How much is Apple on the hook for in Ireland? Or, how l...

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I've already explained I think Apple and Ireland have little way out of the allegations levied by the EU. But, how much is Apple on the line for?

Heather Self has said in the Wall Street Journal that she thinks it may be â‚¬200 million. I think that's ball park fair.

BUT, (and I don't use capital letters in that way often) there is another option here which could mean that Apple are exposed to considerably more liability.

My logic is that the companies that are being looked at are Irish incorporated companies that are not resident in Ireland. Therefore, the estimate of additional tax Heather Self has, I think, made is is based solely on those taxes on profits arising within their Irish operations. That is because although these companies were Irish incorporated they effectively only ran permanent establishments in Ireland which gave rise to profits in a branch in that country which were then, supposedly, subject to tax, although as the EU has shown, that may not have been appropriately charged. I have no doubt Apple would argue that the rest of the profits were elsewhere i.e. not in Ireland and so not taxable there under its territorial taxation rules.

Now, I cannot see how the European Commission could overturn Ireland's right to have territorial tax system when a number of countries within the EU have such an arrangement, so there is little prospect of that being challenged. There is, however, another potential challenge. The fact is that whilst these companies claim to be not resident in Ireland it seems that for all practical purposes all their staff and all their activity was really undertaken in that country. What is more, Apple told a US investigation these companies were not in fact resident nowhere. In that case the obvious question to ask is how did the Irish tax authorities decide what part of the total income was attributable to Ireland when there was in fact no basis for attributing any of the income to another place, when the company was nowhere else? If it had been somewhere else then of course income could be attributed to that other place but when it was nowhere else how could any profit be allocated to somewhere which, by definition, was non-existent?

So, the question then arises as to whether Ireland in fact provided a second element of state aid by turning a blind eye to this fact that the companies in question were in fact, for all practical purposes, stateless except with regard to that part of profit that they negotiated might be attributable to the operations within Ireland.

I put this forward as conjecture, but if I was working for the Commission I would most certainly be interested in trying out this line of argument in the amount of charge to be imposed because at that point the scenario of penalty due changes completely.