughey had tax issues which had not been encompassed by the earlier settlement, and the Tribunal appear to have

completed its taking of evidence in relation to Mr. Haughey's affairs. It also appeared likely that the work of the Tribunal would be continuing for some time. At a meeting on the 30th July, 2001, between the then Chairman, Mr. Dermot Quigley, the then senior Revenue officers dealing with Mr. Haughey's tax affairs, and Revenue's legal advisers, approval was given for the officers to begin the process of dealing with the apparent tax issues arising from the evidence at the Tribunal. During the latter part of 2001 and early 2002, the Board was kept apprised of progress on the case and the key issues emerging. At meetings between the Board senior officers and legal advisers, on 11 February, 2002, and 15 March 2002, the approaches outlined at paragraph 6 and 7 of the statement of Mr. Norman Gillanders was agreed. The Board was kept informed of subsequent progress, including

the discussions with Mr. Haughey's agents and the emergence of an initial indication on behalf of Mr. Haughey that he was prepared to settle the case for ï¿½2,000,000.

"On the 23rd September, 2002, a document from Mr. Gillanders entitled 'Negotiating Document for Haughey Case' was considered at a case meeting with board. This document set out a range of possible settlement outcomes largely influenced by the amount of 'Expenditure' that could be sustained which would be used as a proxy for receipts and how interest would be dealt with. After detailed discussion, a proposed negotiating approach was approved by Revenue.

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"Immediately following the meeting with the agents on the 8th October, 2002, Mr. Gillanders advised the Board of the increased offer of 3.85 million. The Board agreed that Mr. Gillanders could proceed on the basis that Commissioners would be prepared to settle the case for a sum of 3.94 million, i.e. ï¿½5 million, subject to the necessary legal agreements and security being put in place. Subsequently the Board also accepted that while there was no statutory basis for publishing Mr. Haughey's name in the normal list of tax defaulters, there was a legitimate public interest in the conclusion of the settlement being made public. The Board insisted, therefore, that it be a condition of the settlement agreed that conclusion of the settlement would be made public by Revenue by way of an

agreed press statement to be issued on conclusion of the legal formalities. At a board meeting on the 10 December, 2002, the Board formally agreed to proceed with the settlement.

At a board meeting on the 6 March, 2003, the conclusion of the settlement with Mr. Haughey for ï¿½5 million was approved, as detailed in a draft primary agreement which was before the Board. The Board also approved a package of securities which it considered adequately protected Revenue against any failure on the taxpayer's part to discharge his Revenue debt within the time-frame envisaged in the principal agreement".

Then you deal with what you call the rationale for the

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settlement.

Just before dealing with that, might I just draw your attention to one matter which has been mentioned in evidence already. You mentioned that at one point the Revenue approach was to monitor the evidence and to wait until the Tribunal had published its findings. But I think, as has been pointed out, there is in fact a provision of the Terms of Reference which obliges the Tribunal to take the results or the fruits of your monitoring of the evidence into account in its report and its published findings. And I think that became apparent in the course of evidence of other witnesses. Are you aware of that provision?

A. I am.

Q. You go on in paragraph 10 of your witness statement to say:

"While Revenue were prepared to pursue this case through the assessment/legal route, the extensive analysis carried out in the legal advice provided indicated that the best prospects for closing the case within the reasonable timescale and on a satisfactory basis lie in a settlement with the taxpayer. Many of the payments identified by the Moriarty Tribunal as having been made to or in respect of the taxpayer were at least as complex, if not more so, in terms of money trails and surrounding circumstances as those identified by the McCracken Tribunal. This would have given rise to an extremely complex evidential burden on Revenue. The statements of both Mr. Gillanders and Mr. McCabe outline concern, including the matter of whether the payments should be dealt with as income or gifts, and

the difficulties attaching to sustaining a tax charge in either case. The principle of calculating receipts on the basis of identified expenditure, together with the opportunities for disagreement about specific expenditure items was considered. Difficulties would have been compounded in attempting to raise Gift Tax assessments in respect of the gap between the taxpayer's estimated expenditure over a period of some 20 years and those receipts and payments specifically identified as having been made to him over that period. In agreeing this

settlement, which was the single largest tax settlement with a taxpayer to that date and involved the taxpayer having to dispose of his family home, we also considered the very real likelihood of a long, drawn-out process of appeal and challenge before the Appeal Commissioners, together with the probability of further protracted litigation to follow, and the need for realism in relation to our prospects of success.

"The settlement was approved on the basis of Revenue's actual knowledge of Mr. Haughey's affairs as of the date of the agreement, and it is a condition of the agreement that Revenue remain free to examine any new issues or information that might come to light with a view to determining if further tax issues arise".

Now, I want to pass on immediately, although I may come back to aspects of that statement, to a statement you furnished to the Tribunal concerning the dealings of the Revenue Commissioners in relation to Mr. Michael Lowry's

tax affairs and Garuda's tax affairs within the Terms of Reference.

You say that since late 1996, you have been generally aware of the investigation that is being conducted by the Revenue Commissioners and Prosecutions Division of the Revenue Commissioners, formerly the Investigations Branch of the Chief Inspector's Office, into Mr. Michael Lowry and Garuda Limited. "In the normal course, I would not be aware of

the details of such an investigation until any offer of settlement in relation to a case had been placed before me or another Board member for approval. However, as Mr. Lowry's affairs and those of his company had been in the public arena since late 1996, I have been aware in a general sense of the investigation of those two cases and the progress of events. I have also been conscious of the Terms of Reference of the Tribunal of Inquiry. While officers of the Investigations and Prosecutions Division have conducted investigations in relation to the tax liability of Mr. Lowry and Garuda Limited, it is important to state that a number of outstanding items requested by investigating officers are still awaited from the taxpayer. I would emphasise in particular that no formal offer of settlement has yet been made by Mr. Lowry and Garuda Limited. Any such offer and the quantum of any such offer would be a matter of consideration and approval by the Board.

"At present I am not in a position to say what view I may take in the event of an offer from Mr. Lowry and Garuda

being transmitted to me for consideration. It would be premature for me to offer such a view at this stage due to a number of factors, including:

"A) the financial position of Garuda Limited at the time any such offer might be made and the argument Garuda Limited has made to the investigating officers in the past

that it had an inability to pay issue.

"B) the fact that Revenue has referred a file to the DPP on the matter of a possible prosecution, and that there is no final decision as yet as to whether a final prosecution will ensue.

"Difficulties could arise from taking a final decision on any offer that might be made by Mr. Lowry and Garuda in advance of a decision by the DPP".

Now, in relation to that latter matter, I think we have heard evidence from a number of officials, namely Mr. Nolan, and to some extent Mr. Liston, that Revenue have gone through a process of a sort of a shadow civil process, if I can put it that way, of endeavouring to identify liabilities and identify a sum of money that might be capable of being recommended to Revenue subject to a formal offer being received; isn't that right?

A. That's correct. The investigating officers would be dealing with that and would eventually put before me, through Mr. Donnelly, the Assistant Secretary, a recommendation in relation to settlement.

Q. That I think they had been conducting, if I can put it this way, the civil side of that operation as opposed to the criminal side of it, in the shadow of the criminal side, isn't that right, and they have gone through all the steps that you might normally go through in trying to bring closure to a taxpayer's affairs on a civil basis without

being able to take the final steps in it, isn't that right, because of the overhanging criminal process?

A. I think there is attention in bringing it to a conclusion while the criminal process is still in train; and while we haven't a final decision on that, and one would always be conscious of the potential for overlap or cross-contamination, possibly, particularly that the civil process might in some way contaminate the prosecution or the criminal investigation. So they have been very, very conscious of that, yes.

Q. I just want to take you back for a moment to the evidence that we have heard to date concerning the steps the Revenue take to collect tax due by Mr. Charles Haughey.
And I suppose ordinary taxpayers listening to the evidence might well be left with the impression that because of the length of time it has taken to come to grips with these affairs or these matters, rather that the delay that has taken place in bringing closure to Mr. Haughey's tax affairs, going right back to when the liabilities would have accrued away back in the eighties and the nineties, has actually resulted in a weakening of the Revenue position and a strengthening of the taxpayer's position.
Do you take my point?

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A. I do indeed, Mr. Healy. The very fact of the length or the period into which the whole issue drifts back 20, 30 years is obviously a weakening of our position. The very fact

that we knew absolutely nothing about this until around the time of the McCracken Tribunal, and then subsequently this Tribunal, obviously because of the huge secrecy and the very convoluted structures that were put in place specifically to hide this, I should think, certainly from Revenue, maybe from others, certainly weakened our position; and even when we became aware of the extent of the evasion and when we got to a stage where, on the basis of payments revealed at the Tribunals, and building on that with some of our own information and analysis and information we gleaned from elsewhere, even at that stage we were constrained in the way we could deal with this because of the necessity to take the monies that had been identified and to put a tax order on them.

In other words, get them into a situation in which we could reasonably be confident of taxing them. And that took us into a whole process of discussion and analysis and legal advice about how exactly could we pin a liability here on the taxpayer? How could we tax these monies?

That led us, and it's been aired in the last couple of weeks by my colleagues, to the question of could we tax it as income? Which would have been our preference, because that is the highest rate of tax. We did a lot of analysis. We looked at the law, we looked at case law. We got legal advice, and the conclusion at the end, and I think I might

be quoting from our summarising the legal advice, was

these, if they are to be amenable to tax at all, are only amenable to Gift Tax or to Capital Acquisitions Tax.

So we were forced down that road. And even at that stage, having concluded the Capital Acquisitions Tax was the only route that we could go, even then, there were real technical and evidential difficulties in sustaining a tax assessment in that case.

All of that led us to the conclusion that the only way in which to proceed to get a result, to get an outcome to collect money, would be to go down a road of negotiated settlement with the taxpayer. So we were in a weakened position. We were on the back foot, I think, right from the beginning here. And that is what eventually brought us into the position of negotiating with Mr. Haughey's agents on a settlement.

Q. Some of the witnesses who gave evidence I think mentioned the really only option open to Revenue was to endeavour to convert evidence or information at this Tribunal and the McCracken Tribunal into collectible tax, but that it's one thing to give evidence at a Tribunal and to draw inferences from it; it's another thing, I think, to do what I think you were suggesting.

But I want to be sure I'm right about it. To fit that evidence into very tightly defined statutory definitions, is that what you mean by putting tax order on something, is it?

A. Absolutely. Tax statutes case law are very technical, very complex, and you have got to almost shoe-horn what might be your view of an amount of payments or income or whatever, gifts, but you have got to make sure that that fits somewhere into the Tax Acts in terms of taxability, and that was extraordinarily difficult in this case.

Q. In the ordinary way, when you are dealing with a taxpayer whose affairs, should I say, to put it neutrally, are in some disarray, you may be, in the first instance, minded to negotiate with him; but any negotiations are usually conducted with either obvious or manifest or veiled threat that you have enforcement powers. Isn't that right?

A. Yes, I think that would be fair.

Q. But coming back to my very first question, I suppose in this case one has the impression again that the force of any threat like that, in a situation where you had very little information, must be effectively diluted quite substantially; is that right?

A. I think that's correct, and would be very evident to any taxpayer who was engaging people who were very expert tax practitioners or accountants and who would be well versed in tax legislation, well versed in Revenue practice, and well aware of what the Revenue had to do to make this tax stick, as it were.

If I may just to give an example, because in terms, you mentioned earlier my role now as to, I suppose, take a broader view than the technical issues, although I have to

be very cognisant of technical issues and standards, but in the process of agreeing this ultimately, the settlement in
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the Haughey case, there were two figures that really stood out for me and that emphasised the whole difficulty of getting a result if we had gone the assessment appeal litigation route, and that was the estimate that if we had gone to assessment, and inevitably ended up in an appeal process, which almost inevitably itself would have ended up in the courts, the maximum that we thought, even on a reasonable basis, and we weren't even sure of this, but the maximum we thought that we might get out of that process would be something in the order of ï¿½1.9 million. Now, if you contrast that and that after a long period, possibly, of litigation, I might be here today explaining why we are still in that litigation rather than talking about a settlement contrast that with a figure of 5 million. Contrast and also have regard to the fact that even if we had gone that litigation route, the most we might have hoped for at the end, as I say, might have been the 1.9 million, but we would not have had any guarantee about collection of that 1.9 million.

On the other hand

Q. Because of your agreement you secured

A. With the agreement we secured, we had absolutely copper-fastened an agreement that guaranteed us that 5 million. Whereas if we had gone the other route, got the

assessment reinstated, and that's all that would have happened at the end of that process, we'd be back ab initio trying to collect the money.

Q. Do I understand it correctly, then, that Revenue recognise that there is a public interest in, if you like, enforcing

the law so far as every taxpayer is concerned every taxpayer must have the law enforced against him in the way as any other taxpayer but that there is also a public interest in simply collecting money, getting in as much for the Exchequer as you possibly can, and that you have to make a choice sometimes between going down the "black letter of the law" route, and going down a negotiation route, and ask yourself which public interest is best served by going down one route or the other route?

A. Well, let me say in the overall sense that I have no doubt at all that the best public interest is served by Revenue collecting all the tax that is due and promoting a culture or a situation where that becomes the norm. But the reality is, and particularly the reality in what I might call some these legacy or older cases, is that going down the "black letter" I think you said the "black letter of the law" route

Q. Black letter of Revenue law.

A. Black letter of Revenue law route, is just not I think let me say it's just not a practical option for us. It would be, I think, irresponsible, probably, of us to go

down that route if we knew that what we were going to get into was a long drawn-out process of litigation, with all the costs which Revenue would bear in that process, which ultimately would be costs on the taxpayer. If there was an alternative which was going to collect a significant sum of money and which was going to, if you like, I suppose, get some retribution or some contribution and maximise that contribution from the defaulting taxpayer, I think it would have been very difficult for us to justify going an

alternative route in the set of circumstances we had in this case.

Q. The case has been described as a unique one. I suppose you can only say that if you know of every other case, and nobody can know that. To date it's been a relatively unique one; is that right?

A. To date it's been relatively unique. I don't think there is any case, certainly in my experience, that has had the same set of circumstances in terms of complexity, hidden secretiveness structures designed to keep all this from our gaze. But I would add, because you are quite right, you can't claim it's unique because you are never sure there isn't another one. But what I would take some comfort from is the fact that over the past number of years, the past three or four years in particular, Revenue has conducted an extensive amount of investigations which have allowed us enter into the financial world to a far greater extent than

we were able to do before, and I would have to say that as of now, despite all the information we are accumulating from that process, there is no indication that there is another one of these type cases. But...

Q. Well, of course, one could surface, or more information might come out in Mr. Haughey's case, and in fact you have provided for that in your agreement in any case?

A. Absolutely. That's a very important part of the agreement.

Q. Just to deal with one aspect of all of this. In the ordinary way, where Revenue doesn't have information, or where Revenue believes that there is information out there but can't get its hand on that information, there is a mechanism, a statutory mechanism which has been put in

place to encourage disclosure, and that is the, if you like, the concept of the voluntary disclosure and the advantages that flow from it, and likewise if you fail to make voluntary disclosure, the disadvantages that flow from that; isn't that right?

A. That's quite correct. Voluntary disclosure is encouraged, and always encouraged, and there is on the positive side, the encouragement is that if you come in and voluntarily disclose, when obviously from the time you come in the interest clock stops ticking, but more importantly, penalties will be considerably mitigated and the threat or the likelihood of prosecution is much diminished, and as well as that, and it's a very important factor for a lot

taxpayers, their names are not published in the tax defaulters list. So that's the positive side, and that's what drives voluntary disclosure on the positive side. Voluntary disclosure, I mean, to be realistic about it, is also driven to a considerable extent by the degree of awareness, or the degree of expectation people have that Revenue will eventually catch up with them, will find out something.

Q. Yes. Obviously if you apprehend that nobody is going to get access to the information, the incentive to disclose voluntarily is not as great; isn't that right?

A. That's quite true, and I think that would have been a feature maybe ten years ago. I don't think it's necessarily the perception out there now. And there are a number of reasons for that, which I can elaborate if you wish, but

Q. Well, I may come to that in a moment. Just while we are still on this question and I'm not expecting to you give me, you know, a comprehensive technical answer to this question. It's not a question, really; it's just something that I think might be worth considering, might be worth the Sole Member's while considering, in that you mentioned earlier the efforts the Revenue made to try to in putting tax order on Mr. Haughey's affairs, to try to establish what was the appropriate tax pigeon hole or tax head under which the funds that you were trying to get

information about should be taxed. And you ended up with C.A.T., and you mentioned that income might have been, but in your case had to be ruled out, another tax head under which those funds might have been taxed.

And I am just wondering, is there any point in considering whether when somebody's affairs do not come to the Revenue's attention, save as a result of the activities of an inquiry or a tribunal, or even from some third-party information, is there some point in considering putting the burden on the taxpayer in those situations to show why he shouldn't be taxed at the highest going rate, if you like which at the moment is income tax; isn't that right?

A. It is, yes.

Q. Would that not be a greater incentive to somebody who was confident his affairs mightn't come to the notice of the taxpayer, or reasonably confident reasonably confident his affairs mightn't come to the notice of the Revenue?

A. I think it's can I just preface my remarks, because if

we are talking about potential changes to the tax law or to Revenue powers, I have to be cognisant of the fact that Revenue doesn't make the law.

Q. You don't make the law.

A. We may certainly suggest changes to the law, but we do that in a process with the Minister and the Department of Finance.

Q. I want to make it clear that I am suggesting this, or putting this forward for your consideration and Revenue's consideration, merely in the light of the fact that the Sole Member may wish to make recommendations. I am simply wishing to avail, I suppose, of the policy overview you have rather than anything else.

A. In that context, let me put it as something that would be deserving of some consideration. We were stymied, as you have pointed out, Mr. Healy, in this case; our preference would have been tax this as income, because it is the highest rate; we couldn't go that route. There is a provision in the Taxes Act, in Section 58 of the Tax Consolidation Act, I think, which allows us to tax as profits or gains, which would be the same as income, monies from either unknown or from unlawful sources.

The problem with that, as it stands, is it starts off by saying 'or profits or gains'. And this was exactly the position we were in with Mr. Haughey. We couldn't prove that they were profits or gains, and the reality is of course that Mr. Haughey didn't in any way help us to come to that position. So what might be considered would possibly be having a look at that Section and wondering

whether a rebuttable presumption, that in the type of scenario you are outlining, of total lack of cooperation with Revenue over a long period of time, that Revenue might not in that situation be entitled to presume that those

monies could be taxed as income or profits or gains, and it would then be up to the taxpayer to rebut Revenue's position. So this would put the onus back on the taxpayer and would, in a way well, I presume this is what you are getting at

Q. Yes, it would transfer the advantages of delay to the taxpayer rather than to the Revenue?

A. And would force the type of cooperation that might be necessary in that case. I think something like that might be considered. There will obviously a power or a provision like that I think would certainly need to be used only in very exceptional cases, and quite a few safeguards would probably need to be built into the legislation. But I think in the extreme cases, it's something that might be useful. And of course obviously there would be the normal avenues of appeal to the Appeal Commissioners and the courts.

Q. But, assuming that it was workable, and I agree that workability is a major factor, it might reverse the balance of power in the Revenue's favour in such a situation?

A. Well, I think it would certainly level the playing field.

Q. Yes, that's a fair way of putting it, yes.

Now, in the course, again, of the evidence we have heard of a number of we have heard of the impact or the effect of a number of Revenue provisions which seemed to result in

taxpayers, whose affairs were obscured from view for some

considerable period of time, benefiting from conventions or practices designed to mitigate, I suppose, the impact of interest and penalties; and in particular, one of those that was mentioned was this cap on interest in the case of C.A.T. at 100%, which, as I understand it, and correct me if I am wrong, means that if a taxpayer's affairs are obscured from view, once he has reached 100% interest, he is investing the Revenue money for his own benefit after that, or the Exchequer money for his own benefit after that time, isn't that right, and the longer he can stay below the radar, the better it is for him?

A. Well, I think you could only call it the Revenue money or the Exchequer money if it's gone beyond what Revenue has the legal power to collect, which is tax and the statutory interest.

Q. If it goes beyond the 100 C.A.T., the 100% C.A.T. cap, if so many years had passed by that interest calculated was, from a particular point onward, likely to exceed 100%, the taxpayer might well say, "Well, so what? I have got the money; I am not going to be charged any more tax now". The reason I am drawing that to your attention is it featured in the Revenue's handling, I think, of Mr. Haughey's case. And that was the state of the law and Revenue practice at the time; isn't that right?

A. It was. There were two consequences of these monies falling into the C.A.T., or into the Gift Tax box. One was that there is a provision in the C.A.T. Acts, the Capital

Acquisitions Tax Acts, which, in effect, caps the interest,

or allows us to cap the interest at 100%. There is no provision anywhere else in any other Revenue legislation no specific provision, I should say that suggests or is, you know, clear about that.

And the reason it's there in the Capital Acquisitions Tax Acts, I think, is that these go back to 1894, to the old Estate Duty time. And I suspect, although I wasn't around at the time and I don't have access to the thinking at the time, that it was because Estate Duty and the subsequent inheritance taxes were related very much to property and land, and sometimes the process of bringing an inheritance to conclusion could be long drawn-out, and I suspect also that possibly applying full interest in those cases would have resulted in extreme hardship and might, in some cases, have, in effect, resulted in confiscation of an inheritance.

So I suspect that's where it came from, and it came down through the Tax Acts, and it's still there. As to whether it is still, I suppose, justifiable in the case of monetary gifts is something that I would certainly be interested in looking at, not so much as in changing the law but in looking at the Revenue practice in that area.

But that's the reality of where it was, and that's why the interest in Mr. Haughey's case was capped at 100%.

On the sort of bigger question, I suppose, which is, I

suppose, one of well, you know, did Mr. Haughey
therefore have the use of a lot of money in which he was

able to invest or build up a portfolio?
I don't know. I would be going into Mr. Haughey's affairs
to a depth there that I don't have any knowledge of or
expertise in. But just to say in the specific case,
whatever he did with the money at the end of the day, he
had to sell his house and property to fund this settlement.
So, I am not sure how far more I can go there.
Q. Now, in Mr. Lowry's case, again the Revenue did not become
aware of the accumulation of funds, of untaxed funds,
until, I think, in the case of Revenue, there was a
third-party disclosure to Revenue, and then subsequently
information came into the public domain, and then there
were Inquiries, Tribunals, and so forth. But over a much
shorter period of time, you had, again, the same feature of
the case: namely the accumulation of funds unknown to the
Revenue. Isn't that right?
A. That's correct.
Q. There was again what Mr. Lowry contends and I don't want
to get into it at this stage as voluntary disclosure,
isn't that right, in 1996, 2nd December, 1996?
A. That's Mr. Lowry's contention.
Q. In Mr. Lowry's case, there was a voluntary disclosure?
A. That's Mr. Lowry's contention. That's not our position.
Q. Correct. And I am not going to engage with you on it.

Mr. Lowry's contention is that there was a voluntary disclosure. And thereafter, Mr. Lowry's case took there was there were a bifurcated treatment, if you like, of his affairs. On the one hand you had the civil side, and on the other hand you had the criminal side; isn't that

correct?

A. That's right.

Q. By the time, if you like, on the civil side it came to trying to it came to pass that the Revenue and Mr. Lowry it's hard to know how to describe this agreed what type of figures might be capable of being recommended in the event of an offer being put to and accepted by Revenue, one of the taxpayers, Garuda, was in I think what Mr. Liston called an "inability to pay" situation; isn't that right?

A. That's correct.

Q. And I suppose it might be suggested that, well, had Revenue, in the first instance, simply pursued a civil route, that eventuality might not have affected the collection of tax?

A. I'm not sure I mean, it's a possibility to look back at hindsight and say that might have been the position, but I don't think it guarantees that that would have been the position. The reality is that very often nowadays we pursue cases on the criminal side and on the civil side simultaneously. They run side by side.

As to whether, if we had not decided to go the criminal route, this "inability to pay" situation will arise, I don't know; because I think there were issues right through this process, it seems to me, about Garuda's inability to pay at particular points in time. But to suggest out of that that maybe Revenue should not go a prosecution route, simply because at the end of the day we'll collect more money, would not be in keeping with our general approach

right now, where we have a greater emphasis on prosecution in suitable cases.

I suppose the actual money reality is that obviously, if Mr. Lowry had declared all this money, as and when he received it, in his normal tax returns, there would have been no interest at all.

Q. Inability to pay would not have arisen, because Garuda was trading profitably at the time?

A. Yes indeed.

Q. And of course, compared to Mr. Haughey's case, you did have access to information; and I suppose, in fairness to Mr. Lowry, it must be said that his adviser did provide information after he began to engage with the Revenue Commissioners. Isn't that right?

A. Yes, after we had begun our inquiries, our investigation, Mr. Haughey's (sic) representatives did provide us

Q. Mr. Lowry?

A. Sorry, Mr. Lowry's, indeed, yes, did provide us with

information.

Q. I just want to touch again on one aspect of Mr. Haughey's affairs, and this concerns the level at which penalties were imposed, and you'll correct me if I am wrong about this: I understand that in Mr. Haughey's case, there was no opportunity for Revenue to apply what, in a situation like that, would probably have resulted or generated significant tax penalties; is that right?

A. Yes. Again, that was a consequence of being forced down the Capital Acquisitions Tax route. Because, at that time, the only penalty there were no tax-geared penalties in

relation to Capital Acquisitions Tax, and the only penalties that we could sustain would have been penalties for non-filing of returns. Those were fixed penalties, I think of the order of ï¿½2,000 per event. Of course the other consequence of that was that Mr. Haughey could not be published in the defaulters list, because that is statute-based. Publication arises is mandatory in certain circumstances, but publication is not allowed in our circumstances, and the particular one that came into play in Mr. Haughey's case was that the penalties did not exceed 15% of the tax. And again, that was a direct consequence of there not being tax-geared penalties. I would like to say that we have since, and as a consequence of the difficulties in that case, that tax-geared penalties do now apply to Capital Acquisitions Tax, and indeed in one

or two other tax areas where they didn't apply at the time.
So we have rectified that situation.
Q. And I think that, in fact, during the past maybe seven or eight years, Revenue have, if I can use this word, promoted a number of other technical changes in the Tax Code in light of the huge amounts of increasing information they are getting both from Tribunals of Inquiry, but also from the changing atmosphere of tax compliance in the country; isn't that right?
A. We would have promoted quite a lot of changes, and it will probably be doing some of them a disservice to call them technical changes; some of them are quite substantive. But in the area of Capital Acquisitions Tax, we have, as I have already mentioned, now have tax-geared penalties; and also, as the Tribunal will be aware, the because again it was

a difficulty for us in the Haughey case, we have moved from the concept of domicile to resident. And now, if either the donor or the recipient are Irish, are resident, are ordinarily resident, then there is a liability. We have also moved to make it an obligation not just on the recipient, but now also on the donor to make a return to Revenue in relation to Gift Tax.
So certainly those are technical very important changes. But the more important ones, I think, in terms of the overall change in culture and change in promotion of compliance

Q. Before you come to that, and I know you want to say something about that, could I just ask you one other thing about this question of donors and donees in relation to resident or nonresident status and the amenability of the obligation to make a return. I think there have also been changes in the law, am I right, in the context of the obligations of banks to make disclosure obligation of offshore banks to make disclosure, is that right, to the Revenue Commissioners where those offshore banks are subsidiaries of banks in Ireland?

A. This is in relation to just to be clear on this, it is in the Finance Act, I think, 2005, there is we got a power which allows us to go to the High Court and to require a bank that is either based in the State or operating in the State and has subsidiaries overseas, it allows us to go to the entity operating in the State and to require them to disclose details of accounts held in the offshore subsidiary in relation to anybody who has a

liability to Irish tax.

So, there are a number of just to be clear the bank, in other words, the main bank, the parent

Q. The Irish bank?

A. Well, it doesn't have to be an Irish one.

Q. I appreciate that.

A. But the parent entity, the parent bank, has to be either based in the State or operating in the State. If the

subsidiary is abroad, we can require, with a High Court order, the parent bank operating in the State to get us information that might be held in a subsidiary operating abroad. That's in I think the 2005 Act, but I'm not absolutely sure.

Q. So that if an Irish bank, and I'll use that category for a moment, has an offshore branch in the Isle of Man or the Channel Islands, you can, in relation, I presume, to an Irish taxpayer, an Irish resident

A. They don't have to be Irish. If they have a liability to Irish tax, to tax here, yes.

Q. You can compel the Irish bank to disclose information or compel its foreign subsidiary to disclose information provided you can convince the High Court to issue an order; isn't that right?

A. Yes.

Q. If a bank is doing business here even though it's not an Irish bank, it's a foreign bank is doing business here, and that bank has a subsidiary in, we'll say, the Channel Islands, the Cayman Islands, or the Isle of Man or whatever, you can, again, by taking the same steps, compel

disclosure by that entity, the bank as a whole, of material relevant to the taxable person here; is that right?

A. Yes, if it's operating here and has a licence from the Central Bank to operate here, yes. But it can't operate here without a licence from the central bank, or shouldn't.

Q. Well, yes, and we have been over that ground, and we have heard Mr. Barnes this morning giving evidence in relation to Hamilton Ross. But that's an inroad, I suppose, on the immunity that banks and financial institutions conducting extraterritorial activities had from disclosure to the Revenue; isn't that right?

A. It is. It's I think a considerable addition to our powers, to our armoury, and it complements other powers that we received in recent years in relation to financial institutions.

Q. But I suppose that the State cannot legislate to compel a completely non a non-Irish bank, a bank that has no business here, that is operating exclusively in a foreign jurisdiction, in an offshore jurisdiction, to disclose information. The Irish court, or the Irish courts have no jurisdiction; the Irish legislature cannot legislate extraterritorially. This depends on international agreements; is that right?

A. Yes. This does not work in that situation. We cannot compel a bank that is not established or operating here to give us information. And you are absolutely right, it is the issue of extraterritoriality that is the consideration there.

That said, I suppose in a more general sense, because,

again, if we are talking in terms of Revenue's ability to become aware of monies moving around in financial circles

has been enhanced in recent years by other legislation, most particularly money-laundering legislation, which, as you know, is pretty much worldwide legislation. So while we don't directly get information from banks who are based overseas, again, it the real value of it, I think, is it creates an uncertainty in the minds of somebody who might want to be moving money around the financial system. They must be more less certain in the future that at some stage this won't come to the attention of some Regulatory authority. But I mean, we do not have any direct access to foreign banks based abroad, no.

Q. I'm not going to go into all of the changes that have been brought about in legislation in the past few years with a view to providing the Revenue with access to more information. But am I right in saying there have been some significant changes, affording the Revenue access to banks, that weren't there before? Without going into the details of them. And that secondly, quite apart from any new legislation, there has been, would I be right in thinking there has been a change in the attitude of financial institutions to intrusions by Revenue using powers that have been there for perhaps many years with a view to gaining information or seeking disclosure of the affairs of financial affairs of taxpayers?

A. On the first part of your question, prior to certainly 1999, Revenue had practically no powers in relation to going into or intruding into financial institutions; very,

very limited powers. In 1999, in particular, we got a

suite of powers which enabled us to, again, in let's say the really significant cases, go to the High Court and get an order from the Court which required the banks, or indeed financial institutions in general, and indeed other third parties, to provide information to Revenue. That suite of powers has been very significant for us, and we have worked that very, very successfully in recent years. It's been, I suppose, the it's what has allowed us to conduct all the special investigations that we have done over the past few years and to do those very, very successfully.

The second part of your question: Yes, it has definitely contributed to a change in the attitude of the financial institutions, and a change in the general climate here in relation to tax compliance. I think that climate has been driven by a number of things, by those powers, which I think indirectly are attributable to the climate created as a result of revelations at Tribunals and inquiries, which allowed the climate to develop in which those powers could be sought and given. It's also, I think, a factor of Revenue itself being much more active, and having much more real-time intervention and having reshaped ourselves internally and having put a greater focus on financial affairs and on wealth and that.

And it has also, I think, and in fairness, been fostered by a growing sense of greater social and corporate

responsibility out there. The realisation of what tax is, what it does, and in particular, what tax evasion does. There is only two consequences of tax evasion.

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Q. No hospitals, no schools?

A. Or everybody else pays more. It's as simple as that. So I think it has improved. And specifically in relation to the financial institutions, I am sure they still don't like to see us coming with all these orders, in terms of the burden of compliance it puts on them, but certainly I must say the attitude and approach to cooperation is very positive.

Q. In the course of the last number of years during which this Tribunal and other Tribunals have been working, we have heard references to an era, I suppose pre-1990, perhaps pre-mid-1980s, where there was where we didn't have this culture of compliance you are talking about now. A culture perhaps of more defiance of the Revenue Commissioners than of compliance with Revenue obligations. We have heard the huge increase in funds collected by Revenue in recent times, including I think even some mentions of Tribunals; but can I ask you, the problems that Revenue has identified in these two cases that I am asking you about, in the context of the change in the atmosphere or the change in the culture between the 1980s, 1990s, 1970s, and the late '90s and the 21st century?

A. Certainly in the I mean, a lot of commentators have spoken about the culture in the eighties and nineties and

have adduced all sorts of reasons for the attitude there was to tax and to tax compliance at that time. As I say, I think the culture has enormously improved. I don't think it's perfect yet, by the way, but I think we are getting there.

And as I say, there have been a number of factors. There

is a greater sense of social responsibility, of the realisation of what tax does. There is the work that Revenue has done. There are the powers that have come about. There is the work of the Tribunals and other inquiries. All of that has contributed to a better culture.

I'm not sure where your question was leading in relation specifically to Mr. Haughey and Mr. Lowry.

Q. What I'm suggesting is that during all that period of time you may have answered it to some extent, you know, tangentially in one of your earlier answers, but you referred to the fact that for a long period of time, in Mr. Haughey's case, funds were accumulated entirely without your knowledge.

A. Yes.

Q. Well, we know from the evidence, or it appears from the evidence, in any case, that banks or financial institutions and financial agents appear to have been involved in the accumulation of those funds, and indeed Mr. Haughey has given evidence that he left all his affairs in the hands of

his agents. And a section of the financial infrastructure of the country, if you like, was involved in activities that did not come to your notice until the disclosure, some of which we have heard evidence of in this Tribunal. What I'm asking you to comment on is the fact that part of the financial infrastructure of the country appears to have been involved. Could that happen today?

A. I think it's fair to say that part of the financial infrastructure of the country was involved, and the whole

plethora of investigations from bogus nonresident accounts to offshore assets, to the Haughey case in particular, have made that incontrovertible as a suggestion.

Could it happen today? I would never say something couldn't happen. I think, though, that it's highly unlikely that it would happen today. And I think, again, it would be because, having been through that whole process, certainly the financial institutions in this country have a totally different attitude to tax compliance and have a totally different attitude to what might be even their unwitting involvement in helping that, or in some way facilitating that.

It's driven by, as I say, their own re-examination of their consciences, if I can put it that way, and I think they are now very, very responsible in that area. But it's also driven by a knowledge that we now have powers to go in there and to find out what's going on, and I think that's a

reality as well.

So I think it's much less likely to happen now. I think Revenue is much more likely to come across it, and in Revenue itself, as I say, we would have a focus on this, and we would have, I suppose, a type of focus now that says, even if there is no apparent evidence of something going on, that we just get out there and work on the worst-case scenario that is there something that could be going on here that we should be finding out about?

So, there was a different culture in the nineties. There is a different attitude now. There is a different Revenue now. Much less likely to happen now. But I never underestimate the ingenuity of tax evaders either.

Q. Thanks very much.

THE WITNESS WAS EXAMINED BY MR. FANNING AS FOLLOWS.

Q. MR. FANNING: Very briefly, Mr. Daly.

Mr. Donnelly's evidence yesterday was to the effect that he afforded you with general briefings from time to time about general progress and developments with Mr. Lowry's tax affairs; is that a fair summary of the situation?

A. That's right, yes.

Q. And his evidence was really to the effect that this was somewhat out of the ordinary, as distinct from another private individual who had a tax problem of a similar quantum, and that the briefings that would have been furnished to you could really only be accounted for by

reference to Mr. Lowry's particular public profile; would you accept that?

A. I think it would be I take an interest in cases where there is a public profile, and this would have been one of them, yes.

Q. So I suppose, in effect, you'd accept that there was some element of additional oversight at a senior level in the Revenue Commissioners in this case on account of Michael Lowry's profile?

A. I'm not sure "oversight" is the word. I would be aware of

a lot of cases that are going through Revenue, but I don't pay detailed attention to every one of them. I can't do that. But certainly, in terms of I mean, to be honest, because of Mr. Lowry's involvement with Tribunals, I take an interest in all Tribunal cases in particular. I took an interest, yes, but it wasn't an oversight in the sense that I was directing any different approach to Mr. Lowry than anybody else.

Q. I accept that. And everybody on the Revenue side, as far as you are concerned, would have been scrupulous to ensure that Mr. Lowry and Garuda Limited have been simply treated in the same manner that any other taxpayers in the same situation would have been treated?

A. Absolutely, yes.

Q. And that would apply both to the manner in which the negotiations on the civil side proceeded, and also,

presumably, to the manner in which a caution was administered to Mr. Lowry?

A. Yes.

Q. And he'd have been cautioned in the same way as any other taxpayer in an equivalent situation would have been cautioned?

A. Absolutely. I don't see why there could be any difference, yes.

Q. Indeed. And presumably Mr. Haughey would have been cautioned in a like manner.

MR. CONNOLLY: Sir, this is a question concerning Mr. Haughey's tax affairs. I question whether it is appropriate that we pursue this line of questioning,

firstly as to relevance. It doesn't touch in any way on how effectively the Revenue pursued Mr. Lowry for outstanding tax.

And secondly, there is a question of confidentiality that has to be protected. Mr. O'Donnell, on behalf of Mr. Lowry, at the outset of this section of the sittings was at pains to make pronouncements to you concerning the protection of Mr. Lowry's right to confidentiality concerning his tax affairs. Now, that same confidentiality obviously has to apply in relation to Mr. Haughey's tax affairs. And it's not appropriate, in my respectful submission, for Mr. Fanning now to pursue questions with the Chairman of Revenue Commissioners as to how they dealt

with Mr. Haughey's tax affairs. There is a certain amount of circumspection required in relation to any possible pursuit in this line of questioning, in my submission.

CHAIRMAN: On a basis of promised brevity on the part of Mr. Fanning, I am disposed to allow a limited leeway, based totally on what evidence has been heard in relation to the two cases.

MR. CONNOLLY: Thank you, sir.

MR. FANNING: I am not sure that's a direction that the witness should answer the question, sir.

CHAIRMAN: Put the question.

Q. MR. FANNING: I presume Mr. Haughey was cautioned in the same manner as Mr. Lowry?

A. I am actually not aware of that, but you must remember we were dealing with Mr. Lowry on the basis of an investigation with a view to prosecution.

Q. Yes.

A. If we investigate a case with a view to prosecution, then a caution is part of that process.

Q. And I am conscious, sir, of what Mr. Connolly has said, and I don't want to pursue this line in any meaningful way at all. Was it not similarly the case that a prosecution was intimated in the case of Mr. Haughey?

A. I don't really want to get into the detail of Mr. Haughey's case in these circumstances, Mr. Fanning. The circumstances of each case are unique.

MR. HEALY: I think, in fairness to Mr. Haughey and Mr. Lowry, there were witnesses here dealing with the minute detail of these matters to whom these questions could have been addressed, and if necessary, I think the Tribunal can make an inquiry on Mr. Lowry's behalf. But my recollection is that there were a number of witnesses asked about the degree of personal engagement with Mr. Haughey, which might have been the appropriate time. I certainly don't see what useful purpose is served by asking a witness

MR. FANNING: Begging your pardon, sir, in the past three days of hearings, the only witness who has given evidence that has dealt with the tax affairs of Mr. Lowry but also

the tax affairs of Mr. Haughey has been the present witness. The other witnesses, Mr. Nolan, Mr. Donnelly and Mr. Liston, that have been here over the past couple of days, have said nothing at all in relation to Mr. Haughey. And I think, in fairness, it was Mr. Healy's line of examination that interspersed questions in relation to Mr. Lowry on the one hand and Mr. Haughey on the other hand that has, in effect, opened up what I am pursuing, which is the very limited inquiry as to whether Mr. Haughey was cautioned.

I have heard the witness's response, which is seemingly, to the best of his knowledge, Mr. Haughey was not cautioned in like manner that Mr. Lowry was cautioned. I am happy to

leave it there if that's the witness's response.

CHAIRMAN: You have had access to all the information pertaining to Mr. Haughey's evidence, and I would prefer that matters be left on that basis.

MR. FANNING: Very well. I have only one final question then, in those circumstances, for Mr. Daly.

Q. That is, Mr. Daly, I presume you are satisfied, from the limited briefings you have received from your officials, in particular Mr. Donnelly, that there is therefore no question of any preferential treatment been afforded to Mr. Lowry or Garuda Limited?

A. I think from the briefings I have had from Mr. Donnelly, and remember I haven't had a report to me yet in relation to the settlement.

Q. I accept that limitation, yes.

A. Mr. Lowry and Garuda have been treated by the book, in the same way that we would treat any other case.

Q. Very good. Thank you, Mr. Daly.

THE WITNESS WAS EXAMINED BY MR. CONNOLLY AS FOLLOWS:

Q. MR. CONNOLLY: Just one or two matters, Mr. Daly. You described the extra powers which have changed the situation as far as the Revenue are concerned, and also the climate, as far as the taxpayers and the community in general are concerned, which has led to a greater degree of tax compliance, all of which is to the good as far as the community is concerned. It is appropriate, I think, also

to add that banking practices have become much tighter in recent years, perhaps as a result of money laundering and other things like that, that would make these type of which would make it more difficult for tax evasion of the sort which has been described by this Tribunal; isn't that correct?

A. That's correct. And I mentioned the money-laundering legislation earlier in my evidence. That would be quite true.

Q. A simple practical example would be it's now very difficult to cash a third-party cheque simply on presenting yourself to a bank with a third-party cheque, but a simple practical example where that has been a feature of some of the payments that has been a feature before this Tribunal?

A. There is a much greater regulation of the banking sector.

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Q. Now in terms of the effectiveness of the various powers which have been brought into play in recent years, are you in a position to assist the Tribunal in relation to the amounts of money that have been recovered by the Revenue as a result of special investigations which reflect new powers which have been put in place?

A. The special investigations which have been going on for a number of years now, and are still in train, so we are not finished with them yet, have yielded a figure I think of just under 2 billion, 2.2 billion, as of today. I think the figure right now stands at 2.193 billion. That is made

up of various investigations: bogus nonresident accounts, offshore assets inquiries, insurance investigations and Tribunals. The yield, I think, as a direct consequence of this Tribunal, is something like 7.7 million. The yield from other Tribunals sorry, this Tribunal and the McCracken Tribunal is 7.7. In respect of the other Tribunals, Mahon/Flood, it's about 30 million to date.

Q. And can you give us some estimate of the breakdown of the other items which have which make up the figure you gave to us?

A. The bogus nonresident accounts have yielded 838 million; the offshore assets have yielded approximately 813 million; single premium insurance policies have yielded 391 million; Ansbacher has yielded just about 60 million; the so-called NIB Clerical Medical Scheme has yielded 57; and the Tribunals have yielded 37.8. And all of that, I think, should add up to 2.193 billion.

And I might add that in general terms, there is still

something approximating 10 million a month coming in to Revenue from these special investigations, and obviously there are particular phases of the offshore assets investigation and the single premium investigation which have still to go. So I think the eventual outcome will be considerably greater than that.

Q. Thank you, Mr. Daly.

CHAIRMAN: Your evidence has been very helpful, Mr. Daly,

on the increased powers, but your own perception of the preferable situation is that in general terms, given a somewhat more honourable tax culture, it would be the Revenue preference that people should pay their dues, should still have confidentiality, and that anything by way of publication, prosecution or the like should be very much the exception rather than the rule?

A. The position in which people voluntarily pay, are compliant taxpayers, is obviously the preferred one. The situation in which we have to use powers to compel people to come in is absolutely necessary, and will continue to be necessary, but I would hope over time that the use of those powers will not be as often; that because people will be voluntarily complying.

I am conscious also, because we have been discussing maybe changes to the Tax Code or to the powers of Revenue, that a tax administration needs to have a balanced approach and needs to have a balanced set of powers. I don't think any tax administration that it's in the interest of any tax administration to have an overbearing set of powers,

because that in turn probably causes a reaction among compliant taxpayers. So a balanced set of powers, but in the overall sense, I am encouraged by the culture of compliance that is developing in the contrary.

As I said to Mr. Healy, I don't think it's perfect yet, but I think it's going in the right direction.

CHAIRMAN: So your approach on something such as the comparatively recent discoveries in relation to single premium insurance policies would be not to offer an amnesty, but to offer somewhat improved consequences if people promptly cough up what appeared to be

A. That's what we did. "Amnesty" is not a word that's in my vocabulary as Chairman, I have to say. But what we did in the single premium policies investigations, as we did in the offshore and as we did in the bogus nonresident accounts, was to allow a voluntary period during which people could actually come in and where they got some benefits in mitigation of penalties. They still had to pay the tax; they still had to pay the interest. But they got a considerable mitigation of penalties. That was the encouragement to come in. And an awful lot of them did, as you have seen by the figures I have given this morning.

CHAIRMAN: Yes. The more multifaceted approach of Revenue that you have indicated as regards the reconstruction of the service in recent years has meant you, in particular, have had to have a more public face than some of your predecessors; and whilst the essence of the

taxpayer/Revenue relationship is still confidential, obviously there is more public focus?

A. I think there is a public focus, which I suppose is part of accountability to the general public, and to the taxpayers, and maybe explaining ourselves a little bit better. There

is always a tension between taxpayer confidentiality, which Revenue attaches human importance to, and quite rightly, and at times a temptation to explain ourselves just a little bit better, but to try to do that without intruding into particular cases.

So I think you are right. I think the public profile hopefully started with some of my predecessors, but it is greater now. It certainly wasn't in the job description when I entered the public service. I think it's maybe not a very comfortable part, but a very necessary part of Revenue, just explaining itself, accounting for itself, reporting on the progress that we have made; but also from time to time acknowledging that we are a learning organisation. And I think this is part of the value of the process of Tribunals or Inquiries, that we learn as we go, we improve as we go, we make changes to our structure as a consequence, we make changes to the law as a consequence.

CHAIRMAN: The greater accountability can lead to conflicting pressures. At times you'll have to listen to correspondence and reports clamouring for, to put it colloquially, an Irish Lester Piggott; on other occasions, if you do take the more bullish or the more determined route, if it turns sour, adverse publicity may follow from

a bad outcome before the Commissioners or the High or Supreme Court.

A. Absolutely. I think that's what we were very conscious of,

particularly in Mr. Haughey's case, the clamour for prosecution, the clamour for collect every possible penny you can, as opposed to the reality that we were faced we have to do things within the tax law, and, as you say, the clamour that might be there now if we had collected nothing and were stuck somewhere in a legal process or still had actually had a bad outcome. So very often we are in a lose, lose, situation in relation to that.

CHAIRMAN: The powers of this Tribunal's Terms of Reference requiring it to make recommendations is not insignificant, and I think on foot of that, there have been other dealings between the Tribunal legal team and your office, and you have assisted the Tribunal by making available some experienced and senior people to give some liaison and guidance with a view to such recommendations as may be made.

A. Yes, we are very happy to do that.

CHAIRMAN: I'm very much obliged, Mr. Daly, for your assistance, and indeed for the very fullsome participation that your colleagues have shown to the approaches made on behalf of the Tribunal.

MR. CONNOLLY: Could I just clarify two things, sir, that I left out.

THE WITNESS WAS FURTHER EXAMINED BY MR. CONNOLLY AS FOLLOWS:

Q. MR. CONNOLLY: Mr. Daly, just before you go, I just want to clarify the ï¿½7.7 billion, which you said came directly as a result of the inquiries of this Tribunal and the McCracken Tribunal, were direct payments from taxpayers under scrutiny there, but there would be a higher figures that would be in the way of indirect effects from those Tribunals; is that correct?

A. Oh, absolutely. Well, I thought I mentioned that earlier in my evidence, that it could be said, because of the climate that was created, because of the powers that were given to us, because of the activities that we have undertaken; and of the 2.2 billion, I think a considerable amount of it is attributable to the climate created by the Tribunals and that. But as to what exactly what percentage of it is, I'm not sure we can quantify that.

Q. I think there has been substantial mention in the media in the last week or two of something in the order of 900 million. That may be right. But, in any event, you would go so far as to say there was a very substantial amount of payments which were received by the Revenue which indirectly can be attributable to the climate or the investigations of the McCracken Tribunal and this Tribunal and the Flood/Mahon?

A. Yes. Well, the investigations were facilitated by the powers. The powers we got were facilitated by revelations at these Tribunals, and of course in a number of cases the

actual evidence adduced at these Tribunals, including the monies, provided the trail for us to follow quite a lot, yes.

Q. And there is one final matter that touches on a matter raised by the Chairman. Obviously any changes in legislation are a matter for legislators, and this Tribunal may well be minded to make recommendations at the end of the day when it produces any report. It will be the case that the Revenue Commissioners will be making written submissions in relation to that. I know you have touched on some general matters here, but that's not the end of the matter. I don't want any member of the public to think that's the end of it.

CHAIRMAN: That's what I was trying to elicit. It's just as well you made that clear, Mr. Connolly.

A. There will be written submissions from Revenue.

CHAIRMAN: Thanks very much indeed, Mr. Daly. That concludes this short sequence of sessions in relation to the particular Term of Reference in relation to both the named individuals. I expect to announce in the usual manner a very prompt resumption for what I hope may be, if not the penultimate, very close to the penultimate sittings of the public work of this Tribunal, and by declining to name a precise date at this juncture, I should state that it is my intention that that resumed date will be within this calendar month.

Very good. Thank you.

THE TRIBUNAL ADJOURNED UNTIL FURTHER NOTICE.