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A proposal for a great tax reform in Sweden which also is a preparation for an EU tax

[Translation of the article *Förslag till en stor skattereform i Sverige som också förbereder en EU-skatt*, by Björn Forssén, published in original in Swedish in Tidskrift utgiven av Juridiska Föreningen i Finland – Eng., The journal published by the Law Society of Finland (abbreviated JFT), JFT 5–6/2024 pp. 455–496. Translation into English by the author of this article, Björn Forssén.]

1 Introduction

Previously, I have written in the JFT about the reform of the value-added tax (VAT) that was introduced in Sweden on 1 July, 2023, by *mervärdesskattelagen (2023:200*, the VAT act, abbreviated ML).[1] In this article, I present a proposal for a great tax reform in Sweden. That has been up for debate before general elections in Sweden, but the politicians have never submitted any proposal. Instead, they have debated details like the right of deduction for interests and whether it shall be limited and if so how much. With this article, I give my great proposal for a reform.

The cornerstones (or linchpins) of my proposal is that not only the indirect taxes, but also the income tax, will be adapted to the EU law[2] for the determination of the tax subject for enterprise law purposes and that another EU-country – the Netherlands – may give guidance for the introduction of a model for capital and dwelling taxation for private persons, similar to the so-called box model that has been applied there since 2001.[3] In the first mentioned respect, I am also aiming for the proposal to prepare for the introduction of an EU tax. Then, I am setting out from my theses, which basically concerned the determination of the tax subject in VAT respect.[4] In the latter respect, I am setting out from the proposal for the introduction of a

[1] See Björn Forssén, *Synpunkter på vissa regler i förslaget till en ny mervärdesskattelag i Sverige – SOU 2020:31* (Viewpoints on certain rules in the proposal to a new VAT act – SOU 2020:31), JFT 3/2020, pp. 388–399 (Forssén 2020a) and Björn Forssén, *Momsreformen i Sverige – flera minus än plus beträffande implementeringen av bestämmelserna i EU:s mervärdesskattedirektiv* (The VAT reform in Sweden – more minus than plus regarding the implementation of the EU's VAT Directive), JFT 1–2/2024, pp. 48–82 (Forssén 2024a). Forssén 2020a and Forssén 2024a are available on www.forssen.com. SOU, abbreviation of *statens offentliga utredningar*, the Swedish Government's official reports.

[2] EU, the European Union or the Union.

[3] See p. 7 in the ESO-report 2017:4, *Yes box! En ESO-rapport om en ny modell för kapital- och bostadsbeskattning (ESO-rapport 2017:4)*, Yes box! An ESO-report about a new model for capital and dwelling taxation (the ESO-report 2017:4)), by professors Sven-Olof Lodin and Peter Englund. The ESO-report 2017:4 is available on https://eso.expertgrupp.se/RAPPORTER. ESO: *Expertgruppen för Studier i Offentlig ekonomi* (The Expert group for Studies in public economy). The ESO is an independent committee under the Treasury in Sweden, and on its website it is inter alia stated (in my translation) that 'The ESO's assignment is to independently contribute to broaden and deepen the foundation for future socioeconomic and fiscal policy decisions'. See https://eso.expertgrupp.se/om-eso/esos-uppdrag/ (visited 2024-07-11).

[4] See *Skattskyldighet för mervärdesskatt – en analys av 4 kap. 1 § mervärdesskattelagen* (Tax liability for VAT – an analysis of Ch. 4 sec. 1 of the ML), Jure Förlag AB 2011 (Forssén 2011) and *Skatt- och betalningsskyldighet för moms i enkla bolag och partrederier* (Tax and payment liability to VAT in joint ventures and shipping

box model for the capital and dwelling taxation given by the professors Sven-Olof Lodin and Peter Englund in the ESO-report 2017:4.[5]

In this article, I account for the cornerstones of my proposal for a great tax reform in Sweden with an EU-signature (sections 2–8) and the suppositions for its fulfilment set out from how I to my experience perceives the legislative work and the research (sections 9.1–9.3.2.4). Finally, I summarize and mention something about the importance of the law of procedure for the constitutional dimension in the field of taxation with regard of the European law (sections 10.1 and 10.2).

2 The main question for a reform – a common corporate taxation law subject

The main question in my licentiate's dissertation of 2011 – Forssén 2011 – was that the EU law demanded that the connection from the VAT to the income tax for the determination of the corporate taxation law subject would be revoked,[6] which also was done thereafter during 2013.[7] However, the legislator disregarded that I in Forssén 2011 recommended the reverse order, that is that the corporate taxation should be altered concerning the determination of who is an entrepreneur for taxation purposes, so that the VAT is governing the income tax in that respect.

The legislator should have borne in mind that I wrote that the case-law by the Court of Justice of the EU (CJEU) and *Högsta förvaltningsdomstolen*, the Supreme Administrative Court (abbreviated HFD), meant that it was at least of interest to examine whether the determination of who is an entrepreneur according to the income tax law can be governed by the VAT law.[8] In Forssén 2011, I mentioned that there was no support to object against this reverse order to determine who is an entrepreneur for taxation purposes. The analysis in Forssén 2011 showed

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partnerships), Örebro Studies in Law 4/2013 (Forssén 2013). Forssén 2011 and Forssén 2013: see www.diva-portal.org or www.forssen.com.

[5] Previously, I have mentioned it in *Tidningen Balans* (The Periodical Balans), which is issued by *Föreningen Auktoriserade Revisorer* (the Institute for the Accountancy Profession) in Sweden, abbreviated FAR, and in three articles in the net paper *Dagens Juridik* (Today's Law). See Björn Forssén, *Boxmodell för en enhetlig kapital- och fastighetsbeskattning: Yes box – alright?* (A box model for a uniform capital and real property taxation: Yes box – alright?). Published in *Tidningen Balans Fördjupningsbila*ga (The Periodical Balans Annex with advanced articles), printed version 5/2017, pp. 8–13, and on www.tidningenbalans.se 2017-10-18 (Forssén 2017a). Since 2022 the articles in the annex of The Periodical Balans are only digitally published. The three articles in *Dagens Juridik*, Today's Law (www.dagensjuridik.se), where I also have mentioned the ESO-report in question are the following: *Stabilt regeringsunderlag eller bristande låne- och bostadsbubbla*, Stable basis of government or deficient loan and dwelling bubble, published 2020-01-02 (Forssén 2020b); *Samlat grepp nödvändigt beträffande nationella skattereformer*, Overall grip necessary regarding national tax reforms, published 2020-03-06 (Forssén 2020c); and *Bostadspolitiken bör förenas med revisionsplikt på ägarnivå*, The dwelling policy should be joined with a liability of auditing on the owner's level, published 2023-06-08 (Forssén 2023a). Forssén 2017a, Forssén 2020b, Forssén 2020c and Forssén 2023a are also available on the ESO's website, in connection to the ESO-report 2017:4 under *Mediarapportering kring rapporten* (Comments in media about the report), and on www.forssen.com.

[6] See Forssén 2011, section 1.1.3.1.

[7] The wording of Ch. 4 sec. 1 of *mervärdesskattelagen (1994:200*, the VAT act, here abbreviated GML) was altered in the mentioned respect on 1 July, 2013, by SFS 2013:368. SFS, abbreviation of *svensk författningssamling*, Swedish Code of Statutes.

[8] See Forssén 2011, p. 268.

that the profit prerequisite for an actual business activity (*egentlig näringsverksamhet*) that was considered preventing this no longer was upheld in the case-law.[9] The objection was not valid then and is neither so today. By the main rule on the tax subject in the EU's VAT Directive (2006/112/EC),[10] article 9(1) first para, follows that the result is not decisive, but a person is a taxable person provided that the person independently carries out an economic activity. That is also in correspondence with the case-law on actual business activity.

That it was necessary to revoke the connection from the VAT to the income tax and the concept *näringsverksamhet* (business activity) according to *the whole of* Ch. 13 of *inkomstskattelagen (1999:1229*, the Income Tax Act, here abbreviated IL) depended on that reference, unlike what followed by the prerequisites for an actual business activity in sec. 1 of Ch. 13, meaning that *all* legal persons, for example limited companies, constituted – according to sec. 2 of Ch. 13 – tax subjects not only regarding the income tax, but also regarding the VAT. That was in conflict with the main rule of the directive on who is a taxable person, where the prerequisites are the same regardless of enterprise form – that is natural person (sole proprietorship) or limited companies etc. Thus, a legal person is not a taxable person solely by virtue of the subject registration at *Bolagsverket* (the Swedish Companies Registration Office) of for instance a limited company (*aktiebolag*) as precisely a limited company, which the legislator has regarded after Forssén 2011.

Disregarding the mentioned necessity, I consider that the big point otherwise with a common corporate taxation law subject is that it gives a common taxation frame for the types of taxes VAT and income tax. It was a step in the right direction that the legislator did not allow the income tax concept *näringsverksamhet* (business activity) to continue to determine who is an entrepreneur for VAT purposes. However, the tax system still needs to be revised, so that a common taxation frame will be established which individuals and taxation officials at the tax authority (*Skatteverket*, abbreviated SKV) can stick to for the judgment of who is an entrepreneur. I mentioned in Forssén 2011 that the requirement to maintain accounting records for a natural person emerges if he or she professionally carries out an activity of an economic type, and that these prerequisites and the prerequisites for an actual business activity are similar.[11] With the book-keeping as the foremost evidence at the judgment of who is a tax subject for corporate taxation purposes my proposal to introduce the reverse order for the determination of the tax subject ensures that a common taxation frame will be upheld. Thereby, an altered case-law of what constitutes an actual business activity shall not cause that the tax subject question regarding the two types of taxes in question must be tried in double procedures. That would be in conflict with the principle of legal certainty *ne bis in idem* (not twice about the same question).

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[9] See Forssén 2011, p. 267.

[10] The VAT Directive: the EU's VAT Directive (2006/112/EC). Complete title: COUNCIL DIRECTIVE 2006/112/EC of 28 November 2006 on the common system of value added tax.

[11] See Forssén 2011, pp. 33 and 268 and the preparatory works to *bokföringslagen (1999:1078*, the Book-keeping Act, here abbreviated BFL) – prop. 1998/99:130 (*Ny bokföringslag m.m.*), New Book-keeping act etc., Part 1, p. 205. Prop., abbreviation of *regeringens proposition* (the Government's bill).

3 A common taxation frame for the taxes VAT and income tax should lead to a more efficient collection but for the VAT is registration control always the most important

In my opinion, the question about a common taxation frame for the VAT and the income tax is not only about procedure but concerns also that the EU law shall function for collection purposes. I have mentioned this since 2015, when I take part in the education on The Master's programme in European Legal Studies at Södertörn University (which I here call the European Law programme), whereby the EU law's principle of good governance is treated. I consider that the treatment of the income tax rather often is solved by political considerations of the national authorities and courts, by application of the principles for the internal market, regardless of whether the actual question is comprised by a legislation of the EU.

In the last-mentioned respect, it may be mentioned that it is a decisive difference that the competence for the determination of the tax subject for VAT purposes generally lies by the EU,[12] whereas it is not so regarding who is an entrepreneur according to the income tax law. Directives like the VAT Directive is binding for the EU's Member States, according to article 288 third para of the Treaty on the Functioning of the European Union (TFEU), and for indirect taxes like VAT a harmonisation demand applies for the legislations in the Member States according to article 113 TFEU. However, for income tax there is only a demand of approximation of the national legislations to each other according to article 115 TFEU. The Council has issued a small number of directives on income tax, for example the Merger Directive (2009/133/EC) and the Parent Companies and Subsidiaries Directive (2011/96/EU),[13] but not any about who is entrepreneur for income tax purposes,[14] whereas the demand on harmonisation is general for the national VAT legislations in the Member States.

By introducing a common taxation frame for the determination of the tax subject for corporate taxation purposes regarding VAT and income tax a more efficient collection should be achieved for both the types of taxes in question by the enterprises acting in the internal market. In Forssén 2011 as well as in my doctor's thesis, Forssén 2013,[15] I pointed out that the EU Commission as from its green paper of 2010 emphasized that the attitude that as many enterprises as possible should be registered to VAT had led wrong. The Commission recommended giving priority to the question of collection and the registration to VAT, to counteract VAT frauds by those only interested in appropriating the State's money.[16] In the

[12] In the field of VAT the competence has been conferred to the EU's institutions by the Swedish Parliament, according to Ch. 10 sec. 6 of *regeringsformen (1974:152*, the 1974 Instrument of Government, here abbreviated RF) and articles 4(1) and 5(2) of the Treaty of European Union (TEU). See also prop. 1994/95:19 (*Sveriges medlemskap i Europeiska unionen*), Sweden's membership of the European Union, Part 1, pp 139–143.

[13] The directives' complete titles are: Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States; and Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

[14] See also Forssén 2011, p. 44.

[15] Which were parts of the same project regarding the tax subject for VAT purposes that I carried out in 2011–13 at Örebro University.

[16] See Forssén 2011, p. 223.

theses, I also stress – based on my interpretation of the ”Gregg”-case (C-216/97)[17] – that the CJEU at the interpretation of the directive rules in the field of VAT also emphasizes the collection before the taxation question itself.[18] Thus, an efficient collection is very important for a functioning corporate taxation system, and lacking an empirical investigation thereby, I may express in words the following about the collection’s importance for the taxation question.

I state that the economists should not be commissioned to prepare tax tables before an empirical study has been made of what support entrepreneurs consider themselves having in a taxation case, by being able to show a chronologically organized, audited and approved book-keeping. I have written this in a preliminary study to deepened studies in *fiscal sociology*, which translate *skattesociologi* in Swedish.[19] If the entrepreneurs cannot perceive that they are comprised by a legally certain procedure their loyalty towards the tax system will tend to decrease, that is the collection to finance the welfare will lose in efficiency. In this context, it may be especially mentioned regarding the VAT that the legislator has named the entrepreneur an *agent* for the State with respect of collection.[20]

Moreover, I refer especially concerning the VAT that the registration question is very much decisive for an efficient collection, which I inter alia has expressed in The Periodical Balans.[21] For an efficient collection of VAT the registration question is decisive regardless of whether it is a matter of the current system or a corporate taxation system according to that of me suggested reverse order for the determination of who is an entrepreneur for taxation purposes. I mention in Forssén 2024a concerning the VAT reform of 1 July, 2023, whereby the ML replaced the GML, that if not the registration control at the SKV is given priority, the legislation measures taken against VAT frauds of so-called carrousel type will become rather inefficient. It is first by the registration that someone aiming to commit fraud will get hold of the public treasury in the form of the tax account system. Therefore, I have stated that the legislator a long time ago should have regarded these for the taxation procedure and an efficient collection so decisive questions about registration and control, but this did not

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[17] See the CJEU-verdict C-216/97 (Gregg), ECLI:EU:C:1999:390, of 7 September, 1999.

[18] See regarding item 20 of the CJEU-case C-216/97 (Gregg): Forssén 2011, pp. 93 and 94 and Forssén 2013, p. 72.

[19] See Björn Forssén, The Entrepreneur and the Making of Tax Laws – A Swedish Experience of the EU law: Fourth edition, pp. 59, 112, 146 and 212 (self-published 2019). (Forssén 2019a). My other preliminary study in that project is Björn Forssén, Law and Language on The Making of Tax Laws and Words and context – with Legal Semiotics: Fourth edition (self-published 2019). (Forssén 2019b). Forssén 2019a and Forssén 2019b are available on www.forssen.com, under PFS Böcker with the codes 010Röd and 011Röd. They are also available in printed versions at *Kungliga biblioteket* in Stockholm (the National Library of Sweden) and at Lund University Library.

[20] See Forssén 2011, p. 286, where I refer to that attitude to prop. 1989/90:111 (*Reformerad mervärdeskatt m.m.*), Reformed VAT etc., p. 294. In that respect, I also referred to the same attitude according to tax law literature in Great Britain, namely Graham Virgo, Restitution of Overpaid VAT, British Tax Review 1998 pp. 582–591, 591, who states that ”*the taxpayer*” can be seen as ”*agent for the Commissioners*” (*Inland Revenue Commissioners*).

[21] See Björn Forssén, *Aktuell utredning löser inte problemet med Momsbedrägerier* (Current official report does not solve the problem with VAT frauds), *Tidningen Balans fördjupning*, The Periodical Balans Annex with advanced articles, 2024, pp. 1–11 (published on www.tidningenbalans.se 2024-05-07). (Forssén 2024b). Forssén 2024b is also available on www.forssen.com.

happen in connection with the reform of 2023.[22] Furthermore, I note for the context that VAT registration was not even mentioned in the preparatory works to the reform *Det nya Skatteverket* (The new tax authority), which was introduced on 1 January, 2004, that is more than 20 years ago, by *lag (2003:642) med anledning av inrättande av Skatteverket* (the law due to the establishment of the tax authority).[23]

4 An advantage for legal certainty if the VAT governs the income tax at the determination of the tax subject

It should typically promote the legal certainty, if the VAT governs the income tax at the determination and judgment of the tax subject for corporate taxation purposes, so that the administrative courts can better decide difficult interpretation questions, by the problemizing of the actual interpretation question being made coherent for both types of taxes. Thereby should a development of the case-law take place without any risk of deviations between the HFD and the CJEU. That could occur if the status of the tax subject must be kept together by the HFD being expected to consider the conditions for the internal market of more political than legal reasons.[24] If a co-ordination to determine the tax subject, with the EU law as the guiding-star for both VAT and income tax, is not introduced, also the double taxation agreements for the field of income tax constitute a dividing circumstance, since the OECD's model treaty is the basis in that respect – not the EU law.[25]

The legal certainty for the individual, here the entrepreneur, is strengthened by a more thorough judgment totally of a corporate taxation question of precedent interest, when the HFD is regarding legal reasons for the determination and the judgment of the tax subject and allows what concerns the VAT decide if a preliminary ruling should be obtained from the CJEU as the highest interpreter of the EU law. Since there is no OECD-court as a highest interpreter of double taxation agreements, the legal certainty should be favoured if the VAT law thereby governs the income tax law in difficult cases.

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[22] See Forssén 2024a, p. 73. See also Forssén 2024a, pp. 56 and 73, where I refer to Björn Forssén, *Momsbedrägerier genom karusellhandel – erfarenheter i Sverige avseende mervärdesskatt, redovisning och straffrätt i förhållande till EU-rätten* (VAT fraud by carousel trading – experiences in Sweden regarding VAT, accounting and criminal law in relation to the EU law), JFT 4-6/2023, pp. 344-378 (Forssén 2023b), and Björn Forssén, *Rätt resurs på rätt ställe minskar momsbedrägerierna*, The right resource on the right place decreases the VAT frauds, published in *Dagens Juridik* (Today's Law) 2021-05-05 (www.dagensjuridik.se). (Forssén 2021a). Forssén 2021a and Forssén 2023b are also available on www.forssen.com. See furthermore Forssén 2011, where I as side issue E submitted proposals concerning VAT registration and control issues.

[23] See The tax committee's consideration 2003/04:SkU2 [*Det nya Skatteverket* (prop. 2002/03:99, *delvis*) – The new tax authority (prop. 2002/03:99, partly)], The Government's bill 2002/03:99 (*Det nya Skatteverket* – The new tax authority) and the department memo Ds 2002:15 (*Det nya Riksskatteverket*), The new National Tax Board. See also Forssén 2021a.

[24] See regarding in the first place the principles on free movement of goods, persons, services and capital and the freedom of establishment of a citizen of a Member State within the Union respectively: articles 28, 45, 56 and 63 and 49 respectively TFEU.

[25] OECD: *Organization for Economic Co-operation and Development*.

5 A reintroduced auditing duty for small enterprises strengthens the connected area between corporate taxation and the civil law accounting law and a legally certain determination of the tax subject

I finish Forssén 2024b with that it should be considered if the exemption from auditing duty for small enterprises shall remain, and mention that the exemption has been discussed a couple of times the last few years under the tab *Yrkesvardag* (Professional weekday) in The Periodical Balans.[26] In this article, I set the question of a reintroduction of the auditing duty for small enterprises in connection with my proposal of a common taxation frame for the types of taxes VAT and income tax.

The book-keeping is central for my proposal for a corporate taxation reform due its importance at the trial of whether a person is a tax subject for corporate taxation purposes. Then, it must be right from the start of an activity. Serious entrepreneurs shall be able to lean on the external auditor's audit, if the SKV has any questions. They shall have the support of an approval from the auditor also if the SKV refuse the enterprise the right to VAT deduction. Then, the courts shall not approve by routine issued tax surcharge at an assertion of erroneous information, although they are on the same line as the SKV in the actual taxation question. It presumes that the auditors keep their banner flying. What I and other lawyers state is in other words secondary in the context. The civil law accounting law is the foundation for the tax law in the present context, and then there are experts to be found at the auditors and accounting consultants.

I was against the abolishment of the auditing duty for small limited companies already when the proposal of it was given in a report in 2005 from the professors Per Thorell and Claes Norberg.[27] In an article in *Ny Juridik* (New Law) in 2006, I stated that the legal certainty demanded an analysis of the procedural value of having an approved book-keeping, before the auditing duty for small enterprises was revoked.[28] However, the auditing duty for the smaller enterprises was abolished on 1 November, 2010,[29] and it has to my experience been unfair to small enterprises in tax cases as well as in criminal cases regarding tax. I stated in conclusion in Forssén 2006 that if the value of having an organized, audited and approved book-keeping is not analyzed nobody knows what corresponding legal certainty value that shall replace it at the abolishment of the auditing duty for small enterprises. I still claim that the risk of taking measures uncritically is that it – by the SKV – will be developed a special taxation version of Generally Accepted Accounting Principles (GAAP) beside the concept according to the BFL. If the responsibility for the development of the concept GAAP not solely lies at *bokföringsnämnden* (the Swedish Accounting Standards Board, here abbreviated BFN),[30]

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[26] See Forssén 2024b, p. 10.

[27] See *Rapporten Revisionsplikten i små aktiebolag* (The Report Auditing duty in small, limited companies), March 2005, by Per Thorell (deceased) and Claes Norberg. The report given on assignment from *Svenskt Näringsliv* (Confederation of Swedish Enterprise).

[28] See Björn Forssén, *Revisionsplikten för små företag – börda eller komplement till brist på småföretagarpolitik?* (Auditing duty for small enterprises – burden or complement to lack of small enterprise politics?) *Ny Juridik* (New Law) 2/2006 pp. 19–25 (VJS 2006), Forssén 2006, which is available on www.forssen.com.

[29] See *lag (2010:837) om ändring i revisionslagen (1999:1079)* (Law on alteration in the auditing act).

[30] See Ch. 8 sec. 1 first para first sen. of the BFL.

there is an obvious risk of a big legal uncertainty occurring for the enterprises, by the connected area between corporate taxation and the civil law accounting law breaking for evidentiary purposes. Then, the counterpart – the SKV – will be given an unjustifiably strong position in the tax cases.

Thus, the BFN's role in the context is important for my proposal, but already under the existing tax system the BFN's function as creator of norms regarding corporate taxation questions is important for a legal certainty in the taxation procedure and in tax cases. Therefore, the forming of norms by the BFN should be strengthened. In that respect, I may mention the debate on profits in the welfare which started almost a decade ago,[31] and will probably come up also in the general elections in 2026 in Sweden. If the BFN issues special guidances, statements or general advice within the sectors of health care, schools and social care, the frivolous participants will be removed, if they are not deemed as enterprises which shall take part in the competition within those sectors. That they are not being up to standard would be proven at an examination where they are tried by an auditor not only according to the BFL, but also with regard of such for the sectors in question special norms developed by the BFN. That for instance a private health care enterprise makes a profit will thereby become a question which can be debated with more nuance than so far.

I conclude that a reintroduced auditing duty for the smaller enterprises should strengthen the connected area between corporate taxation and the civil law accounting law and promote legally certain evidence at the judgment of the tax subject. By the way, I state a further reason for revoking the exemption from the auditing duty. It is that small enterprises hopefully will become successful, and then it has – to my experience as lawyer – a great value to be able to present a yearly book-keeping which is audited and approved by an auditor. Otherwise, the entrepreneur may have difficulties with selling his or her enterprise because a due diligence will be too expensive.

6 If the VAT governs the income tax at the determination of the tax subject it would promote the introduction of an EU tax

Thus, fundamental for my proposal for a tax reform is that there is no obstacle for a reform meaning that the national income tax law concerning the determination of the tax subject for corporate taxation purposes would be governed by the EU law in the field of VAT. To improve the efficiency in the Swedish tax system, I place in order of precedence the EU and its institutions before the OECD generally, concerning the charge of tax as well as collection.

If the indirect taxes, that is VAT, excise duties and customs, do not function with regard of competition and consumption neutrality and collection purposes, the suppositions for the internal market and the financing of the welfare fall. In my opinion, too much time has been spent the last few years in Sweden to the so-called BEPS-project,[32] an OECD-project which

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[31] See *Välfärdsutredningens betänkande SOU 2016:78 (Ordning och reda i välfärden)*, The welfare investigations consideration SOU 2016:78 (A welfare in good order) from November 2016.

[32] BEPS: *Base Erosion and Profit Shifting*. See Bertil Wiman, Jan Bjuvberg and Jari Burmeister, *Fasta etableringsställen och fasta driftställen* (Permanent installations and permanent establishments), *Svensk Skattetidning* (Swedish Tax Journal) 2016, pp. 91–92, 91. See also e.g. Björn Forssén, *Momsrullan IV: En handbok för praktiker och forskare* (The VAT roll IV: A handbook for practicians and researchers), p. 63 (self-published 2019), Forssén 2019c, which is available on www.forssen.com and in printed version at *Kungliga biblioteket* in Stockholm (the National Library of Sweden) and at Lund University Library.

foremost shall counteract that the OECD countries tax bases will be eroded by international tax planning like when the taxation is moved from Sweden to another country where corporation tax is missing or on a low level. If the tax base for income tax is not eroded, it is still so that the internal market must not be distorted due to the indirect taxes not functioning with regard of competition and consumption neutrality and collection purposes. I consider that the BEPS project is a cuckoo in the nest which should not be allowed to steal space from the indirect taxes. It is more important to carry through such a project as the paused work with a free trade agreement between the USA and the EU, the so-called TTIP-agreement.[33] I have emphasized this on several occasions.[34] By the USA introducing *the Inflation Reduction Act – IRA – of 2022* on great local environmental investments the USA is treating competing enterprises from the EU unfairly,[35] and after the presidential election in 2024 even a trading war seems to be emerging against the EU and China. I tie a carrying through of the TTIP-agreement to the question on an efficient collection in the field of indirect taxes in the way that the TTIP should promote a continuous development of the customs questions. In that context should also research efforts be made to examine the possibility to introduce a common concept of goods for all indirect taxes. That itself should promote an efficient collection and thereby the maintaining of the internal market.[36] Thus, it is important that a great tax reform in Sweden is put in a context promoting the carrying through of the EU project.

In the extension of my suggestion to tie together in a great tax reform the income tax and the VAT, so that a common determination of the tax subject and thereby a common taxation frame for procedure purposes is introduced for the two types of taxes, lies also to prepare the introduction of an EU tax. Already in 2004 the EU Commission recommended the introduction of an EU tax as from 2014, and exhorted the Council to work with the question,[37] but it is only recently that it has been mentioned again – after being put on ice in several long-term budgets by the EU. I have repeated on several occasions after my theses that the question should be resumed, so that the Swedish tax system is prepared for the EU project coming back to the matter of an introduction of an EU tax.[38] By giving the EU a right of taxation of

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[33] TTIP or T-TIP: *The Transatlantic Trade and Investment Partnership*.

[34] See e.g. Forssén 2019c, p. 63 and Björn Forssén, *EU:s frihandelsavtal med USA, TTIP – en motvikt till förflyttningen av världsekonomins tyngdpunkt till Asien och till gagn för världsfred* (The EU's free trade agreement with the USA, TTIP – a counterbalance to the transfer of the main focus of the global economy to Asia and to the advantage of world peace), JFT 4/2022, pp. 425–436 (Forssén 2022a). Forssén 2022a is available on www.forssen.com.

[35] See Forssén 2022a, p. 432.

[36] See Forssén 2022a, pp. 435 and 436. See also e.g. Forssén 2019c, p. 63 and Björn Forssén, *Momsforskningen i Sverige – metodfrågor* (The VAT research in Sweden – method questions), JFT 6/2020, pp. 716–757, 757, Forssén 2020d (see www.forssen.com).

[37] See Forssén 2011, p. 269 and Forssén 2013, pp. 41 and 42.

[38] See Björn Forssén, *Punktskatteforskningen i Sverige – skattesubjektsfrågan* (The research on excise duties in Sweden – the tax subject question), JFT 3/2022, pp. 242–276, 267 (Forssén 2022b), and Björn Forssén, *Indirekta skatter – forskningen i Sverige och EU-rätten* (self-published 2023), p. 91, Forssén 2023c, and Björn Forssén, *Indirekta skatter – en svensk erfarenhet av forskningen i EU-rätten* (self-published 2024), p. 96, Forssén 2024c. I have translated Forssén 2023c and Forssén 2024c into English with the titles: Indirect taxes – the research in Sweden and the EU law (self-published 2023), Forssén 2023d; and Indirect taxes – A Swedish experience of the research on the EU law (self-published 2024), Forssén 2024d. The article and the books are available on

its own, the EU Commission can make claims directly against Member States which are not taking care of the distribution of means to build up welfare systems. Instead of giving subsidies and favour corrupt regimes and authorities in for instance Bulgaria and Romania, the EU should make more direct demands in that respect. According to the preparatory works to *lagen (1994:1500) med anledning av Sveriges anslutning till Europeiska unionen* (the Act concerning Sweden's accession to the European Union in 1995), the so-called Accession Act or the EU-Act, the EU project should be seen as a macroeconomics co-operation which shall partly promote peace, partly function as means to achieve welfare, where the co-operation makes higher growth and greater economic stability possible for the Member States.[39] Concerning the individuals, it is stated in the mentioned preparatory works that the EU law shall give all EU citizens rights that constitute *a part of their legal* legacy ("*en del av deras rättsliga arv*").[40]

Thus, the Member States shall build solid welfare systems and the individual EU citizens have in a legal sense the right to take part of the welfare. Therefore, I have stated that the EU migrant, who of course is not only Romanian or Bulgarian, but also an EU citizen (according to article 9 TEU and article 20(1) TFEU), probably is not aware of the existence of a solution within the EU project to the problem with making the financing of the welfare also in Romania and Bulgaria efficient, namely by introducing an EU tax.[41] In that case, it can be accomplished in the form of a gross tax based on the enterprises' ennobling value, which I suggest shall contain a broadened tax base that replaces in the first place VAT, excise duty and corporation tax, for example in the form of a production factor tax, which I here abbreviate PFT (and which in Swedish is abbreviated as an acronym, *proms*). It was discussed already in connection with the tax reform in the beginning of the 1990's.[42] I conclude that if the VAT would be governing the income tax at the determination of the tax subject for corporate taxation purposes it promotes the carrying through of the EU project. Thereby, Sweden will get far in the preparations for an eventual introduction of an EU tax as a part of a gross tax. The gross tax would replace inter alia the VAT, and is then tied to an enterprise's ennobling value, but there are also other solutions with gross tax.

A gross tax would also in itself work well in another way than the last-mentioned, namely in pursuance of an old idea about replacing the corporation tax with a gross tax on the enterprises' total costs. I brought up this in Forssén 2020c, whereby I referred to an article

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www.forssen.com, and the books are also to be found in printed versions at *Kungliga biblioteket* in Stockholm (the National Library of Sweden) and at Lund University Library.

[39] See prop. 1994/95:19 Part 1, p. 45.

[40] See prop. 1994/95:19 Part 1, p. 485. See also Björn Forssén, *En EU-skatt är avgörande för att bl.a. Sverige ska ta ansvar på lång sikt för tiggande EU-migranter* (An EU-tax is decisive for inter alia Sweden to take its responsibility in the long view for begging EU migrants), *Socialmedicinsk tidskrift* (The Social Medicine Journal, abbreviated SMT) 1/2024 pp. 90–95, 92 (Forssén 2024e). The SMT has since 2008 its editorial office at Karolinska Institute and its great institution, the Institution for Global People's Health (*Institutionen för Global Folkhälsa*) in Stockholm; the platform for publishing the SMT is placed at *Kungl. biblioteket* in Stockholm (the National Library of Sweden), https://publicera.kb.se/smt. Forssén 2024e is also available on www.forssen.com.

[41] See Forssén 2024e, p. 90.

[42] See Forssén 2011, pp. 269 and 270, where I also refer to SOU 1989:34 (*Reformerad företagsbeskattning* – Reformed corporate taxation) Part I, pp. 189–206. By the way, before the tax reform of 1990–91 was dynamic effects mentioned as possible consequence of new tax rules (SOU 1989:36, p. 109). I consider that more likely at a more efficient collection according to the 'EU line'.

from 1976 by a legendary Professor in Lund, Carsten Welinder. In that article, *Tre aktuella skatteproblem* (Three current tax problems), Professor Welinder mentioned that a discourse about the idea of such a gross tax had existed 10–20 years before then.[43] In Forssén 2020c, I state that it is not possible to add the VAT to the base for the gross tax, so that an in principle common tax base for corporation tax and VAT is based on an enterprise's total costs. The reason is that it would not be in compliance with the VAT principle in article 1(2) of the VAT Directive that the VAT thereby would be replaced with a tax taken out on the costs without addition of mark-up for profit.[44] The EU Commission mentioned in 2004 fuel tax, VAT and corporation tax as tax bases for an EU tax and the idea to base a gross tax only on the costs in an enterprise is not only from the time before Sweden joined the EU in 1995, but even from the time before Sweden introduced VAT in 1969. Thus, I nevertheless propose that a PFT based on the enterprises' ennobling value will be introduced with a broadened tax base replacing in the first place VAT, excise duty and corporation tax, so that an EU tax can be introduced as part of such a gross tax. If the other EU Member States follow Sweden, an EU directive on EU tax can be produced with the VAT Directive as a model. By introducing gross tax – PFT – the entrepreneur will not have a claim against the State for tax paid. Therefore, the tax rate must be rather low – at least lower than today's standard rate for VAT in Sweden of 25 per cent. Then, the EU can be given a right of taxation of its own. By a PFT, unlike the VAT, not giving a claim of input tax against the State, it also in itself decreases the tax frauds.[45] Financing of welfare within the EU should be given priority, so that an EU tax to begin with constitutes a part of the VAT and will be made a part of the PFT, when it replaces VAT etc.

7 Certain excise duties must be taken care of concerning the determination of the tax subject without awaiting an introduction of an EU tax

By the way, I may also mention that my proposal would also solve the problem with that it for two excise duties still is made a reference to the concept *näringsverksamhet* (business activity) according to *the whole of* Ch. 13 of the IL for the determination of *yrkesmässig verksamhet* (professional activity), i.e. of the tax subject. That connection was introduced without motivation already on 1 January, 2000 for the determination of *yrkesmässig verksamhet* in Ch. 1 sec. 4 no. 1 of *lagen (1994:1776) om skatt på energi* (the Energy Tax Act, here abbreviated LSE) and in sec. 4 third para of *lagen (1984:410) om skatt på bekämpningsmedel* (the Act on Tax on Biocides) and has not yet been taken care of by the legislator.[46]

Thus far, the legislator has been passive about the connection in question to the whole of Ch. 13 of the IL, despite that I already in Forssén 2011 especially mention the LSE when I mention the problem with the Swedish tradition of tying the taxation in the field of indirect taxes to the direct taxation. In the present respect, the concept business activity according to the whole of Ch. 13 of the IL gives a too extensive determination of the tax subjects regarding legal persons.[47] I mentioned the problems in connection with the main question concerning

[43] I obtained the article on the Internet 2020-02-07, when I wrote Forssén 2020c.

[44] See Forssén 2020c.

[45] See section 3.

[46] See Forssén 2022b, inter alia pp. 252 and 253.

[47] See Forssén 2011, section 1.2.4 (p. 54) which I also refer to in Forssén 2022b, p. 259.

the VAT in Forssén 2011, and the legislator took care of it, as mentioned, by the connection for the determination of the tax subject in Ch. 4 sec. 1 no. 1 of the GML to Ch. 13 of the IL being revoked on 1 July, 2013, by SFS 2013:368.[48] However, the corresponding connection is neither in compliance with article 7(1) of the Excise Duty Directive (EU) 2020/262 regarding who is liable to pay excise duty. This means concerning the determination of professional activity in the LSE that there is a breach of EU law by Sweden regarding taxes on energy products and electricity – which are examples of harmonised excise duties. The tax on biocides is an example of a non-harmonised excise duty, but also for this should the connection to the non-harmonised income tax law for the determination of professional activity be revoked or – awaiting an eventual introduction of my reform proposal – limited to regard actual business activity (*egentlig näringsverksamhet*) according to Ch. 13 sec. 1 of the IL, since the selection of tax subjects in the internal market should be neutral for all excise duties.[49]

I conclude that the connection to the concept business activity according to the whole of Ch. 13 of the IL for the determinations of professional activity in Ch. 1 sec. 4 no. 1 of the LSE and in sec. 4 third para of the Act on Tax on Biocides must be revoked by the legislator, whether or not my proposal for the introduction of an EU tax is carried through. Although it would solve the problems for both the excise duties, the legislator should not wait with the measure, since it for tax on energy products and electricity exist a breach of EU law by Sweden and the selection of tax subjects in the internal market should be neutral also for tax on biocides.

8 The corporate taxation and the taxation for private persons – the cornerstones of the present proposal for a great tax reform in Sweden

I consider that the cornerstone of a great tax reform must be a functioning corporate taxation. It is the enterprises that by their production of goods and services *create* new money in society, and the taxation of that production must be as efficient as possible. I set the taxation for private persons in relation thereto, and mention in overview why the proposal from the professors Lodin and Englund in the ESO-report 2017:4 might work as the other cornerstone in my proposal for a great tax reform in Sweden, that is in the part concerning capital and dwelling taxation for private persons. Everything must not be made in one step, but the legislator shall be able to join the two cornerstones on the corporate taxation and the capital and dwelling taxation for private persons respectively, and from there move on with the great reform work.

The suggestion in ESO-report 2017:4 from the professors Lodin and Englund to introduce a uniform capital and dwelling taxation for private persons with a Netherlands box model as a model is interesting. This I have, as mentioned, already commented especially in The Periodical Balans.[50] It is of course valuable to go through the professors' Lodin and Englund suggestion as a part of a larger tax reform – the box model had as we know according to the ESO-report 2017:4 remained essentially unchanged in the EU Member State the Netherlands

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[48] See section 2.

[49] See Forssén 2022b, pp. 253 and 262.

[50] See section 1.

since 2001.[51] I concluded, after my review in Forssén 2011 of the then EU Member States and a number of third countries,[52] that the Swedish law technical solution for the determination of the tax subject for VAT purposes, with the connection thereby from Ch. 4 sec. 1 no. 1 of the GML to Ch. 13 of the IL, was unique for Sweden.[53] In for instance the Netherlands was and is the determination of the tax subject independent according to article 7.1 of *Wet op de omzetbelasting 1968* (the Netherlands value-added tax act of 1968).[54] This was also stated by the Netherlands tax authority in the answer on an inquiry that I had sent to foreign tax authorities and treasuries regarding the determination of the tax subject for VAT purposes, and Dr. A.J. van Doesum, University of Tilburg, also confirmed it in an e-mail interview.[55] By the determination of the tax subject for VAT purposes being independent the box system for capital and dwelling taxation for private persons does not affect the comprise of the VAT. By the reform of 1 July, 2013 the determination of the tax subject for VAT purposes is independent also in Sweden.[56] Thus, I consider that there is neither any obstacle to introduce also in Sweden capital and dwelling taxation for private persons according to the Netherlands box model. This, since it does not affect the VAT and thus not prevent my suggestion of a reverse order for the determination of who is a tax subject for corporate taxation purposes, where the VAT governs the income tax.[57] Thereby, the box model does neither constitute any obstacle for a gross tax tied to the enterprises' ennobling value that replaces in the first place VAT, excise duty and corporation tax, for example in the form of a PFT. That would also prepare a future introduction of an EU tax.[58] However, I see certain political problems especially with the box system, namely the following.

When the debate starts in earnest, the objections against a Swedish box system for capital and dwelling taxation will probably concern, if any party at all in the Parliament will bring up the proposal according to the ESO-report 2017:4, that an introduction of the box system would mean the same as a reintroduction of the wealth taxation for private persons. In the box system would on the net of assets and liabilities a standardised income be calculated of 4 per cent for which the tax rate is 30 per cent, and no right of deduction would exist for a negative net within the box. Although the suggestion in the ESO-report means that income of capital remains beside the box taxation, the households tax reductions will disappear for capital deficits caused by high interest expenses.[59] However, the politicians may take that debate

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[51] See ESO-report 2017:4, pp. 7, 9, 19 and 21. See also section 1.

[52] See Forssén 2011, *Bilaga 2 – Internationell utblick*, Appendix 2 – International outlook (pp. 279–297).

[53] See Forssén 2011, p. 297.

[54] Article 7.1 of *Wet op de omzetbelasting 1968* lyder: "*Ondernemer is ieder die een bedrijf zelfstandig uitoefent*." See https://wetten.overheid.nl/BWBR0002629/2024-01-01 (visited 2024-07-21). I translated article 7.1 as follows: *Beskattningsbar person (ondernemer) är alla som utövar verksamhet självständigt* (Taxable person (*ondernemer*) is anyone independently exercising activity). See Forssén 2011, p. 291.

[55] See Forssén 2011, p. 291. See also Forssén 2011, p. 349 regarding my inquiry to foreign tax authorities and treasuries during 2003 and my e-mail interview with Adrianus Johannes van Doesum of 2010-08-04.

[56] See regarding SFS 2013:368 in sections 2 and 7.

[57] See sections 2 and 4.

[58] See section 6.

[59] See ESO-report 2017:4, p. 10 and 22.

nevertheless, since the tax reductions decrease for the households already if the suggestion according to the memo from the Treasury in January 2024, "*Avtrappat ränteavdrag för vissa lån*" (Fi2024/00174), De-escalated deductions of interest for certain loans, is carried out. The question could be debated as a part of the suggestion on the box system. Within the box system taxation of assets and debts will take place with 1.2 per cent (0.04 x 30 per cent = 1.2 per cent) of a financial net.[60] It is similar to the wealth tax, which was abolished by the end of the year 2007.[61] A stumbling-block is that private persons' dwellings are included on the asset side, whereby for small real property the assessed building value and for co-operative flats and freehold flats the share thereof belonging to the real property's tax assessment value will constitute the value of the asset. This would apply instead of today's index-linked municipal real property fee for small houses with a comparatively low cap amount (= SEK 9,287 for the income year of 2023). A suggestion to introduce the box system will set different interest groups against each other, but that is the politicians used to handle.

A tougher nut to crack for the politicians concerns the corporate taxation regarding the tax subject question and the taxation on the owner's level in close companies (*fåmansföretag*) and whether these two aspects on the entrepreneur can be satisfied in the same reform according to my proposal or if the first mentioned taken by itself would be seen as politically feasible, but under the supposition that it is not joined with the box system. I refer to the rather often occurring debate about the so-called 3:12-rules (Ch. 56 and 57 of the IL) promoting the taxation of dividends and capital gain to the partners of close companies compared with the taxation for employees. That debate will probably occur whether or not the box system is introduced but set out from the tax law I deem that the box model will not cause any problem. This since unlisted securities, like 3:12-shares, shall not be comprised by the box system, but otherwise by income of capital. In that respect, I repeat however what I already have stated in my commentary on the box model, namely that clarity should be the aim at the construction of a Swedish box model for the capital taxation, so that suchlike as the so-called Lex Uggla-problems will not appear again for a box taxation. Those problems existed during some time concerning the wealth taxation and disappeared as a consequence of that tax being completely abolished by the end of the year 2007. The problems meant that the SKV deemed that owners of unlisted companies would pay wealth tax on excess liquid resources, why they risked being obliged to pay wealth tax on capital necessary in the enterprise for investments and new employees.[62] This can again be a dividing question in the debate, but only of party politics reasons, by the capital taxation of owners in close companies being put – on the theme of justice – against the taxation in general of so-called low-income groups. Then, it will be said that the "3:12-rules" shall be abolished or restricted for the owners in the smaller enterprises.

I may of course have reason to come back more about details, but the alterations of the corporate taxation and the taxation for private persons constitute the cornerstones in my proposal for a great tax reform in Sweden. Besides the already mentioned it should also give the following advantages.

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[60] See ESO-report 2017:4, p. 9 and 21.

[61] See *lag (2007:1403) om upphävande av lagen (1997:323) om statlig förmögenhetsskatt* (act on abolishment of the state wealth tax).

[62] See *Promemoria om reformerad förmögenhetsskatt* (Memo on reformed wealth tax), The Treasury in February 2007, p. 2. See also Forssén 2017a, p. 13.

Concerning a great tax reform, I stated in Forssén 2020c that if my proposal for a gross tax for the enterprises being carried through in combination with the box model can also the necessity for private persons to file on a yearly basis income tax returns be eliminated. The taxation for employees can be carried out by the enterprises together with the gross tax accounting a definitive tax at source on salaries. The self-employed person's social security contributions (*egenavgifterna*) for natural persons who are entrepreneurs can also be included in the gross tax, and a part of the basis for the tax then forms the pensionable income that the SKV reports to the Pension Agency for the calculation and decision regarding the individual's pension points.[63] The employer's contribution for national security purposes would however to a beginning after "my" tax reform continue to be accounted for separately by employers that are legal persons – and by private persons who are employers, but for the entrepreneurs this would also be possible to solve in the long run.

Concerning capital and real property taxation would the private persons who still would be liable to submit income returns only consist of those who have had such incomes from payers that are not comprised by liability to submit statements for control measures, since banks etc. that are comprised by such liability will be comprised by the box system and in that respect take care of the collection in the same way as is done today on a standardized basis of incomes from *investeringssparkonton* (abbreviated ISK), investment savings accounts. One problem that existed in the time of the wealth tax was that loans were taken around the turn of the year, to lower the net wealth on the taxation date, 31 December. That is resolved in the proposed box system, with model from today's ISK-system, by the balancing of possessions by the turn of every quarter, and the tax base constitutes the average value within each type of assets for the year.[64] Thus, banks etc. will have a decisive role for a box taxation.

9 The proposal regarding corporate taxation and the PFT regards the principle of good governance and experiences from the legislation and the research in Sweden

9.1 The proposal of a common taxation frame for the taxation procedure and in tax cases

Both cornerstones of my proposal for a great tax reform in Sweden concern, as mentioned, the adaptation of the indirect taxes and the income tax to the EU law for the determination of the tax subject for corporate taxation purposes and to introduce a taxation of capital and own dwellings for private persons similar to the box model which has been applied since 2001 in the Netherlands.[65] I have concluded that it is possible to combine the questions, so that they constitute precisely the cornerstones of my reform proposal.[66] Regardless of whether that combination is carried through, the corporate taxation should be reformed, so that the

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[63] Regarding that the SKV establish *pensionsgrundande inkomst* (pensionable income) and that *Pensionsmyndigheten* (the Pension Agency) decides on *pensionsgrundande belopp* (pensionable income), *pensionsrätt* (pension entitlement) and *pensionspoäng* (pension points) respectively: see sec. 8 of *förordning (2017:154) med instruktion för Skatteverket* (the regulation with instructions for the tax authority) and Ch. 53 sec. 5 of *socialförsäkringsbalken (2010:110)*, the Social Insurance Code, and Ch. 53 sec. 5, Ch. 58 sec. 9, Ch. 60 and Ch. 61 of the Social Insurance Code respectively.

[64] See ESO-report 2017:4, p. 59.

[65] See sections 1 and 8.

[66] See section 8.

determination and the judgment of who constitutes a tax subject for corporate taxation purposes can be made composed for VAT and excise duties and income tax respectively within a common taxation frame for the taxation procedure and in tax cases.

Thereby, I go further with a review of my proposal for a tax reform especially concerning the corporate taxation. The questions that I bring up in that respect concern in the first place how the proposal shall function in relation to the legal certainty for the individual. An efficient collection may not be made at the expense of the legal certainty for the entrepreneur in the taxation procedure and in the tax case or the tax fraud case. I consider that a so-called good governance shall in practice correspond to good technocracy, so that the individual will not get jammed unnecessary by the State's investigation machinery in the field of taxation. In the lack of an empirical investigation, I then motivate my proposal of a reform of the corporate taxation based on my own experiences as academic and lawyer of lacks by the legislator and the research in Sweden, when it is a matter of achieving an efficient *and* legally certain tax system.

To accomplish that the determination and the judgment of who is constituting a tax subject for corporate taxation purposes can be made composed for VAT and excise duties and income tax respectively within a common taxation frame for the taxation procedure and in tax cases, I suggest, as mentioned, that a gross tax (PFT) tied to the enterprises' ennobling value will replace in the first place VAT, excise duty and corporation tax. Whether or not an EU tax is introduced in close time that reform will prepare the tax legislation in Sweden for a reform on EU level. An EU tax is, as also have been mentioned, a solution of all Member States being able to build solid welfare systems and to give the individual EU citizens a legal right to take part of the welfare.[67] I am not going deeper into the question about an EU tax, but motivate my proposal for a Swedish PFT (*proms*) in two perspectives based on my experiences from the project where I treated the determination of the tax subject for VAT purposes: the Swedish legislator's and research's perspective respectively.

Thus, I motivate my suggestion to introduce a PFT partly with a review of why it, compared with the legislation efforts so far, would give a coherent corporate taxation determination and judgment of the tax subject which would better promote the legal certainty in tax cases and tax fraud cases. Furthermore, I motivate the proposal by mentioning the defects that I consider are inherent in the research in Sweden regarding the VAT and the determination of the tax subject. If the lacks on legal certainty in tax cases and tax fraud cases in for instance cases of asserted VAT frauds cannot be taken care of, so that at least the determination of the tax subject becomes more legally certain, it is no idea to go further with suggestions concerning the tax object. If the research in corporate taxation is not improved compared to my experience regarding efforts concerning the determination of the tax subject for VAT purposes, the legislator will neither get necessary influences to make constructive suggestions on the law. Then, the research about questions on the tax object will also lack relevance for the legal certainty, since useful research results presuppose a problemizing of the tax subject as well as the tax object.

The motives for my proposal to introduce a PFT, to achieve a common corporate taxation determination of the tax subject and thereby a more legally certain taxation procedure and procedure in tax cases and tax fraud cases, originate in the project perspectives in Forssén

[67] See section 6.

2011 and Forssén 2013 and in the material that I since 2015 have produced to lectures and seminars on the European Law programme.

In sections 9.2–9.2.2 is mentioned that the primary law principle on good governance presupposes that an EU tax will be introduced regardless of whether the EU continues as an international union or becomes a federation (section 9.2.1). Furthermore, it is mentioned that good governance in practice shall be corresponded by good technocracy, so that also an efficient tax system will consider the legal certainty for the individual – the entrepreneur (section 9.2.2).

In sections 9.3–9.3.2.4 is mentioned that a PFT gives a coherent corporate taxation determination and judgment of the tax subject that promotes the legal certainty in tax cases and tax fraud cases (section 9.3.1). I also mention that lacks in the research regarding the tax subject for VAT purposes prove the necessity of a reform of the corporate taxation by the introduction of a PFT (section 9.3.2.1–9.3.2.4).

9.2 The principle of good governance and good technocracy as a correspondence in practice

9.2.1 The principle of good governance presupposes that an EU tax will be introduced regardless of whether the EU continues as a union or becomes a federation

According to the preparatory works to the EU-Act the EU project should, as mentioned, be seen as a macroeconomics co-operation which shall partly promote peace and function as means to achieve welfare, by the Member States' co-operation making higher growth and greater economic stability possible.[68] In the first mentioned respect the project has got a receipt of success by the organization EU being awarded the Nobel Peace Prize in 2012. The European Parliament expressed on 12 October, 2013 that the EU got the prize for contributing to *alter the greater part of Europe from a war-torn continent characterized by peace*. The European Parliament also noted that the Nobel Prize Committee at the announcement of its decision the same day established that *the Union and its forerunners had for over six decades contributed to the advancement of peace and reconciliation, democracy and human rights in Europe*.[69] With my proposal for a great tax reform in Sweden I aim, as above-mentioned, to emphasize too the importance of it also preparing for the introduction of an EU tax, so that the question about begging EU migrants hopefully gets a solution, by the EU being able to make claims directly against the Member States about the obligation to develop the national welfare by the use of tax revenues.[70] In that respect, I may mention the following as support for the primary law principle of *good governance* in article 15(1) TFEU presupposing that an EU tax will be introduced, regardless of whether the EU continues as an international union or would change into a federation, a state à la the United States of Europe.[71]

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[68] See prop. 1994/95:19 Part 1, p. 45. See also section 6.

[69] See the EU's website, https://www.europarl.europa.eu/topics/sv/article/20121012STO53551/eu-vinner-nobels-fredspris-2012 (visited 2024-07-14).

[70] See section 6.

[71] See also Forssén 2013, p. 41.

In connection with my lecturing during the spring semester of 2018 on the course *Rättsstat och offentlig rätt* (State governed by law and public law) at Södertörn University, I wrote a study material about the new *förvaltningslagen (2017:900*, the Administration Act, here abbreviated FL), which came in to force on 1 July, 2018, and refer in this article to the second edition of it.[72] In the preparatory works to the EU-Act it is stated (in my translation) *that there are no EC rules on how a Member State shall organize its administration*.[73] In the course the primary law principle of good governance was treated. It is expressed in article 15(1) TFEU, which has the following wording (in my translation): *To promote a good governance and making sure that the civil society can participate the Union's institutions, bodies and agencies shall carry out its work as openly as possible*. A general problem exists within the administration law by the competence thereon not being conferred to the EU's institutions by the Swedish Parliament, although material rules in a certain field is governed by the EU law. This is the case today with the field of VAT, where the competence has been conferred to the EU by the Swedish Parliament,[74] but the competence in principle remains at the Swedish Parliament concerning questions on taxation procedure and proceedings.

I iterate the following from Forssén 2019d concerning what the administration legislation report (SOU 2010:29 – *En ny förvaltningslag*, A new administration act), which led to the introduction of the FL, expressed about the problems with a non-existing administration law EU-directive and mention the commentary of the report in that respect by Professor Wiweka Warnling-Nerep (nowadays Warnling Conradsson).[75]

The administration legislation investigation stated that the citizens legal protection according to the Swedish administration law tradition *is from several aspects superior to European normal standard* but considered that it still would be good to facilitate the interaction with the Union law, if the deviations are not too big.[76] In Warnling-Nerep 2015 is also mentioned that the investigation had a general feature of a European law perspective on what should be regarded at new legislation.[77] However, support is lacking for the competence being considered generally conferred to the EU for administration law rules, for example on the taxation procedure, although the meaning of the material rules on for instance VAT are governed by the EU law – i.e. in the first place by the VAT Directive.[78]

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[72] See Björn Forssén, *Nya förvaltningslagen och skatteförfarandet – studiematerial: Andra upplagan* (The new administration act – study material: Second edition), self-published 2019 (Forssén 2019d). Forssén 2019d is available on www.forssen.com and also in printed version at *Kungliga biblioteket* in Stockholm (the National Library of Sweden) and at Lund University Library.

[73] See prop. 1994/95:19 Part 1, p. 453. See also Forssén 2019d, p. 18.

[74] See section 3 regarding Ch. 10 sec. 6 of the RF, articles 4(1) and 5(2) TEU and prop. 1994/95:19 Part 1, p. 139–143.

[75] See Wiweka Warnling-Nerep, *RÄTTSMEDEL: om- & överprövning av förvaltningsbeslut* (LEGAL REMEDY: review & appeal of administrative decisions), Jure Förlag AB 2015. (Warnling-Nerep 2015).

[76] See SOU 2010:29, p. 21. See also Forssén 2019d, p. 19.

[77] See Warnling-Nerep 2015, p. 181. See also Forssén 2019d, p. 19.

[78] See Forssén 2019d, p. 19.

According to sec. 4 of the FL special laws in the field of administration law takes over in relation to the FL as general law in the field: the FL is subsidiary in relation to *skatteförfarandelagen (2011:1244*, the Taxation Procedure Act, here abbreviated SFL) concerning the taxation procedure. Thereby, I deem that the SFL is not in general affected by the EU law in that respect as long as there is no administration law legislation from the EU, regardless of whether the EU law is governing the meaning of the material rules in a certain field, like with the VAT Directive whose rules shall be implemented in the ML according to article 288 third para TFEU.[79] On the other hand, the CJEU's perception about the judgment of evidentiary questions in relation to article 178(a) of the VAT Directive will have an effect at the interpretation and application of Ch. 13 sec. 31 of the ML (corresponding with Ch. 8 sec. 5 of the GML), which is an evidentiary rule.[80] By the CJEU's case C-516/14 (Barlis 06) follows namely that the SKV must not suppress evidence that can complete invoice data for the trial of the individual's right to exercise the right of deduction of input tax on acquired goods or services.[81] The approach corresponds with the legislator's reasoning about the FL's subsidiarity. In the present respect, this means that if a deviating instruction about the administration procedure follows by a binding legislation of the EU it is applying – which according to the legislator follows *already of the principle of the EU law's supremacy over national law in the fields where the right to make decisions has been transferred to the EU (see prop. 1994/95:19 p. 35)*.[82] By the findings in the CJEU-case 6-64 (Costa) follows that "[t]he precedence of Community law" over national law is confirmed by article 189 (nowadays article 288 TFEU).[83] After the "Costa"-case the principle of the EU law's supremacy over national law has been confirmed constantly by the CJEU, and applies for both.[84] Since the competence has been conferred to the EU by the Swedish Parliament in the field of VAT, I consider that the SKV and the administrative courts are bound to try the whole of the evidence material that the taxable person (the entrepreneur) is invoking. They must not disregard evidence that the entrepreneur is invoking as a completion of an invoice or invoices which are not fully fulfilling the formal demands on contents in invoices according to Ch. 17 sec. 24 of the ML (corresponding with Ch. 11 sec. 8 of the GML) and article 226 of the VAT Directive.[85]

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[79] See section 3.

[80] See prop. 1993/94:99 (*Ny mervärdesskattelag*), New VAT act, pp. 210, 211 and 217. See also Forssén 2019d, p. 19.

[81] See item 49 in the CJEU-verdict C-516/14 (Barlis 06), ECLI:EU:C:2016:690, of 15 September, 2016. See also Forssén 2019d, pp. 19, 20 and 37 and Björn Forssén, *Momsen och fakturan: tredje upplagan* (The VAT and the invoice: third edition), self-published 2019, section 5.2.1 [The CJEU-verdict Barlis 06 (C-516/14)]. (Forssén 2019e). Forssén 2019e is available on www.forssen.com and in printed version at *Kungliga biblioteket* in Stockholm (the National Library of Sweden) and at Lund University Library.

[82] See prop. 2016/17:180 (*En modern och rättssäker förvaltning – ny förvaltningslag*), A modern and legally secure administration – new administration act, pp. 38 and 39. See also Forssén 2019d, p. 17.

[83] See the CJEU-verdict 6-64 (Costa), ECLI:EU:C:1964:66, of 15 July, 1964. See also Forssén 2011, p. 55 and Forssén 2013, p. 41.

[84] See Sacha Prechal, Directives in EC law (Second, Completely Revised Edition), Oxford University Press. Oxford 2005 (in the series Oxford EC Law Library), where she notes this on p. 94 regarding "*the supremacy of Community Law over national law*". See also Forssén 2011, p. 55.

[85] See also my reference in Forssén 2019e, p. 56 to Björn Forssén, *Avgör inköpsfakturas utseende alltid rätten till avdrag för moms?* (Does the appearance of the invoice always decide the right to deduct VAT?), *Skattenytt* (Tax news) 1999, pp. 258–268, 268 (Forssén 1999), where I stated, concerning the GML's demand on contents

I conclude that for a truely good governance there is a demand for the introduction of an EU tax in the field of corporate taxation. A common gross tax ties it together for procedure purposes and thereby also where proceedings are concerned. If a gross tax in the form of a PFT would is replacing not only VAT and excise duties, but also the corporation tax, emerges a common tax base and it would be comprised by an equally common taxation procedure. This also means that the evidence would be kept together in the tax cases, so that the book-keeping with invoices etc. constitutes the foremost evidence to judge who constitutes a tax subject and what rights and obligations that are comprising the person in question according to the tax system. That gives the individual advantages concerning legal certainty, by the trial of status as entrepreneur and of rights and obligations not being made by double procedures.[86] This supports that the principle of good governance demands that an EU tax will be introduced as a part of a PFT in the field of corporate taxation, regardless of whether the EU continues as an international union or becomes a federation.

9.2.2 A PFT gives a coherent corporate taxation determination and judgment of the tax subject that promotes good technocracy and the legal certainty

The mentioned primary law principle on good governance should for the corporate taxation be reflected in practice of what I call *good technocracy*. In the FL *the bases for good governance* in the handling activity at the administrative authorities and in the handling of administrative issues at the courts and in other administration activities at the administrative authorities and courts with regard of these principles:: legality, objectivity and proportionality (5 §); service (6 §); accessibility (7 §); and collaboration (8 §).[87] The principle of proportionality for the taxation procedure was codified in 2012 in Ch. 2 sec. 5 of the SFL.[88]

If a common taxation frame is not introduced for corporate taxation purposes, there are difficulties with keeping together the taxation procedure and the procedure in the administrative courts when for instance the VAT is governed by the EU law regarding who constitutes a tax subject, whereas the competence remains on national level for the income tax in that respect. A reform giving the types of taxes in question a common taxation frame would, as mentioned, lead to legal certainty advantages by the trial of the evidence in for instance questions about a person's status as tax subject for corporate taxation purposes not being carried out in double procedures, which would be in conflict with the principle *ne bis in idem*.[89] Without such a reform the problems remain at the SKV with double procedures for

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in an invoice, that an invoice fulfilling these demands *is a necessary supposition to exercise (demand) the deduction in the tax return, if not an investigation otherwise makes it likely that the suppositions for the right of deduction are fulfilled*. Thereby, I also noted in Forssén 2019e, p. 56 that the main rule on the contents of the invoice then was to be found in Ch. 11 sec. 5 of the GML, and that it was transferred in 2004 to Ch. 11 sec. 8, by SFS 2003:1134. Forssén 1999 is available on www.forssen.com.

[86] See also section 2.

[87] See sec. 1 of the FL. See also Forssén 2019d, p. 10.

[88] At the introduction of the SFL on 1 January, 2012 the legislator noted that the principle of proportionality is a prescriptive principle in Swedish law which applies as a general legal principle within the administrative law. The legislator stated that the SFL would contain a rule that the principle of proportionality applies. The principle was codified for the taxation procedure in Ch. 2 sec. 5 of the SFL. See prop. 2010/11:165 (*Skatteförfarandet*), the taxation procedure, Part 1, pp. 301 and 303. See also Forssén 2019d, p. 10.

[89] See sections 2 and 5.

taxation of VAT and income tax. This is also a problem for the Economic Crime Authority (*Ekobrottsmyndigheten*, abbreviated EBM) at investigations on tax fraud and for the general courts, when investigations lead to prosecution and the types of taxes in question are regarded in that respect. The two administrative authorities the SKV and the EBM and the courts shall not only regard *the bases for good governance*, but also the constitutional principles of everyone's equality before the law and objectivity and impartiality according to Ch. 1 sec. 9 of the RF and the equally constitutional principle of legality for taxation measures according to Ch. 8 sec. 2 first para no. 2 of the RF.[90] A principle of legality also applies for criminal law measures against the individual, according to Ch. 1 sec. 1 of *brottsbalken (1962:700*, the Penal Code, here abbreviated BrB). With these principles of legal certainty the individual can meet the State's attack on economy and person, but since the State have access to the investigation machinery they must be expressed by a concept giving them a practical value for the individual, which I call *good technocracy*.

With good technocracy I mean that the tax system is built on a foundation of efficient charging and collection of tax carried out in a way giving the system credibility. The process of the making of rules stipulating the liability to pay tax should be combined with the ambition that communication distortions will not occur between what the legislator has intended with the rules and how they are perceived by those applying them, that is individuals, authorities and courts. They shall perceive the system as neutral as possible regarding *the making of tax rules* and the procedure at the SKV and in the courts respectively.[91] To accomplish such a good technocracy for the financing of the welfare by taxes that at the same time creates an incentive for the individual to be loyal with the tax system and, if he or she is an entrepreneur, fulfilling the function as an agent for the State with respect of collection, it would be an advantage if a common taxation frame for corporate taxation purposes was introduced for in the first place VAT and income tax. I consider it especially important with good technocracy at the SKV in the taxation procedure and at the administrative courts in tax cases and at the EBM and general courts in tax fraud cases respectively, if a common taxation frame would not be introduced.

9.3 Experiences from the legislation and the research respectively in Sweden speaking for the introduction of a common taxation frame for corporate taxation purposes by PFT

9.3.1 A PFT gives a coherent corporate taxation determination and judgment of the tax subject that promotes the legal certainty in tax cases and tax fraud cases

To support my perception that a PFT would give a coherent corporate taxation determination and judgment of the tax subject that promotes the legal certainty in tax cases and tax fraud cases, I refer in this section to my review of problems in the present respect that I have accounted for inter alia in Forssén 2023b, and in another article in the JFT during 2024.[92] The

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[90] See the principle no tax without an act (*nullum tributumj sine lege*), which is expressed by the principle of legality for taxation measures according to Ch. 8 sec. 2 first para no. 2 of the RF.

[91] See Forssén 2019a, pp. 36, 37, 119, 281 and 282 and Forssén 2019b, p. 144.

[92] See Björn Forssén, *Mellanmän och frågor om karusellhandel respektive vinstmarginalbeskattning – en jämförelse av gamla och nya mervärdesskattelagen i Sverige* (Middlemen and questions about carrousel trading and profit margin taxation – a comparison of the old and the new VAT act in Sweden), JFT 4/2024, pp. 294–329 (Forssén 2024f). Forssén 2024f is available on www.forssen.com.

review concerns above all the phenomenon with VAT frauds by so-called carrousel trading and the special scheme for VAT at the trading with second-hand goods, works of art, collector's items and antiques, that is profit margin taxation (PMT).[93] I mention the following on the theme of good technocracy set out from what I in the mentioned respects have accounted for especially about the determination of the tax subject.

In an e-book, I have put together my articles on VAT frauds by carrousel trading, where inter alia the articles Forssén 2021a, Forssén 2023b and Forssén 2024b are included.[94] In Forssén 2023b, I set out from inter alia my article of 2023-06-13 in The Periodical Balans, which also is included in my collection of articles in the e-book Forssén 2024g.[95] Based on the review in Forssén 2024g my overall conclusion is that the entrepreneurs as tax subjects shall function as agents for the State with respect of collection of the VAT. Then it is important for an efficient collection that those VAT registered are loyal against the tax system. Thus, the registration control is decisive for an efficient collection and for the mentioned loyalty being upheld among the entrepreneurs.[96]

In section 3 of this article, I state that concerning the VAT is the registration question of decisive importance for an efficient collection, regardless of whether it is a matter of the existing system or the system for corporate taxation that I am suggesting in this article. I repeat from section 3 that I mention in Forssén 2024a regarding the VAT reform of 1 July, 2023, whereby the ML replaced the GML, that if not priority is given to the registration function at the SKV the legislation measures taken against VAT frauds by carrousel trading will be rather ineffective. That applies to all kinds of VAT frauds, since it, as also mentioned, is first by the registration that those aiming to commit fraud will get hold of the public treasury in the form of the tax account system. Therefore, I also iterate that the legislator should have regarded a long time ago those in the context decisive questions on VAT registration and control. However, this was not done in connection with the VAT reform of 2023. The questions on VAT registration and control and their decisive importance for an efficient and credible tax system are also included in my project presented in the collection of

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[93] See regarding PMT: Ch. 20 of the ML (*Särskild ordning för begagnade varor, konstverk, samlarföremål och antikviteter*), Special scheme for second-hand goods, works of art, collector's items and antiques, previously Ch. 9 a of the GML. The rules on this special scheme has its correspondence in articles 311–343 of the VAT Directive. See also section 3.

[94] See Björn Forssén, "*Momskaruseller" samt näringspenningtvätt, m.m.* (self-published 2024). (Forssén 2024g). Forssén 2024g is available on www.forssen.com, and also in printed version at *Kungliga biblioteket* in Stockholm (the National Library of Sweden) and at Lund University.

[95] See Björn Forssén, *Skenfaktura med momsdebitering – konsekvenser för skatt och redovisning* (Fictitious invoice with charging of VAT – consequences for tax and accounting), *Tidningen Balans fördjupning* (The Periodical Balans Annex with advanced articles) 2023 pp. 1–9, published 2023-06-13 on www.tidningenbalans.se, Forssén 2023e. Thus, Forssén 2024g is including the articles Forssén 2021a, Forssén 2023b, Forssén 2023e and Forssén 2024b and furthermore also these two of my articles: *Felaktigt debiterad moms föranleder betalningsskyldighet – inte skattebrott – 'karusellen' går vidare* (Falsely charged VAT causes liability of payment – not tax fraud – the 'carrousel' goes on), published in Today's Law 2023-11-27 (www.dagensjuridik.se), Forssén 2023f; and *'Momskaruseller' och ändringen av den särskilda förmedlingsregeln genom nya mervärdesskattelagen* ('VAT carrousels' and the alteration of the special intermediation rule by the new VAT act), published in Today's Law 2024-05-16 (www.dagensjuridik.se), Forssén 2024h. Also Forssén 2023e, Forssén 2023f and Forssén 2024h are available on www.forssen.com.

[96] See also section 3.

articles in the e-book Forssén 2024g. However, an efficient collection of tax is typically counteracted if the entrepreneurs are not perceiving that the taxation procedure and cases regarding tax are not comprised by the legal certainty. On the theme of legal certainty,[97] I may state the following to support that a PFT should give a coherent corporate taxation determination and judgment of the tax subject that promotes the legal certainty in tax cases and tax fraud cases.

Forssén 2024f is a continuation on one of the articles in the e-book Forssén 2024g, namely Forssén 2024h (which ended Forssén 2024g at the project's stage then). In Forssén 2024f, I mention inter alia the background to the SKV – and the EBM – having claimed that according to Ch. 6 sec. 7 of the GML and its predecessor, first para in item 3 of the instructions to sec. 2 of *lagen (1968:430) om mervärdeskatt* (the VAT act of 1968), a special 'VAT commission rule' existed. They asserted that the rule caused that a middleman could be compared with respect of VAT with a commissioner, if the middleman receives the payment from the customer *and* omits to, in the invoice regarding the mediated goods or service, identify the mandator.[98] By the VAT reform of 2023 and the introduction of the ML was at least the special intermediation rule of Ch. 6 sec. 7 of the GML altered, so that it nowadays consists of two rules, Ch. 5 sec. 3 second para no. 3 and sec. 27, which in principle corresponds with the mandatory rules of the VAT Directive, that is article 14(2)(c) and article 28.[99]

Regardless of whether the SKV – and the EBM – would be deemed having support for its standpoint about the existence of a special 'VAT commission rule' in older Swedish VAT law, my conclusion in Forssén 2024f is that the VAT reform of 2023 has meant that it is not applying anymore, according to Ch. 5 sec. 3 second para no. 3 and sec. 27 of the ML. Set out from that conclusion, I consider that if the EBM in an investigation regarding the time before 1 Julý, 2023 has invoked Ch. 6 sec. 7 of the GML as something that I call a 'rubber rule' regarding what is meant with doing business on a commission basis, the general courts cannot sentence the individual in such a case on 1 July, 2023 or later for tax fraud or coarse tax fraud according to sec. 2 or 4 in *skattebrottslagen (1971:69*, the Tax Fraud Act, here abbreviated SBL).[100] Thus, by the VAT reform of 2023 I consider it clarified that there is not anymore a 'rubber rule' meaning that itself leads to an ordinary agent being deemed as tax liable (nowadays liable of payment) for the whole sales price to customer for the goods or the services, instead of only regarding the commission that the person in question receives from the mandator, only because the agent has received the payment from the customer *and* has issued the invoice in his own name.[101]

At the same time that I have stated the last-mentioned in Forssén 2024f, I have mentioned that it no longer can be considered that there is a special rule expanding the cases of business done on a commission basis to comprise also ordinary private persons, like I stated in section 2.2 (The special rule on tax liability for intermediary services – Ch. 6 sec. 7 ML) in Forssén

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[97] From my project with making a study material regarding questions on VAT frauds by carrousel trading and regarding PMT-questions.

[98] See Forssén 2024a, section 6 and Forssén 2024f, section 2.

[99] See Forssén 2024f, section 1.

[100] See Forssén 2024f, section 8.

[101] See Forssén 2024f, section 2.

2019b that Ch. 6 sec. 7 of the GML did. This due to that in the ML is stipulated in Ch. 16 who is liable of payment, and in which other chapters that rules thereof exist, whereas transactions which are taxable are stipulated in Ch. 5 of the ML. It means that a division into two parts has been introduced by the ML of the determination of the tax subject and the tax object respectively, instead of as in Ch. 1 sec. 2 sixth para of the GML expanding the concept tax liable with *special rules on who is tax liable in certain cases*, which existed in Ch. 6, Ch. 9 and Ch. 9 c, with the present special rule, sec. 7, in Ch. 6 of the GML. Although it was not decisive for the questions that I brought up in Forssén 2024f, I mentioned for the context that it thus also must be considered clarified by the VAT reform of 2023 that middlemen – like traders – must have the character of taxable persons to be comprised by the VAT.[102]

The big question that I brought up in Forssén 2024f concerning the special rule Ch. 6 sec. 7 of the GML regarded the legal uncertainty that had existed for an entrepreneur who has acted as a middleman and assumed that he or she had taken an ordinary agent role in relation to mandator and customer, but who afterwards have been forced to defend himself or herself against the State's investigation machinery being used to carry through that he or she instead shall be compared for VAT purposes with a commissioner. The person in question would then be deemed having a taxable amount equal to that of a trader, instead of equal to the commission from the mandator.

In connection with my writing about the VAT reform of 2023 in Forssén 2024a, I stated in section 6 therein that the problems with the expression *i eget namn* (in his own name) in the special rule in question has not been of the same extent and frequency regarding services as to the part Ch. 6 sec. 7 regarded goods. Concerning VAT frauds by carrousel trading I reconnect to that I in the beginning of Forssén 2023b denote this a phenomenon, since there is no precise definition. Different types occur with the common denominator that frivolous enterprises take measures via the VAT returns so that the State loses money. What then is especially problematic on the topic of legal certainty is that it is unclear if the SKV consider that it also after the VAT reform of 2023 exists such a special 'VAT commission rule' that the SKV, and the predecessor *Riksskatteverket* (the National Tax Board), previously had asserted.[103] I iterate from Forssén 2024f that the SKV in its standpoint[104] of 2020-09-25 (*Förmedling av tjänster i eget eller i annans namn, mervärdesskatt*, Intermediation of services in one's own or in another person's name, dnr 8-314934) has made an amendment, "*Nytt: 2023-05-31*", i.e. New: 2023-05-31. There the SKV notes that *a new VAT act comes into force on 1 July, 2023*, which means that *certain concepts in the standpoint are out of date*. However, *the SKV's conception is that the legal judgment remains, why the standpoint shall remain*. Therefore, the question is whether the SKV puts forward that standpoint and at the same time regards that the legislator in the proposal of 17 February, 2022 made to the Council on Legislation for consideration abandoned the viewpoint in SOU 2020:31 (*En ny mervärdesskattelag*), A new Vat act, meaning that GML Ch. 6 sec. 7 of the GML would get an exact correspondence in the ML.[105]

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[102] See Forssén 2024f, section 2.

[103] See Forssén 2024f.

[104] *Förmedling av tjänster i eget eller i annans namn, mervärdesskatt* (Intermediation of services in one's own or in another person's name, value-added tax), dnr 8-314934.

[105] See Forssén 2024f, section 2.

I consider that the recently mentioned shows there is a considerable legal uncertainty, where the handling at the SKV – and the EBM – and in the courts of such serious cases as the asserted VAT frauds by carrousel trading is concerned. Therefore, I repeat from Forssén 2024f also that the legislator stated, in connection with the reform of the SBL on 1 July, 1996 (SFS 1996:658), that what is an erroneous information must be decided with guidance from the rules in the tax act which in the individual case regulate the tax liability and that *this connection between the tax fraud case and the tax question itself must not be disrupted*.[106] Furthermore, I repeat on the theme of middlemen and PMT-questions, from Forssén 2024a, that I stated that the phenomenon with Ch. 6 sec. 7 of the GML as a special 'VAT commission rule' became even more peculiar when the SKV invoked the special rule as support for the middleman being deemed having made an acquisition from a mandator in another EU Member State than Sweden, but at the same time not being deemed liable to regard the goods in an inventory of stock of goods according to *lag (1955:257) om inventering av varulager för inkomstbeskattningen* (the 1955 act on physical count of goods for the income taxation). Ch. 6 sec. 7 of the GML was considered meaning that a middleman made an acquisition of for instance goods from the mandator, instead of only acting as an agent for the mandator. This caused that the middleman was not deemed having a taxable amount equal to the commission and, if the mandator was a trader that for instance sold second-hand goods, but not himself or herself applying PMT, that neither the middleman was allowed to apply PMT, but obliged to charge VAT on the whole sales price paid by the customer. By the VAT reform of 2023 and the alteration of the special rule in question, I consider that the SKV – and the EBM – no longer can claim that there is a suchlike meaning that a fictitious acquisition of goods has been made by the middleman from the mandator.[107] The legal uncertainty that I have stated existed should be considered taken care of, so that a middleman can rely on being compared with a trader first if a civil law commission agreement exists.[108]

In Forssén 2024f, I state that the described viewpoint on Ch. 6 sec. 7 of the GML at the SKV, the EBM and the HFD has led to bankruptcy for retailers of for example used cars, since they could not charge afterwards their customers the raise of the VAT and sometimes even were hit by criminal law charges.[109] I invoke the example of above as support for the SKV's amendment on continuous validity of its standpoint of 2020-09-25 showing there is a need for clearer rules on the determination of the tax subject. The introduction of a PFT should give a coherent corporate taxation determination and judgment of the tax subject. If corporate taxes like VAT is replaced with a PFT, the common taxation frame will solve the legal uncertainty, and the individual will get his or her right to a fair trial according to article 6(1) of the Convention for the Protection of Human Rights (the European Convention) in both tax cases and tax fraud cases. In that respect, I may especially invoke my commentary of *Svea hovrätts* (the Svea Court of appeal's) verdict of 2023-11-07 (case no. B 15272-22) with the focus on the court of appeal's judgment of the tax fraud question, that is sec. 2 of the SBL. I brought up

[106] See prop. 1995/96:170 (*Översyn av skattebrottslagen*), Overview of the tax fraud act,, p. 91. See also Forssén 2024f, section 8.

[107] See Forssén 2024a, p. 66.

[108] See also Forssén 2024a, p. 67.

[109] See Forssén 2024f, section 7.

the verdict in the article Forssén 2023f.[110] In my commentary of the case, I question that the Svea Court of appeal allowed the prosecutor to adjust the deed assertions, by stating as a clarification that with respect of tax fraud it was of no importance whether the transactions regarded in the lawsuit constitute taxable transactions with regard of VAT or if it is a matter of fictitious transactions, since the risk of tax evasion exists in both cases.

In the Svea Court of appeal the prosecutor safeguarded by adding to the deed descriptions that what had been denoted as VAT in the present invoices "*i vart fall*" (in any case) constituted falsely charged VAT according to Ch. 1 sec. 1 third para and sec. 2 e of the GML.[111] I mention this *oäkta moms* (false VAT), since it, according to the preparatory works to the implementation in these rules of article 203 of the VAT Directive on 1 January, 2008 (SFS 2008:1376), only can arise a liability of payment for the issuer of an invoice regarding an amount which is falsely denoted as VAT, like at the issuing of a fictitious invoice.[112] The prosecutor stated that such a false VAT should have been accounted for at the same points of time as if it was a matter of real VAT (*äkta moms*). The prosecutor based this safeguarding on accounting rules – not on an imperative in a taxation rule with the exhortation to pay *skatt* (tax). That is in conflict with the principle of legality for taxation measures according to Ch. 8 sec. 2 first para no. 2 of the RF, and for criminal law measures against the individual according to Ch. 1 sec. 1 of the BrB.[113] Furthermore, it is in conflict with the legislator's mentioned perception meaning that what is an erroneous information must be decided with guidance from the rules in the tax act that in the individual case regulates the tax liability, whereby that connection between the tax fraud case and the tax question itself must not be disrupted.[114] In the commentary of the Svea Court of appeal's verdict (Forssén 2023f), I mention that I have previously[115] stated that the receiver of a fictitious invoice with a falsely charged VAT can be comprised by tax fraud according to sec. 2 of the SBL, but not the issuer. The issuer shall according to Ch. 26 sec. 7 of the SBL account the amount in a special tax return to the SKV – not as real VAT in a VAT return (Ch. 26 sec. 21 of the SBL). I repeat that the prosecutor's reasoning demands a clarification in the SBL of that *skatt* (tax) also regards amounts falsely denoted as VAT. The prosecutor's reasoning is invalid, when the prosecutor makes the additional statement to safeguard the assertion on tax fraud as if the special rule on liability of payment would be subsidiary to the main rule on tax liability in Ch. 1 sec. 1 first para no. 1 of the GML. Therefore, the Svea Court of appeal should have disqualified the amendment about the invoices *in any case* meaning falsely charged VAT according to Ch. 1 sec. 1 third para of the GML.

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[110] It is included in the collection of articles Forssén 2024g as Annex 2. See Forssén 2024g, pp. 89–91. My title of the article Forssén 2023f and headline of Annex 2 of Forssén 2024g is: *Felaktigt debiterad moms föranleder betalningsskyldighet – inte skattebrott – 'karusellen' går vidare*" (Falsely charged VAT causes liability of payment – not tax fraud – the 'carrousel' goes on).

[111] Ch. 1 sec. 1 third para and sec. 2 e of the GML are corresponded by Ch. 16 sec. 23 of the ML.

[112] Jämför prop. 2007/08:25 (*Förlängd redovisningsperiod och vissa andra mervärdesskattefrågor*), Extended accounting period and certain other VAT issues, pp. 90 and 91. See also Forssén 2023f and Forssén 2024g, pp. 90 and 91.

[113] See section 9.2.2.

[114] See prop. 1995/96:170, p. 91.

[115] See Forssén 2023e, which is also expressed in the collection of articles in Forssén 2024g, pp. 22–30.

I was surprised that *Högsta domstolen*, the Supreme Court (abbreviated HD), decided 2024-01-17 (case no. B 8498-23) to not give a leave to appeal concerning the appeal of the Svea Court of appeal's verdict. If the HD do not bring up for trial even the questions that obviously should be tried on the theme of compliance with the EU law, which I consider is called for regarding the prosecutor's safeguard in the case in question at the Svea Court of appeal, it is obviously to detriment for the carrying through of the EU project. The collection of articles Forssén 2024g contains an extensive reasoning about VAT frauds by carrousel trading and commercial laundering etc., but to save space I stay at invoking the mentioned case in the Svea Court of appeal as significant of current law being precarious for the individual's right to a fair trial, concerning that an entrepreneur shall be able to rely on the EU law in the field of VAT being regarded in connection with the trial of a criminal law responsibility for him or her. By the way, I may mention that if a PFT is introduced according to my proposal, it is still demanded a clarification in the SBL that a false suchlike tax also constitutes *skatt* (tax) according to the SBL, for the issuer of an invoice with a falsely charged PFT being able to be comprised by tax fraud according to sec. 2 of the SBL. That question is not automatically solved by a PFT giving a coherent corporate taxation determination and judgment of the tax subject. The legal certainty in tax fraud cases demands the mentioned extra measure in the SBL.

9.3.2 Lacks in the research in Sweden regarding the VAT and the tax subject that prove the necessity of a reform of the corporate taxation by the introduction of a PFT

9.3.2.1 Regarding the projects to lectures and seminars at the European Law programme

To further support my perception that a PFT gives a coherent corporate taxation determination and judgment of the tax subject that promotes the legal certainty in tax cases and tax fraud cases, I refer in this section to yet another project that I have mainly carried out in the form of articles in the JFT and in The Periodical Balans, namely concerning the research in Sweden regarding indirect taxes in relation to the EU law. The project formed step by step the central material at the European Law programme during 2021–2023, which was transferred in 2024 to concern above all VAT frauds by carrousel trading. The collected material to the education in question during the years 2021–2023 consisted of seven of my articles in the two periodicals during the years of 2020–2023, namely the following:

The JFT 2020, 2021 and 2022

- *Momsforskningen i Sverige – metodfrågor* (The VAT research in Sweden – method questions)[116]
- *Momsforskningen i Sverige – svenska språkets ställning* (The VAT research in Sweden – the position of the Swedish language)[117]

[116] *Momsforskningen i Sverige – metodfrågor* (The VAT research in Sweden – method questions), JFT 6/2020, pp. 716–757 (Forssén 2020d). Both the original version in Swedish and my translation into English are available on www.forssen.com.

[117] *Momsforskningen i Sverige – svenska språkets ställning* (The VAT research in Sweden – the position of the Swedish language), JFT 6/2021, pp. 412–447 (Forssén 2021b). Both the original version in Swedish and my translation into English are available on www.forssen.com. A translation from Swedish into Finnish made by ArthemaxX Business Services ay, Åbo (Turku) is also available on www.forssen.com: *ALV-tutkimus Ruotsissa – ruotsin kielen asema*.

– *Punktskatteforskningen i Sverige – skattesubjektsfrågan* (The research on excise duties in Sweden – the tax subject question)[118]

The Periodical Balans Annex with advanced articles 2021, 2022 and 2023

– *Momsforskningen i Sverige – vart är den på väg? Del 1* (The VAT research in Sweden – where is it going? Part 1)[119]
– *Momsforskningen i Sverige – vart är den på väg? Del 2* (The VAT research in Sweden – where is it going? Part 2)[120]
– *Momsforskningen i Sverige – vart är den på väg? Del 3* (The VAT research in Sweden – where is it going? Part 3)[121]
– *Indirekta skatter och forskningen i Sverige – vart borde den vara på väg? Del 4* (Indirect taxes and the research in Sweden – where should it be going? Part 4)[122]

My project with a review of the research in Sweden during the period of 1994–2020 regarding the field of indirect taxes, which in the first place comprise VAT, excise duties and customs, has been carried so that I have written the detailed articles on the topic in question in the JFT and then step by step have followed up with shorter reviews of the mentioned questions in The Periodical Balans Annex with advanced articles. I have, as a final step for the time being in that project, compiled the articles in question in Forssén 2024c, where also inter alia one more of my articles in the JFT from that project is included, to especially prepare continued research in customs law, namely: *EU:s frihandelsavtal med USA, TTIP – en motvikt till förflyttningen av världsekonomins tyngdpunkt till Asien och till gagn för världsfred* (The EU's free trade agreement with the USA, TTIP – a counterbalance to the transfer of the main focus of the global economy to Asia and to the advantage of world peace).[123]

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[118] *Punktskatteforskningen i Sverige – skattesubjektsfrågan* (The research on excise duties in Sweden – the tax subject question), JFT 3/2022, pp. 242–276 (Forssén 2022b). The original version in Swedish of Forssén 2022b and my translation into English are available on www.forssen.com.

[119] *Momsforskningen i Sverige – vart är den på väg? Del 1* (The VAT research in Sweden – where is it going? Part 1), *Tidningen Balans fördjupningsbilaga* (The Periodical Balans Annex with advanced articles) 2/2021, pp. 22–28 (Forssén 2021c). See www.tidningenbalans.se. Both the original version in Swedish and my translation into English are available on www.forssen.com.

[120] *Momsforskningen i Sverige – vart är den på väg? Del 2* (The VAT research in Sweden – where is it going? Part 2), *Tidningen Balans fördjupningsbilaga* (The Periodical Balans Annex with advanced articles) 2/2021, pp. 29–36 (Forssén 2021d). See www.tidningenbalans.se. Both the original version in Swedish and my translation into English are available on www.forssen.com.

[121] *Momsforskningen i Sverige – vart är den på väg? Del 3* (The VAT research in Sweden – where is it going? Part 3), *Tidningen Balans Fördjupning* (The Periodical Balans Annex with advanced articles) 2/2022, pp. 1–8 (Forssén 2022d). See www.tidningenbalans.se. Both the original version in Swedish and my translation into English are available on www.forssen.com.

[122] *Indirekta skatter och forskningen i Sverige – vart borde den vara på väg? Del 4* (Indirect taxes and the research in Sweden – where should it be going? Part 4), *Tidningen Balans fördjupning* (The Periodical Balans Annex with advanced articles) 2023, pp. 1–8 (Forssén 2023i). See www.tidningenbalans.se. Both the original version in Swedish and my translation into English are available on www.forssen.com.

[123] *EU:s frihandelsavtal med USA, TTIP – en motvikt till förflyttningen av världsekonomins tyngdpunkt till Asien och till gagn för världsfred*, JFT 4/2022 pp. 425–436 (Forssén 2022a). For the European Law programme, I have translated Forssén 2022a into English with this title: The EU's free trade agreement with the USA, TTIP – a counterbalance to the transfer of the main focus of the global economy to Asia and to the advantage of world

For methodological reasons, I emphasize as a main thread in my projects in the fields of VAT and excise duties the importance of examining rules on the determination of the tax subject to be able to problemize questions on the tax object. The common denominator of my criticism of the research concerning indirect taxes in Sweden regards first the disregarding of the question about the determination of the tax subject and who is an entrepreneur with respect of VAT and excise duties. However, for customs can the tax subjects be either entrepreneurs or ordinary private persons. With my effort at the European Law programme in 2024, I also emphasized the importance of the determination of the tax subject, when the EU law is governing the contents of the national tax legislation, whereby I focused on the VAT in connection with frauds by carrousel trading. The problems are especially interesting for the application of criminal law rules, since that field, like the administration law,[124] in principle is comprised by national competence,[125] whereas the competence regarding the material tax rules and evidentiary rules for VAT has been conferred to the EU's institutions whereby in the first place the following legislations apply: the VAT Directive and the Council's Implementation Regulation (EU) No 282/2011.[126]

9.3.2.2 Experiences supporting the perception that a rigid research environment in Sweden is counterproductive to the success of the EU project

With the project where I am going through the research concerning VAT and excise duties in Sweden,[127] I have shown that questions regarding the tax subject have been treated in Forssén 2011 and Forssén 2013 and in Jesper Öberg's doctor's thesis from 2001, which also concerned VAT, and – although rather limited – in Stefan Olsson's doctor's thesis from 2001 concerning excise duties respectively.[128]

In Forssén 2013 I stated, because of my conclusion that *enkla bolag* and *partrederier* are not deemed as tax subject according to the GML, whereas *sammanslutningar* (joint ventures) and *partrederier* are considered as tax liable according to the Finnish VAT act (*mervärdesskattelagen (1501/1993*), despite that none of these legal figures constitute legal entities, that this difference means that Sweden and Finland should jointly bring up on EU level the question about altering article 9(1) first para of the VAT Directive. I consider that the current law should be clarified in the tax subject question, so that also these enterprise

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peace. The original version in Sw. of Forssén 2022a and my translation into Eng. are available on www.forssen.com.

[124] See section 9.2.1.

[125] According to the preparatory works to the EU-Act the criminal law is one of the fields which are comprised by an exclusive national competence – see prop. 1994/95:19 Part 1, p. 472.

[126] The complete title of the Implementation Regulation is: the COUNCIL IMPLEMENTING REGULATION (EU) No 282/2011 on implementing measures for the VAT Directive.

[127] See Forssén 2024c, p. 149.

[128] See Jesper Öberg, *Mervärdesbeskattning vid obestånd, Andra upplagan* (Value-added taxation at insolvency Second edition), Norstedts Juridik AB 2001 and Stefan Olsson, *Punktskatter – rättslig reglering i svenskt och europeiskt perspektiv* (Excise duties – legal regulation in a Swedish and European perspective) respectively, Iustus förlag 2001 (Olsson 2001).

forms can be deemed constituting taxable persons (if they carry out economic activity).[129] I have iterated this inter alia in Forssén 2024c,[130] and in Forssén 2024a I state that it was a great minus in the VAT reform of 2023 that the legislator did not even announce that the question might be brought up on EU level, since the existing situation cause an obvious risk of application problems regarding transactions between the two Member States.[131]

My proposal to replace inter alia VAT with a PFT should, as mentioned,[132] give a coherent corporate taxation determination and judgment of the tax subject, so that the legal certainty is strengthened by a common taxation frame for corporate taxation purposes which eliminates double procedures. I consider that it strengthens the right for the tax subject (the entrepreneur) to a fair trial according to article 6(1) of the European Convention in tax cases and tax fraud cases. The lacks in the research in Sweden regarding VAT and the tax subject shows the need of a reformed corporate taxation by the introduction of a PFT. Such a reform should compensate for the lacks in the research. This is necessary, since the EU project presupposes a dynamic legislation in a changing world and cannot await measures being taken regarding the lacks.

In Forssén 2024c, I state that a common taxation frame for income tax and VAT improves the legal certainty for the entrepreneur and furthermore that I concluded in Forssén 2011 that it was possible to have a common taxation frame for the determination of the tax subject for the two types of taxes.[133]

Thus, I have in this article mentioned in section 2 that I in Forssén 2011 stated that there was no support to make objections against the reverse order for the determination of who is an entrepreneur for taxation purposes. In Forssén 2011, I also stated that it would go to far to fully analyse the issue therein, but that it should be examined whether the reverse order is an alternative to the existing order, since there are advantages with a common taxation frame concerning evidence, procedure and proceedings for the determination of the tax subject.[134] With this article, I consider that I have further confirmed that the reverse order in question should be examined more by the legislator.

If the EU project shall become a success in the field of taxation, it is demanded that the research gives useful influences to the legislator. My review of the research in Sweden in the field of indirect taxes shows above all concerning the VAT that the science is not going further, so that the legislator gets influences to adjust the legislation well to the EU law in that respect. These lacks are first proven by questions on the tax subject not being properly

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[129] See Forssén 2013, p. 225.

[130] See Forssén 2024c, pp. 57 and 112 and furthermore Björn Forssén, *Om rättsliga figurer som inte utgör rättssubjekt – den finska och svenska mervärdesskattelagen i förhållande till EU-rätten* (On legal figures not constituting legal entities – the Finnish and Swedish VAT acts in relation to the EÙ law), JFT 1/2019, pp. 61–70, 70 (Forssén 2019f) and Forssén 2020a, p. 394. Also Forssén 2019f is available on www.forssen.com.

[131] See Forssén 2024a, p. 62.

[132] See section 9.3.1.

[133] See Forssén 2024c, pp. 149 and 150.

[134] See Forssén 2011, p. 267. See also Forssén 2011, p. 325 and the concluding viewpoints in Forssén 2013, i.e., p. 34 in the coat to Forssén 2011 and Forssén 2013, whereto I also refer in Forssén 2024c, p. 150.

analysed before the authors write about the tax object. Thus, the VAT law is to a large extent still not investigated by the research, due to incomplete problemizing of the tax object question.

Where the excise duties are concerned, there has so far only been one thesis in Sweden, Olsson 2001, and therein the tax subject is treated, as mentioned, rather limited. Therefore, I return to in the first place my viewpoints on the affection of the research on the legislator regarding the question on tax subject for the VAT. In Forssén 2011, I treated first the connection to the IL for the determination of the tax subject according to the GML. It may have stimulated the legislator to reform revoking that connection (SFS 2013:368). However, the legislator has been passive so far regarding that the connection in question to Ch. 13 of the IL still exist for certain excise duties, despite that I already in Forssén 2011 mentioned especially that the problems with the Swedish tradition of connecting the taxation in the field of indirect taxes to direct tax exists concerning the LSE.[135] I stated in the JFT and in Forssén 2024c that nobody has been interested so far for the problems with that tradition still existing for certain excise duties, and that I expected after Forssén 2011 that the research or the legislator with bring up the question of compliance with the EU law also regarding such connections to the IL, but that this has not happened.[136] However, the question is an easy one for the legislator, and I return shortly to the following to complete the picture of the research not stimulating the legislator to take measures against lacking implementation of the EU law for indirect taxes.

In the JFT and in Forssén 2024c, I have also stated that Professor Olsson participated at the final seminar regarding Forssén 2011 on 13 June, 2011, and that I mentioned the problems with the Swedish tradition to connect the taxation in the field of indirect taxes to direct tax. That gives, by connection to the concept *näringsverksamhet* (business activity) in the whole of Ch. 13 of the IL, a too extensive determination of the tax subject regarding legal persons. I mentioned that Professor Olsson at that occasion expressed that he did not understand my comparison with Olsson 2001. I mentioned later on that it was a major deficiency in Olsson 2001 that the connection in question to Ch. 13 of the IL for the determination of the tax subject regarding energy tax, advertising tax and the tax on biocides is not mentioned therein. I also mentioned that I in an e-mail-communication with Professor Olsson in the years of 2018 and 2019 mentioned that I was aiming to write an article on the question. This was thereafter done in the JFT, by Forssén 2022b. I expected that the research or the legislator would bring up the question on the compliance with the EU law concerning the connection to the IL regarding indirect taxes, but this has only been done regarding the VAT by SFS 2013:368. Concerning the mentioned excise duties, I also noted that the problem in question was solved especially regarding the advertising tax simply as a consequence of it being abolished in Sweden on 1 January, 2022, by SFS 2021:1166.[137]

In other words, academics in Sweden are having difficulties to write useful theses within the field of indirect taxes. It was probably the degree of complexity in my choice of topic, that is the determination of the tax subject, that was the reason why it was not possible to get opponents in Sweden. My main supervisor, Professor Eleonor Kristoffersson at Örebro

[135] See section 7. See also Forssén 2024a, pp. 81 and 82.

[136] See Forssén 2020d, p. 755 and Forssén 2024c, p. 47.

[137] See Forssén 2022b, pp. 258 and 259 and Forssén 2024c, pp. 90 and 91.

universitet (JPS), where I carried through my project regarding the tax subject question for the VAT, contacted Aarhus University, which showed a positive attitude and Professor Dennis Ramsdahl Jensen and Professor Henrik Stensgaard respectively became opponents on Forssén 2011 and Forssén 2013 respectively. The review of the research in Sweden regarding indirect taxes during the years of 1994–2020 confirmed the perception from my work with the theses, which started in the beginning of the 2000's at Lund University, that is that the topic was too hard for academics in Sweden to be able to take the role as opponents on my work, since I did not dedicate to delimitations which in advance cut down the topic. Without the JFT and The Periodical Balans I would never have been allowed to present this in Sweden, and then would my material to the European Law programme the years of 2021–2023 never have been produced.[138] With this article, I emphasize once again that a rigid research environment in Sweden is counterproductive to the success of the EU project.

9.3.2.3 The EU project cannot wait any longer for the realization of the EU Commission's ambitions – the risk is that it implodes due to lacks in the research regarding VAT

Based on this article, I also state that my viewpoints in the projects as from Forssén 2011 should stimulate the legislator to consider a great tax reform in Sweden. What I state constitute at least a basis for the discourse that I am expecting about a great tax reform. It should be time for that in the light of it being over three decades since the great tax reform in Sweden of 1990–91, which should not be patched up anymore. I also state that if the described attitude in the research in Sweden gains a hearing within the Union the EU project will implode, by the legislator being understimulated concerning influences from the research. This is especially serious for the VAT which constitutes 20 cents (*öre*) on each Swedish crown (*krona*) in most economic situations for people in their lives, and thereby also is an important source of financing of the welfare.

I consider that the EU project cannot wait any longer for the realization of the EU Commission's ambitions to give priority to the collection question and the registration to VAT, to counteract VAT frauds, and to introduce an EU tax respectively.[139] Thereby, I aim to contribute to improvements of the research in Sweden, so that the students will get ideas to essays or topics to theses, and to contribute at the same time to the EU project not imploding due to lacks in the research regarding above all VAT. If such an important tax as VAT does not function for collection purposes and concerning the legal certainty for the tax subject in procedure and proceedings on tax, that is for the entrepreneur who shall function as an agent for the State with respect of collection, it contributes politically to aspirations for a federation. I oppose this: I voted for Sweden's accession to a union with an internal market for free trade

[138] In an SVT-interview 2024-02-21 Magnus Zetterholm, member of the board in *Insamlingsstiftelsen Academic Rights Watch* (The fund collection foundation Academic Rights Watch), made a statement about the academic freedom. I commented in an e-mail to him 2024-02-22 that the academic freedom in Sweden has given me reason to try to find an interest of publishing in Finland. In an e-mail the same day, he confirmed my perception by answering: "*Ja, det finns en mängd rätt allvarliga problem i Sverige så att ta sig till Finland är nog inte en dum idé. De har ofta legat bättre till och man får hoppas att det består*" (Yes, there are many serious problems in Sweden so going to Finland is probably not a bad idea. They have often been better positioned and one may hope that this continues). *Academic Rights Watch* has the following motto: *Bevakar den akademiska friheten i Sverige* (Watching the academic freedom in Sweden). See https://academicrightswatch.se/ (visited 2024-07-29). SVT, *Sveriges television*, Swedish Television (website www.svt.se).

[139] See sections 3 and 6.

– not for a United States of Europe. I stated this already before the EU-election in 2019,[140] which also is a motivation for my commitment.

9.3.2.4 The European law should be a legal discipline in its own right at universities and university colleges that gives the legislator useful results from the research to promote the carrying through of the EU project

With this article, I consider that I have also shown the need of the European law being regarded as a legal discipline in its own right. I mentioned this in Forssén 2019d (p. 16) with reference to Professor Ulf Bernitz, who stated that in 2012, instead of the European law being integrated in individual subjects, whereby he mentioned that the European law constitutes a legal discipline in its own right in the legal educations in most places in Europe. In that respect, Professor Bernitz stated the following (in my translation):

> *Thus, the legal education in European law needs to be improved and deepened. How should you do it? One often hear that the European law should be integrated in the individual subjects. However, in my opinion, the European law should be considered a discipline in its own right, like what is the case in most places in Europe. There is absolutely a need for a separate course of its own in basic EU law at the beginning of the legal education. It would be unsuitable to limit these to constitutional and institutional aspects, since they are closely connected to the material law; they live in a symbiosis. To understand the constitutional EU law, you must also understand how the material EU law works in central fields, naturally in the first place the freedom of movement and the internal market, 'the four freedoms'*.[141]

The European Law programme at Södertörn University is a programme with the focus on the principles of good governance.[142] I aim with my projects to develop the programme, by mentioning questions about the VAT, which is central for the internal market. No European country can become a Member State of the Union without having VAT in its economy as a source to finance the welfare and for the Member States applies according to article 113 TFEU a demand on harmonisation of their legislations on indirect taxes, which in the first place are VAT, excise duties and customs, and the harmonisation is stipulated as "necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition". Hopefully, the programme can be expanded to a subject in its own right, European Law (*Europarätt*), where the EU law is included, with elements of questions on for example indirect taxes, inter alia VAT. I consider that such a subject should not only be a part of the legal education, but also for example of the education in economics (*nationalekonomi*) and business economics (*företagsekonomi*). That should make it easier for economists and lawyers and others to make adequate empirical examinations of what support entrepreneurs

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[140] See Björn Forssén, *Det räcker inte med den s.k. sociala pelaren – det behövs en EU-skatt för att stoppa tiggeriet* (It is not enough with the so-called social pillar – there is a need for an EU tax to stop the begging), published in *Dagens Juridik* (Today's Law) 2019-05-23 (www.dagensjuridik.se). (Forssén 2019g). Forssén 2019g is also available on www.forssen.com.

[141] See Ulf Bernitz, *Europarättens genomslag* (the impact of the European law), Norstedts Juridik 2012, s. 43. (Bernitz 2012).

[142] Regarding *Magisterprogrammet i Europarättsliga studier* (the Master's program in European Legal Studies) at Södertörns högskola, see https://www.sh.se/program--kurser/program/avancerad/magisterprogram-i-europarattsliga-studier (visited 2024-07-20).

perceive that they have in a tax case of a book-keeping that shows a correct accounting of taxes and fees. I mentioned, as mentioned, the question in a preliminary study to deepened studies in *fiscal sociology*.[143]

By emphasizing the procedural aspect, I emphasize also the importance of the evidence to determine the tax subject, and state again that a reintroduced auditing duty for small enterprises strengthens the connected are between corporate taxation and the civil law accounting law, and promotes legally certain evidence.[144] In Forssén 2011, I stated that evidentiary problems arise if the tax law accounting rules are disconnected from the civil law ones like suggested in SOU 2002:74 [*Mervärdesskatt i ett EG-rättsligt perspektiv* (VAT law in a EC law perspective)] and SOU 2008:80 [*Beskattningstidpunkten för näringsverksamhet* (The point of time for taxation of business activity)].[145] It has never led to any Government's bill, and positive for the evidence about distinguishing entrepreneurs from ordinary private persons is that neither the VAT reform of 2023 meant any such disconnection from the civil law's GAAP.[146]

Thus, I state that the procedural viewpoint on issues about economy and taxes is a pragmatic necessity for at all being able to make useful tax rules. Finally, I come back to the importance of the law of procedure for the constitutional dimension with regard of the European law regarding for example the field of tax law. Before, I may mention that I in both those in section 3 mentioned books with my preliminary studies to the *fiscal sociology*-project, Forssén 2019a and Forssén 2019b, state that Johan Henric Kellgren (1751–1795), Sweden's and Finland's foremost representative within the Enlightenment, in the end of the 1700's argued for the guilds to be abolished and the freedom of trade to be introduced, but due to opposition from *poorly enlightened governments* ("*illa uplyste Regeringar*") this was done first half a century after the death of Kellgren.[147] The EU project cannot wait that long for achieving a more effective tax collection and a minimization of the VAT frauds and an improved legal certainty for the individual in the taxation procedure and in cases concerning tax, why the research should be improved where the usefulness of what it is producing is concerned. A step in the right direction would be to carry through the suggestion of Professor Bernitz to make the European law a discipline in its own right in the legal education at

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[143] See in section 3 regarding my reference to Forssén 2019a.

[144] See section 5.

[145] See Forssén 2011, section 3.6, where I mention the affection of evidence on the determination of the tax subject. See also SOU 2002:74 Part 1, p. 20, where it is stated that that investigation suggested that the connection to what is constituting *god redovisningssed* (Generally Accepted Accounting Principles - GAAP) according to the BFL would be abolished, and SOU 2008:80 Part 1, pp. 19 and 20, where it is stated that also that investigation suggested an abolishment of the material connection between accounting and taxation.

[146] See regarding the concept *god redovisningssed* (GAAP): the VAT, and Ch. 7 sec. 14 no. 1 of the ML, which was corresponded by Ch. 13 sec. 6 no. 1 of the GML, and Ch. 7 sec. 31 no. 1 of the ML, which was corresponded by Ch. 13 sec. 16 no. 1 of the GML; and the income tax, and Ch. 14 sec. 2 second para of the IL, which is also unchanged regarding the reference to GAAP.

[147] See p. 10 in Johan Henric Kellgren, *Afhandling om Näringstvånget i gemen och Skrån i synnerhet. Fristående parti i det av Johan Henric Kellgren utgivna Nya Handels-biblioteket 1784* (Thesis about the Nutritional Compulsion in general and Guilds in particular. Detached part in that of Johan Henric Kellgren edited Nya Handels-biblioteket 1784). The book is published in a new edition by Natur och Kultur. Stockholm 1954. See also my references to Kellgren in Forssén 2019a, p. 283 and Forssén 2019b, p. 145.

universities and university colleges,[148] but also applying this for instance in the education in economics and business economics. Then, the legislator would probably be given necessary impulses in the form of useful results from the research. I Forssén 2024f, I mention that I gave a lecture on measures against 'VAT carrousels' at Swedish Law Meeting over two decades ago, on 14 November 2001,[149] and if not at least the control of registration becomes more effective the lecture will probably not lose in interest for a long time yet. In my opinion, it is an aspect that should be regarded concerning questions of application regarding VAT within both the legal education and the education for instance of economists recruited as auditors to auditing firms and the tax authority etc.

10 Summary and concluding viewpoints

10.1 Summary

With this article, I give a proposal for a great tax reform in Sweden. Concerning the corporate taxation it is about introducing an order where the VAT governs the determination of the tax subject regarding both VAT and income tax. There are no obstacles for such an order with regard of the EU law.[150] On the contrary, that is incorporating the income tax's business activity in the VAT legislation meant a far too vast choice of tax subjects was the main question in Forssén 2011 and that connection was also revoked on 1 July, 2013, by SFS 2013:368. A problem is that the connection in question remains still today concerning the excise duties on energy products and electricity and on biocides, despite that I in Forssén 2011 mentioned that the concept *näringsverksamhet* (business activity) according to the whole of Ch. 13 of the IL also caused problems in relation to the EU law concerning excise duties, where it is used to determine the tax subject.[151] In section 3, I state that an order where the VAT governs the determination of the tax subject for both VAT and income tax leads to a common taxation frame for the two types of taxes, which would ensure a more efficient collection, but emphasizes at the same time that registration control always is the most important for the VAT in that respect. In this context, I state moreover in section 5 that a reintroduced liability of auditing for small enterprises should strengthen the connected area between the corporate taxation and the civil law accounting law and that it also should strengthen a legally certain determination of the tax subject.

With an order where the VAT is governing the determination of the tax subject regarding both VAT and income tax the possibilities open to introduce a gross tax, which furthermore can be of guidance for a continuation of the since 2004 paused EU project on the introduction of an EU tax. Thus, I suggest the introduction of a production factor tax (PFT – Sw. *proms*) based on the enterprises' ennobling value, that is a gross tax with a broadened tax base that replaces in the first place VAT, excise duties and corporation tax. This might be followed up with the

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[148] See Bernitz 2012, p. 43 and citations from there expressed above in this section.

[149] See Forssén 2024f, sections 5, 7 and 8 regarding: Björn Forssén, *Föredrag på Svensk Juriststämma* (Lecture at Swedish Law Meeting) 2001-11-14 (*Stockholmsmässan i Älvsjö*), *Moms och omsättningsbegreppet. Karusellen hos skatte- och ekobrottsmyndigheten (SKM och EBM)* [VAT and the transaction concept. The carrousel by the tax and economic crime authorities (abbreviated SKM and EBM)]. Arranger VJS. See memo on https://www.forssen.com/forskning/f10/f13/.

[150] See section 2.

[151] See section 7.

introduction of an EU tax as a part of such a gross tax. Then, an EU directive on EU tax can be made with the VAT Directive as a model. However, a gross tax means that the enterprises will not get a claim against the State on paid tax. This means that the tax rate must be rather low – at least lower than today's standard rate for VAT in Sweden of 25 per cent. The advantage with the entrepreneurs not having a claim against the State regarding the tax is that the tax frauds should decrease radically. However, the financing of the welfare within the EU should be prioritized so that an EU tax to begin with constitutes a part of the VAT and is made into a part of the gross tax (e.g. a PFT), when it will replace VAT etc.[152]

In sections 9.2–9.3.2.3, I motivate by suggestion of a Swedish PFT from two perspectives based on my experiences from the project where I treated the determination of the tax subject with respect of VAT: the Swedish legislator's and the research's perspective respectively. The motives to my suggestion of the introduction of a PFT, to accomplish a common corporate taxation law determination of the tax subject and thereby a more legally certain taxation procedure and proceedings in tax cases and tax fraud cases originate thus in the perspectives of the projects in Forssén 2011 and Forssén 2013 and in the material which I since 2015 have produced to lectures and seminars at the European Law programme.[153]

Thus, one of the cornerstones of my proposal to a great tax reform in Sweden is that not only the indirect taxes, but also the income tax, will be adapted to the EU law for the determination of the tax subject for enterprise law purposes. The other concerns capital and dwelling taxation for private persons, where I quite simply recommend that the EU-country the Netherlands may give guidance, by its so-called box model, which has applied there since 2001. I deem that there is no obstacle for also introducing capital and real property taxation for private persons also in Sweden according to the box model of the Netherlands. The model does not affect the VAT and thus neither obstructs my suggestion of an order for the determination of who is a tax subject for corporate taxation law purposes, where the VAT governs the income tax.[154] Thereby, the box model does neither obstruct a gross tax connected to the enterprises' ennobling value replacing VAT, excise duties and corporation tax, for example in the form of a PFT. That prepares also for the introduction of an EU tax in the future.[155]

In section 9.3.2.4, I state – whereby I also refer to Bernitz 2012 – that European law should be a legal discipline in its own right at universities and university colleges, so that the legislator is influenced by useful results from the research to promote the carrying through of the EU project.

10.2 Concluding viewpoints

Finally, I may mention something about the importance of the law of procedure for the constitutional dimension concerning the tax law with regard of the European law. In my opinion, the law of procedure has a special importance for the judgment of the interpretation

[152] See section 6.

[153] See section 9.1.

[154] See sections 2 and 4.

[155] See section 8.

and application questions in that respect as long as the Eu is a union and not a federation with a constitution of its own.

In the project with my lectures and seminars at the European Law programme during the central question concerned how 'the principle of the formal power of law' (*den formella lagkraftens princip*) shall be described, if the constitutional dimension is seen in a perspective of the European law. To my lecture in 2015, I wrote a memo on the principle *ne bis in idem* regarding tax fraud and tax surcharge, which I labelled *Skattetillägg och Europakonventionen och EU-rätten – behov av mer djupgående analyser av ne bis in idem-frågan angående skattetillägg och skattebrott (i samband med oriktiga uppgifter om mervärdesskatt och inkomstskatt)?* [Tax surcharge and the European Convention and the EU law – need for more deepened analyses of the ne bis in idem-question about tax surcharge and tax fraud (in connection with erroneous information about VAT and income tax)?][156] Thereafter, I submitted the memo as a remark to the Treasury on a draft of a consideration to the Council on Legislation about the report SOU 2013:62 [*Förbudet mot dubbla förfaranden och andra rättssäkerhetsfrågor i skatteförfarandet* (The prohibition of double procedures and other legal certainty issues in the taxation procedure)]. At the lecture in 2016, I made a completion with legislation that had come into force on 1 January, 2016 about the *ne bis in idem*-question concerning tax surcharge and tax fraud,[157] according to the Government's bill that followed on the report, that is prop. 2014/15:131 [*Skattetillägg: Dubbelprövningsförbudet och andra rättssäkerhetsfrågor* (Tax surcharge: The prohibition of double procedures and other legal certainty issues)]. In the bill (p. 294) is my remark only commented with: "*Yttrande har också inkommit från Björn Forssén*" ('A remark has also been submitted by Björn Forssén').

If the constitutional dimension is set in a perspective where the European law is regarded, 'the principle of the formal power of law' cannot be described for norm hierarchy purposes as a ladder. Instead, I ranked the rules decided by the Swedish Parliament, the EU and the Council of Europe in a stepladder in three steps with five hierarchical levels, whereby I, between the levels where competence has and has not respectively been conferred to the EU, place the principle of an EU conform (directive conform) interpretation as a procedural element. In an article, I presented this as *Europatrappan* ('the European stepladder').[158]

I do not go into the constitutional more than repeating that I from the start has stated that the HD, in the case that gave rise to SOU 2013:62 and the legislations in 2016, that is NJA 2013 p. 502 (case no. B 4946-12), falsely states that the *ne bis in idem*-principle according to article 50 of The Charter of Fundamental Rights of the European Union does not apply only to VAT, a field where the competence lies at the EU, but also generally for income tax. In item 59 of

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[156] See my website www.forssen.com, where the material to my project at the European Law programme for each of the years 2015–2020 are accounted for under: *Material Föreläsningar (FÖ) och Seminarier (SEM)* by Björn Forssén at Södertörn University (Sh), *Institutionen för samhällsvetenskaper (offentlig rätt)*, the Institution for Social Sciences (public law) as from 2015.

[157] See the legislation in that respect on 1 January, 2016: sec. 1 § lagen (2015:632) om talan om skattetillägg i vissa fall (the act on proceedings on tax surcharge in certain cases); Ch. 49 sec. 10 a first para and sec. 10 b of the SFL, SFS.2015:633; and sec. 13 b of the SBL, SFS 2015:634.

[158] See Björn Forssén, *Europatrappan – En normhierarkisk bild vid regelkonkurrens mellan svenska nationella och europarättsliga regler med skatterättsexempel* [The European stepladder (staircase) – a norm hierarchic figure at rule competition between Swedish national and European law rules with tax law examples]. Published in The Periodical Balans in printed version, Annex with advanced articles 4/2017, pp. 15–19, and on www.tidningenbalans.se 2017-09-01 (Forssén 2017b). Forssén 2017b is also available on www.forssen.com.

the court's protocol the HD mentioned thereby article 6(3) TEU, but not article 6(2) TEU. In article 6(3) TEU it is stipulated that the fundamental rights according to the European Convention are comprised by the Union law as general principles. What the HD states about the income tax is in effect only a political standpoint of the HD for the EU law's impact.[159] The HD should have regarded also article 6(2) TEU, which stipulates that the EU shall access to the European Convention, but that has not been ratified by the Member States. This means that the *ne bis in idem*-principle according to article 50 of the Charter is not applying to the non-harmonised income tax law. The principle of the EU law's supremacy over national law, which is expressed in the "Costa"-case,[160] must also be codified in the treaties (i.e. TEU and TFEU), so that national authorities and courts becomes obliged to *ex officio* (i.e. on one's own initiative) apply the EU law and thereby the *ne bis in idem*-principle according to article 50 of the Charter, when the present directive rule has direct effect.[161] An EU-constitution, where the principle of the EU law's supremacy over national law was codified, was decided in 2004, but was not ratified by all Member States.[162] The substitute, the Lisbon Treaty, was implemented in Sweden on 1 December, 2009 (SFS 2009:1110), but did not mean a codification of that principle in the treaties.[163] Thus, I consider that I have shown that the law of procedure is important in a constitutional perspective on the EU law. My proposal for a reform, with a common taxation frame for VAT and income tax, ensures legal certainty advantages on the theme of *ne bis in idem*, by the trial of evidence of for example a person's status as tax subject, as mentioned, not being made by double procedures for the two types of taxes.

[159] See sections 3 and 4.

[160] See section 9.2.1.

[161] According to the CJEU-case 26/62 (van Gend en Loos), ECLI:EU:C:1963:1, a directive rule has direct effect if it is clear, precise and unconditional and the time of implementation has run out.

[162] See Article I-6 in *Fördrag om upprättande av en konstitution för Europa* (Treaty establishing a Constitution for Europe), of 2004-12-16 (2004/C 310/1). See https://eur-lex.europa.eu/legal-content/SV/TXT/HTML/?uri=OJ:C:2004:310:FULL#C_2004310SV.01000101-d-004 (visited 2024-07-26).

[163] The Lisbon Treaty's complete title: *Lissabonfördraget om ändring av fördraget om Europeiska unionen och fördraget om upprättandet av Europeiska gemenskapen* (Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community). The treaty was decided and signed respectively in Lisbon 2007-10-19 and 2007-12-13 respectively and on 2009-11-03 it had been ratified of all the then EU27-states.