An auditor's role as witness when a client has got into carrousel trading

[Translation of the article *Revisorns roll som vittne när klienten råkat in i karusellhandel*, by Björn Forssén, published in original in Tidningen Balans fördjupning (The Periodical Balans: Advanced articles) on 25 June, 2026. Translation into English by the author of this article, Björn Forssén.]

What questions does an auditor need to master when an enterprise which has got into a VAT fraud of so-called carrousel type (carrousel trading) needs the enterprise's external auditor as a witness in proceedings? Björn Forssén develops his view on the matter in an advanced article for Balans.

I assumed that it would take long time before the investigations of 2023 and 2024 against VAT frauds would be resumed but the government started again last autumn. Nowadays, there is new legislation of 1 April and there will be more coming into force on 1 July, 2026. Here, I bring up what nowadays is favourable to consider by auditors who suddenly becomes aware that the client is accused of having taken part in carrousel trading.

Introduction

The auditor's role as witness in various kind of cases concerning tax often consists of stating whether an audited enterprise has carried out a normal business activity and be deemed to have had control of it by its accounting and storage systems. However, for a long period of time the phenomenon carrousel trading has caused that this is not sufficient but *Skatteverket* (the tax authority) and *Ekobrottsmyndigheten* (the Economic Crime Authority) consider that already the circumstance that the businesses have concerned electronical products, like mobile phones or computers and components, means that the enterprise knew or should have known that it took part in a VAT fraud of so-called carrousel typer (carrousel trading). Then, it is not enough to testify about the enterprise having conducted a normal business activity and had control of it by the recently mentioned systems. Still, the enterprise is accused of being fictitious due to it having electronical products in its assortment and the tax authority's audit can even be restricted to comprise only those products which the authority also deems itself to be able to determine and distinguish from electrical products, like vacuum cleaners.

Here, I mention some questions which are advantageous to be aware of based on the government's work after the investigations against VAT frauds of 2023 and 2024 which have led to proposals in two steps, namely the new rules which came into force on 1 April and rules coming into force on 1 July.

New rules of 1 April, 2026

Matters on carrousel trading mean that the tax authority not only for example refuse the enterprise deduction of input tax on purchases of electronical products but imposes also tax surcharge on that raise of taxation. The question of tax surcharge causes the tax authority filing a report against the entrepreneur – a natural person who conducts an enterprise as sole proprietor or representative of a legal person like a limited company – to the Economic Crime Authority on suspicion of tax fraud. If the prosecutor decides to prosecute the enterprise and the entrepreneur suffer proceedings in the administrative courts about the deduction and in general courts about the tax fraud issue. If it is a matter of a sole proprietorship the natural person cannot be subject of two proceedings. In Latin this is named *ne bis in idem* ('not twice

about the same thing') and is usually called the prohibition of double jeopardy. For the same natural person may not double punishment occur for tax fraud *and* tax surcharge, which is also of a punitive character.

Where what the enterprise knew or should have known about that it has been proven that the purchases in question have existed in a chain of transactions where carrousel trading is the matter, it has been *by statement of a lower instance asserted* that the relationship between bad faith (in Latin: *mala fide*) and good faith (in Latin: *bona fide*) is binary. This means per definition that bad faith is deemed existing at the lack of good faith.

I consider that a statement of the government about the new rules gives a certain guidance on the prohibition of double jeopardy regarding tax surcharge and tax fraud. The government states namely on page 26 of the bill prop. 2025/26:43 that it for liability of tax fraud *exists a demand of criminal intent* and that it in that regard thus *is not enough with such bad faith based on objective circumstances sufficient to disqualify the right of deduction*. If bad faith and good faith would be a contradictory pair of opposites the government's statement supports my perception that bad faith determined based on an absence of good faith coincides with the subjective penal law prerequisite intent in the present context. This due to that determination of bad faith making an application of the prerequisite intent superfluous at the trial of responsibility for tax fraud. In other words, what the person in question knew or should have known about the purchase having existed as a link in an avoidance of VAT would according to the definition in question coincide with what is deemed to constitute convincing evidence for a conviction regarding tax fraud. The question about the relationship between bad and good faith should be decided by Högsta förvaltningsdomstolen (the Supreme Administrative Court), HFD, so that a clear guidance is given for the application by administrative courts and administrative courts of appeal but also by district courts and courts of appeal since general courts shall regard that erroneous information according to the Tax Fraud Act shall continue to have the same meaning as according to the rules of taxation, according to the government.

If an auditor is invoked as a witness in a case of carrousel trading, he or she shall of course not answer for what the legislator and the HFD or Supreme Court (Högsta domstolen) respectively have not managed to clarify apparently enough in the legislation and the case-law respectively. Quite simply, the auditor cannot judge what the entrepreneur at least should have known about eventual carrousel trading if it shall not constitute a judgment strictly based on objective circumstances but also be about what is subjective. The auditor can only make statements about what is objective and not about what has existed in the head of the entrepreneur. This is important to consider since the new rules also mean that erroneous information according to the rules on tax surcharge and tax fraud nowadays may comprise oral information and not only what is expressed in the return. Of interest is also that concerning erroneous information regarding VAT a new item was introduced in the rules on tax surcharge aiming at VAT frauds but in the commentary of the bill (p. 38) it is stated that the burden of proof lies with the tax authority concerning erroneous information also in that regard.

New rules of 1 July, 2026

The auditor can also be summoned to make statements on the above-mentioned questions in a case on personal liability of payment, i.e. if the tax authority files a lawsuit against the representative of a legal person, for example a limited company, for personal liability for the company's tax debts (representative liability). Then, the tax authority shall prove that one or more persons have been representatives of the company and that they have acted with intent or

at least by gross negligence with the economy in the company so that for instance the VAT debt has not been possible to pay to the State by the company.

In this regard, the government should have mentioned also the concept erroneous information in the special rule on representative liability regarding excess input tax in the Taxation Procedure Act (Ch. 59 sec. 14). Inter alia, the rules of 1 July means the introduction of a new chapter (63 a) about when excess input tax shall not be credited. By not mentioning the existence of the concept erroneous information in the mentioned rule on representative liability, I consider that the government is lacking a necessary holistic view on the prohibition of double jeopardy since the special rule on representative liability – unlike the main rule – contains the concept erroneous information and support is lacking in the preparatory works to the introduction of the rule on 1 January, 2004 for it having another meaning than erroneous information regarding tax fraud. Since it is not unusual that it is first by the auditor's testimony it is noticed in a procedure concerning VAT that there is a distinction in the VAT return between line 48, input tax, and line 49 if it shows excess input tax, may my reflection be of interest.

Sources

Skatteförfarandelagen (2011:1244), the Taxation Procedure Act; *skattebrottslagen (1971:69)*, the Tax Fraud Act; and *lag (2015:632) om talan om skattetillägg i vissa fall*, the Act on proceedings for tax surcharge in certain cases; SOU 2023:49 and SOU 2024:32 (the government's investigation Measures against VAT frauds); SFS 2026:109 and 110, prop. 2025/26:43 (the legislation on 1 April, 2026); and SFS 2026:707, prop. 2025/26:128 (the legislation on 1 July, 2026); and, regarding the reform of the representative liability rules on 1 January, 2004, SFS 2003:747 and prop. 2002/03:128. Regarding that tax surcharge is of a penal law (punitive) character: see reference to the European Court of Human Rights on p. 70 in prop. 2002/03:106. Regarding *assertion by statement of a lower instance*: see grounds of the judgment in Förvaltningsrätten i Växjös (the Administrative Court of Växjö's) verdict on 2023-03-31 (case Nos. 179-22 and 3956-20).

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