Composite transactions and semiotics regarding VAT

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1 Introduction

I mention, in inter alia my latest article in Svensk Skattetidning (abbreviated SvSkT), Swedish Tax Journal, that interest in effect consists of a typical value-added that would be subject to value-added taxation to or instance a bank, if not exemption from taxation for supply of bank- and financing services and trading of services was stipulated in Ch. 3 sec. 9 of *mervärdesskattelagen (1994:200)*, ML (the Swedish VAT act), in accordance with article 135(1)(b)-(f) of the EU's VAT Directive (2006/112/EC), the VAT Directive.[1] Interest is one example of a composite transaction, which can be divided into services consisting of the granting of credit and aministrative services. Thus, it is decisive for the determination of the value-added taxation to judge whether a consideration that for instance banks, financing institutes and other taxable persons receive gives rise to a transaction of goods or services for them according to Ch. 2 sec. 1 first para. no. 1 and third para. no. 1 of the ML compared with the articles 14(1) and 24(1) of the VAT Directive. Those rules constitute the main rules on transaction of goods ans services and deliveries of goods and supplies of services in the ML and the VAT Directive respectively.

Questions on VAT and composite transactions often concern Ch. 7 se. 7 of the ML, where a principle of division is stated as main rule for a division on a reasonable basis of the taxable amount, when differently composed transactions with respect of the theme taxable or exempt or concerning different tax rates exist. If a division is not possible, a principle of the principal is considered applying, where the dominating part of such composite transaction decides the question whether taxation or exemption shall apply and the question on applicable tax rate.[2] To save space, I do not mention in this article such typical questions on application, but focus on questions like the mentioned about on interest as an example of a composite transaction for VAT purposes. The question on the VAT treatment of a consideration should however not stay at the transaction perspective of the tax object, but for the research should the external limits of the VAT – i.e. of the scope of the VAT – be regarded also at the determination of the tax subject, i.e. concerning the for the VAT fundamental distinction that shall be made on the one hand of taxable persons according to Ch. 4 sec. 1 of the ML, which has the same wording as the main rule article 9(1) first para. of the VAT Directive, and on the other hand the consumers, which normally are private persons and shall carry the tax burden. In another context, I have written about a model for researchers and solicitors as a support for the treatment of the external limits of the VAT.[3] In this article, I make a deeper analysis of the same theme with more examples and show how a deep analysis of concepts can be necessary to make to judge composite transactions and to determine the external limits of the VAT.

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[1] See SvSkT 2019 (pp. 329-346), *Vouchrar och moms – regeltekniska aspekter och förslag till forskning* (Eng., Vouchers and VAT – law technical aspects and suggestions for research), below Forssén 2019a,, p. 344, where I refer to SOU 1989:35 (*Reformerad mervärdeskatt m.m.*), Eng., Reformed VAT etc., Part 1 p. 192.

[2] See the CJEU-case C-349/96 (CPP), item 32. CJEU, the Court of Justice of the EU.

[3] See The Periodical Balans Annex with advanced articles (*Balans fördjupning*) 3 2019 (pp. 19-26), *Mervärdesskattens yttre gränser – en modell för forskare och processförare vid jämförelse av mervärdesskattelagen med EU-rätten* (Eng., The VAT's external limits – a model for researchers and solicitors at comparison of the VAT Act with the EU law). (Below Forssén 2019b).

At the interpretation of the rules in the ML in relation to the rules in the VAT Directive, the scope of the VAT is most made partly of the determination of the tax subject, by the distinction of the taxable persons from the consumers (ordinary private persons), partly regarding the tax object, by the determination of on the one hand what is a taxable transaction of a service or goods and on the other hand what is a from taxation unqualified exemption of a service or goods. In this article, I reason about the VAT's external limits in relation to certain concepts, namely subsidies, interest and money. In connection with interest, I also bring up options, where not only the VAT Directive is concerned, but also the Council's regulation (EU) No 282/2011 laying down implementing measures for the VAT Directive (the Implementing Regulation). Nearest, I treat the tax object in relation to interest and options and money. Thereafter, I treat the tax subject in relation to what can be deemed constituting subsidies from the State and that considerations and agreements can lead to questions about number of transactions and about transactions of goods and services and transaction in the form of withdrawal at the same time. Furthermore, I mention semiotics as an element in models – tools – as support to judge complex VAT questions.

2 The tax object

2.1 Interest and options

If a taxable person who makes from taxation unqualified exempted transactions of services (or goods), and thus not having right of deduction or reimbursement of invoiced input tax on acquisitions to his activity still gets such a right, it is a matter of an illicit subsidy from the State of such taxable persons (entrepreneurs) according to article 107(1) of the Treaty on the Functioning of the EU (TFEU), since the competition is distorted. The CJEU has made that judgment in the case C-172/03 (Heiser), where the court considered that such an illicit subsidy from the State existed, when a physician according to Austrian VAT legislation could not be subject to taxation by adjustment of deductions of input tax for capital goods in the activity when the services that the physician supplied changed from being taxable to be unqualified exempted from taxation. Thereby, the TFEU sets up an external limit for the VAT's liabilities and rights. In that respect, I may mention the following regarding on the one hand what is a transaction of a service for VAT purposes and on the other hand what is pure interest.

In Forssén 2019a, I brought up, together with the law technical aspects and suggestions of research regarding vouchers for VAT purposes, the question on what constitutes a consideration where the earnings consist of a so-called. Thereby, I came back to my article in the SvSkT on bitcoins and VAT,[4] where I brought up that financial institutes profit by incomes of interest by the float, i.e. interest on the money placed on the market during the lapse of time emerging at the intermediation of payments made at banks etc. and which not yet have been entered on the bank customer's etc. (the receiver's) account. Moreover, I stated that the float can exist also by for example coupon enterprises, whereby I stated inter alia the following.

Luncheon coupons are according to the preparatory work to the special rules on vouchers in the ML an example of instruments that can be vouchers.[5] The coupon enterprise's earnings can then consist of the income of interest – the float – which arise by that enterprise having the money from he who has purchased coupons on his account until it pays for example a

[4] See SvSkT 2017 (pp. 95-106), *Bitcoins och mervärdesskatt*, Eng., Bitcoins and VAT (below Forssén 2017a).
[5] See prop. 2017/18:213 (*Mervärdesskatteregler för vouchrar*), Eng., VAT rules for vouchers, p. 15.

restaurant where a luncheon has been bought in exchange for a coupon. According to the preparatory work mentioned, the market for such restaurant vouchers has in itself decreased considerably the last decades, why the importance of the new rules on vouchers in the ML is less for a restaurant enterprise.[6] However, this does not change that it in principle can occur fixing of a border problems for example between what is consideration and what is such pure interest that shall not be included in the taxable amount at the determination of the scope of the special rules on vouchers.

Interest is, as above-mentioned, a consideration that constitutes a composite transaction, and which would cause problems regarding the fixing of a border between taxation and exemption, if not exemption was stipulated for financial services in the ML and the VAR Directive. Akother concept in the field of financial services which could cause the problems mentioned, and which I have mentioend in another context is options.[7] A composite transaction by an agreement which concerns a sale of an option regarding goods placed in an authorised tax warehouse according to Ch. 9 c sec. 3 of the ML situated within the country and sale of the goods after it has ceased to be placed in such a warehouse can cause that the tax amount for VAT will be lowered corresponding to the interest on the option. It is in conflict with the general rules of the VAT, but is possible, when it is a matter of one of the categories mentioned in Ch. 9 c sec. 9 of the ML (e.g. copper, coffee and tea), due to the special rules on who is tax liable in connection with transactions of goods in certain warehouses – like here with tax warehouses – in Ch. 9 c of the ML, which are based on the articles 154-163 of the VAT Directive. Therefore, I state in Forssén 2018a inter alia the following especially about article 9 of the Implementing Regulation and article 24(1) of the VAT Directive concerning private law options, regarding the need of a clarification in that directive rule.[8]

Article 9 of the Implementing Regulation concerns inter alia the main rule of transaction of services in the VAT Directive, i.e. article 24(1) of the VAT Directive. By article 9 of the Implementing Regulation follows that the sale of an option constitutes a transaction of a service according to article 24(1), provided that such a sale is a transaction within the field of application of article 135(1)(f) of the VAT Directive regarding trading of securities. The transaction of the service shall then be deemed as separated from the underlying transactions to which the service is pertaining.

To avoid competition distorting arrangements where the price of certain goods is lowered by transactions composed by sales of option and goods, I consider that there is a need of a clarification of what is comprised by the main rule in article 24(1) of the VAT Directive. The clarification should be made by introduction of a special item in article 24, not by article 9 of the Implementing Regulation.

> Thus, a concept like trading of securities should also henceforth be developed by the CJEU's case-law, like what has already been done by the CJEU-case C-2/95 (SDC) meaning that the trading of securities comprise documents which changes the legal and financial situation between the parties. It follows already by the CJEU-case C-235/00 (CSC) that the exemption in the directive's art. 135(1)(f) for transaction of securities regards transactions which entail legal and economical changes between the parties, whereby supply of a service which is only material, technical or administrative and which does not cause such changes between

[6] See prop. 2017/18:213 p. 24
[7] See *Balans fördjupning* 2018 (pp. 3-10), *Konkurrensfördelar med varuomsättningar efter momsfria omsättningar av varor i vissa lager och av finansiella tjänster* (Eng., Competition advantages with supplies of goods after VAT free supplies of goods in certain warehouses and of financial services). (Below Forssén 2018a).
[8] See Forssén 2018a p. 9.

> the parties constitutes taxable transactions. In my opinion it can be perceived as unclear whether an option constitutes securities for VAT purposes, if it especially for options would be stated in article 9 of the Implementing Regulation what alreayd follows by the CJEU's case-law.

For example the stockmarket is a second-hand market and there is no limit of it regarding options to purchase or sell shares. Thus, it should not exist any limitation of what constitutes securities besides what already is following by the last sentence of art. 135(1)(f) of the VAT Directive (and by article 15(2) of the VAT Directive). However, in my opinion there is a need to clarify what sort of options that are comprised by the unqualified exemption from taxation for financial servises, so that the specification means a fixing of a border of exemptions from taxation regarding trading of securities against private law options for which a second-hand market is missing as comprised by the general taxation of goods and services. Without such a clarifying fixing of a border, as a suggestion in a special item in article 24 of the VAT Directive, I consider that also the emission of private law options is comprised by the exemption from taxation according to article 135(1)(f) of the VAT Directive.

2.2 Money

In Forssén 2017a, I mentioned especially the Supreme Administrative Court's (*Högsta förvaltningsdomstolen*, HFD) advance ruling HFD 2016 ref. 6 and CJEU's preliminary ruling in that case, C-264/14 (Hedqvist). I made the following criticism against the HFD's ruling regarding the question on what is for VAT purposes constituting a transaction of service versus what constitutes money.

HFD 2016 ref. 6 concerned the question whether exchange services regarding bitcoins are comprised by the exemption from taxation regarding transactions of financial services in Ch. 3 sec. 9 of the ML. However, in the verdict is only a simplified judgment made of the question, where it is stated that bitcoins *is a means of payment*I (Sw., "är ett betalningsmedel") which *shows great similarities with electronical money* (Sw., "visar stora likheter med elektroniska pengar"). What was decisive for the exchange services being deemed comprised by the exemption was that *supply of bitcoins constitutes activity required to be reported as financial activity* (Sw., "tillhandahållande av bitcoins utgör verksamhet som kräver anmälningsplikt såsom finansiell verksamhet"). However, the HFD overlooked in my opinion the question on the difference between legal and illegal bitcoins, and reasons in its judgment only about *transactions consisting of exchange of traditional currency into the virtual currency bitcoin and vice versa* (Sw., "transaktioner […] som består av växling av traditionell valuta till den virtuella valutan bitcoin och omvänt"). In my opinion can the virtual currency bitcoin not be deemed equal with e-money without a deeper analysis of what is meant with money. Thus, I consider that neither the advance ruling HFD 2016 ref. 6 nor the CJEU's preliminary ruling in the case, C-264/14 (Hedqvist), have the sufficient underpinning. In my opinion should new trials of bitcoins for VAT purposes be made, where a terminology with such various meaning that is stated for example in the Government's report on electronical money (SOU 1998:14), regarding what alternately is understood with money, is regarded.

3 The tax subject in relation to what can be considered constituting subsidies from the State

When it is a matter of the liabilities meant to be considered by a person deemed to be a taxable person – tax subject – it may be mentioned that the CJEU in the case on labour legislation C-212/04 (Adeneler et al.) considered that the principle of an EU conform

(directive conform) interpretaion of a rule in national law does not mean an obligation for the Member States to interpret the rule in conflict with its wording (*contra legem*), which I mentioned in my doctor's thesis.[9] Thus, the constitutional principle of legality applying for taxation meausres according to Ch. 8 sec. 2 first para. no. 2 of *regeringsformen (1974:152)*, the 1974 Instrument of Government, means that a directive rule cannot be enforced against the will of the individual, if a literal interpretation of the corresponding rule in the ML does not cover the taxation measure by the State.[10]

Concerning the rights that a taxable person has by being comprised by the VAT, it is in my opinion to be denoted as an extreme interpretation result regarding a rule in the ML that an ordinary private person would be comprised by the VAT and have a right of VAT deduction, for example for purchases at the grocer's shop. That would namely set aside the fundamental conditions for the VAT according to the EU law, i.e. the basic idea that the VAT is a tax on consumption which shall be carried by the consumer, who normally is a private person.[11]

If the consumer – like a taxable person (entrepreneur) could make a claim regarding VAT against the State, it would be a matter of some sort of subsidy from the State. Then it is not only a matter of an illicit subsidy from the State to a taxable person, but a case of an ordinary private person being able to invoke the interpretation result to in principle getting money from the State as if it would be a question of a claim of input tax against the State.

> Such an interpretation result regarding a rule in the ML would in my opinion not be an interest worthy of protection according to the constitutional principle of legality for taxation measures. The claim against the State should not be possible to exercise by the individual, since it would be based on an extreme interpretation result and exercising of the right that would follow by the wording of the rule would be in conflict with the principle of prohibition of abusive practice, which follows by the CJEU's case C-255/02 (Halifax et al.).[12] I have mentioned this also in Forssén 2019a, where I inter alia mention that the expression "annan person" (Eng., other person) in Ch. 2 sec. 13 of the ML should be altered into "beskattningsbar person" (Eng., taxable person), so that an ordinary private person (consumer) cannot be comprised by the special rules on vouchers for VAT purposes which were introduced in the ML on 1 January, 2019 according to the Council's directive (EU) 2016/1065.[13]

4 One consideration and one and the same agreement respectively can entail questions on number of transactions and on transactions of goods and services and transaction in the form of withdrawal at the same time

4.1 One consideration can correspond with more than one transaction

In Forssén 2019a, I mentioned that there is not any common EU-definition of intermediation with respect of VAT.[14] It means that interpretation and application problems concerning another of the special rules on who is tax liable than the mentioned Ch. 9 c of the ML, namely concerning the special rule in Ch. 6 sec. 7 of the ML on the tax liability for intermediation *in one's own name* (Sw., *i eget namn*) of goods or service for a mandator.

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[9] See *Skatt- och betalningsskyldighet för moms i enkla bolag och partrederier* [Eng., Tax and payment liability to VAT in *enkla bolag* (approx. joint ventures) and *partrederier* (shipping partnerships)], Örebro Studies in Law 4 2013 (below Forssén 2013), section 1.2.2.
[10] See Forssén 2013, sections 1.2.2 and 2.7.
[11] See Forssén 2013, section 2.7.
[12] See Forssén 2013, section 2.7.
[13] See Forssén 2019a pp. 331-333.
[14] See prop. 2017/18:213 p. 18.

The special rule on tax liability in Ch. 6 sec. 7 of the ML means that the intermedaition of goods or services gives rise to a transaction as well for the intermediary as for the mandator. Nearest corresponding rules in the VAT Directive are the articles 14(2)(c) and 28 of the directive. In the present context, I do not go into any comparison of the rules and their scope, but I may here instead point out that the same consideration can be deemed corresponding with more than one transaction according to the HFD's case RÅ 2002 ref. 113. According to that case the HFD's case-law means that an intermediary who in his own name sells for example goods for the mandator can be deemed making a special transaction regarding the intermediation service that the intermediary thereby is making for the mandator, and not only the transaction that the intermediary like the mandator is considered making of the goods according to Ch. 6 sec. 7 of the ML.[15]

Although the question whether the same consideration can be deemed corresponding more than one transaction often diappear in practice, by the intermediary having made his mark-up in the pricing of the goods and therefore does not take out any special commission for the intermediation service, the question is still decisive in principle for the one or those who are treating composite transactions for VAT purposes. The problem in question exists, due to the VAT Directive lacking a definition of the concept intermediation, regardless whether an analysis of the intermediation question is made only set out from the ML or by an EU conform (directive conform) interpretation where, in accordance with article 288 third para of the TFEU, the result that shall be achieved with the VAT Directive is, if possible, regarded.[16]

By the way, the special rule on tax liability in Ch. 6 sec. 7 of the ML is originating from the general goods tax from 1959, which was replaced by the first Swedish legislation on VAT of 1969, i.e. of *lag (1968:430) om mervärdeskatt*, more precisely from third para. first sen. in the instructions to sec. 12 of *Kungl. Maj:ts förordning (1959:507) om allmän varuskatt* (Eng., the Swedish royal regulation on general goods tax). The same applies to the so-called representative rule, Ch. 6 sec. 2 of the ML, which originates from the regulation of 1959. I consider that the same question exists regarding Ch. 6 sec. 7 that I treated concerning the representative rule in Forssén 2013, namely whether the tax subject according to the ML can be an ordinary private person or an employee by a taxable person, [17] which is in conflict with the main rule on who is taxable person according to the main rule article 9(1) first para. of the VAT Directive, whose wording has been implemented literally in Ch. 4 sec. 1 of the ML, its wording according to SFS 2013:368. I have mentioned that question regarding Ch. 6 sec. 7 of the ML in another context,[18] and stay here to save space at referring thereto and reconnecting to my article in the SvSkT on hiring out of personnel within health care and social care.[19] There I refer to that I have mentioned that the CJEU according to items 23 and 24 of the CJEU-case C-594/13 ("go fair" Zeitarbeit) states that the exemption from taxation of supply of services and goods closely linked to welfare or social security work in article 132(1)(g) of the VAT Directive is not directly applicable on personnel in a staffing enterprise, since it is not the employees who are the taxable person and that they according to article 10 of the directive are excluded from that concept precisely in their capacity of employees.[20] In my opinion, that confirms that already an interpretation result meaning that employees would be comprised by the VAT is to be denoted as extreme, since it sets aside the for the VAT fundamental distinction that shall be made between taxable persons and consumers, which typically are ordinary private persons or employees by taxable persons.[21]

[15] See Forssén 2019a p. 336.
[16] See Forssén 2019a p. 336.
[17] See Forssén 2013, sections 1.5, 6.2.1.1 and 7.1.3.3.
[18] See *Momsrullan: En handbok för praktiker och forskare* (Eng., The VAT roll: A handbook for practicians and researchers), Melker Förlag 2018 (below Forssén 2018b), pp. 81 and 82.
[19] See SvSkT 2017 (pp. 15-25), *Bemanningsföretagens momsstatus inom vård och omsorg*, Eng., The staffing enterprises' VAT status within health care and social care (below Forssén 2017b).
[20] See Forssén 2017b p. 17.
[21] See Forssén 2018b p. 82.

4.2 One and the same agreement can entail questions on transactions of goods and services and transaction in the form of withdrawal at the same time

When writing a contract the ambition is often to determine a common price for several efforts which shall lead to a final product. It can mean that several VAT questions are treated as one, with a common tax amout, when a division of the question should be made in more than one step for VAT purposes.

I have inter alia in the SvSkT brought up the problems in question in connection with the rules on so-called tax liability within the building sector which were introduced into the ML on 1 July, 2007, by SFS 2006:1031 (and SFS 2006:1293), which was done by permission from the EU according to article 27 of the Sixth VAT Directive 77/388/EEC (nowadays article 395 of the VAT Directive), to prevent certain types of tax evasion or tax avoidance.[22] I state there that the legislator may have overlooked that a temporary participant in a chain of contractors can avoid the rules on reverse charge and instead apply the general VAT rules. An enterprise which is both supplying external contract services and erects buildings under personal management has right of deduction in the whole of his building activity and is subject to taxation by withdrawal for services on his own buildings. The transfer of the building – the goods – is exempted from taxation according to the main rule in the field of real estate (Sw., *fastighetsområdet*), Ch. 3 sec. 2 first para. of the ML. The building services becomes instead subject of value-added taxation at the contractor who is completing the building in his own building activity, before selling the building (the goods) VAT free, by the completion constituting a transaction in the form of withdrawal – i.e. a withdrawal of service according to Ch. 2 sec. 7 of the ML. Then an enterprise that is tax liable, and aqquires the building VAT free from the temporary participant in the chain of contractors can, according to Ch. 8 sec. 4 no. 4 of the ML, deduct the VAT on withdrawal, even if the temporary participant in question has not paid output tax to the State on the transaction that the withdrawal of building services constitutes, despite that he is liable to do so.[23] That is in conflict with the idea with the rules on reverse charge, i.e. that they shall stop a building enterprise invoicing contract services by charging output tax but not accounting for and paying it to the State, whereas an enterprise in the chain of contractors that purchases the services has the right to make a deduction of the VAT amount paid as input tax.

Thus, in my opinion can one and the same contract regarding commission of a building contain judgments for VAT purposes of all of the concepts, goods, service and withdrawal. In my opinion, it is important to consider for anyone writing a contract on for instance sale of a building, with or without land, so that the taxable amount for VAT will be correct and a contractor in such a case accounts for the VAT amounting to the building under personal management. The situation is only seemingly a composite transaction, when the contractor is invoicing a price to the purchaser of the building as a lump sum according tp the contract, and only account output tax to the State with the same amount that has been deducted as input tax on the acquisition regarding the erecting of the building. It is for VAT purposes a matter of

[22] See SvSkT 2007 (pp. 195-206), *Omvänd skattskyldighet inom byggsektorn – skapar den flera momsproblem än den löser?*, Eng., Reverse charge within the building sector – does it cause more VAT problems than it solves?, and Ny Juridik (Eng., New law) 1/2007 (pp. 46-60), *Omvänd skattskyldighet inom byggsektorn – skapar flera momsproblem än den åtgärdar?*, Eng., Reverse charge within the building sector – does it cause more VAT problems than it is fixing?

[23] See also Balans fördjupning 1/2019 (pp. 10-16), *Luckor och andra brister i mervärdesskattelagen på fastighetsområdet*, Eng., Gaps and other lacks in the VAT act in the field of real estate (below Forssén 2019c), pp. 14 and 15). On 1 January, 2016 was, by SFS 2015:888, Ch. 8 sec. 4 first para. no. 4 altered into Ch. 8 sec. 4 no. 4 of the ML.

two different transactions, although the price is determined in one and the same contract. For the carrying out of the building service, the contractor shall account for withdrawal VAT and accounts the sale of the building (the goods) as VAT free. Even if the building would be sold the same day as it can be used, and VAT on the withdrawal shall be accounted for according to Ch. 13 sec. 13 of the ML in the VAT return for the same accounting period as for which VAT free transaction due to the sale is accounted, it is a matter of different transactions, i.e. of two for VAT purposes in principle separate transactions – the erecting of the building under personal management (the withdrawal) and the sale of the finished building respectively.

> Moreover, the contractor shall typically acount more output tax on the withdrawal of the building service than what he has deducted as input tax on acquisitions regarding the building under personal management. This follows by Ch. 7 sec. 5 first para. stipulating that the tax amount for withdrawal according to Ch. 2 sec. 7 or sec. 8 of the ML, concerning services regarding real estate, rights of tenancy and tenant-owners' rights, consisting not only of the costs invested in for instance the erecting of a building, but also of a calculated interest on equity and, for the case the contractor is a natural person and not a legal person, of the value of the work that the tax liable person has done personally when carrying out the building procedure. Thus, to use in the contract regarding the sale of the building, without a closer judgment, a lump sum as a common tax amount for the building services and for the VAT free sale of the building, with or without land, can cause increase of the VAT in retrospect for the contractor, regardless of the enterprise form the contarctor is using.

I consider, with respect of the above-mentioned, that the legislation on the whole should review the withdrawal rule for building activities in Ch. 2 sec. 7 of the ML. If the legislator wants to stop practices to circumvent the rules on reverse charge within the building sector according to the ML which are leading to the State losing VAT incomes, should furthermore an overview of the withdrawal rule in Ch. 2 sec. 7 of the ML be made in relation to precisely the rules on reverse charge.

5 Semiotics as an element in tools to support judgments of complex VAT questions

In Forssén 2019b, I have, as mentioned in the introduction, written about a model for researchers and solicitors as a support for the treatment of the external limits of the VAT. Here I come back to something that should give both the legislator and researchers and Här solicitors working with rules on VAT support, where writing and interpretation of rules on VAT are concerned, regardless of which models they are using, namely my article from 2018 in *Tidskrift utgiven av Juridiska Föreningen i Finland* [Eng., The journal published by the Law Society of Finland (abbreviated JFT)], which is about using legal semiotics within for instance the VAT law.[24]

In Forssén 2018c, I developed a side issue from Forssén 2013 regarding applicable tax rate in connection with the creation of artistic and literary works, when authors and artists create common literary and artistic works and use the enterprise form *enkelt bolag* (Eng., approximately a joint venture) for the co-operation, for instance to create a stage play or a film. I focused on the question whether each one of them, by his or her contribution (transaction) to the co-operation in the *enkla bolaget* (Eng., approx. joint venture) results in the play (or the film), has created a literary or artistic work comprised by sec:s 1, 4 or 5 of *upphovsrättslagen (1960:729)*, URL – Eng., the Copyright Act. In that case, he or she is liable to account for VAT at the reduced tax rate of 6 per cent, and if so is not the case applies instead the general tax rate of 25 per cent for his or her transaction. This is due to the rule on

[24] See JFT 5/2018 (pp. 307-328), *Juridisk semiotik och tecken på skattebrott i den artistiska miljön*, Eng., On signs of tax crime in an artistic environment (below Forssén 2018c).

reduced VAT in the present case, Ch. 7 sec. 1 third para. no. 9 of the ML,[25] refers to the rules for independent works according to sec:s 1, 4 or 5 of the URL, and thus applies for the person whose work is deemed fulfilling the unique principle and thereby passing the threshold of originality, whereas an *enkelt bolag* is not a legal entity and common works according to sec. 6 of the URL are not stated in Ch. 7 sec. 1 third para. no. 9 of the ML. Then applies, for each participant in the described situation with composite transaction for creation of the finished work, that each transaction in itself is comprised by the general tax rate of 25 per cent according to Ch. 7 sec. 1 first para. of the ML.

> To make easier the judgment of the complex situation when production companies within the sector of culture shall apply the VAT rules on each part of a composite transaction I use a doll's house as an idea figure regarding the theatre where the finished stage play shall be performed, so that the taxable persons who take part in the creative process will be given a more simple judgment of his or her own regarding which tax rate he or she shall apply, depending on to which room of the theatre – or step in the creative process – the person in question is pertained.[26] By the way, I have in the SvSkT, like in Forssén 2013, described the same problem regarding the rule in question on reduced tax rate without the idea figure of a doll's house, i.e. without an element of semiotics in connection with the way of approach to judge complex VAT problems.[27]

The doll's house is an example of the use of semiotics as a support for the judgment of for example complex questions within law, where the idea figure of the doll's house forms various contexts for different parts of the creative process which shall result in for instance a stage play. I state in Forssén 2018c that semiotics of tax law should be used as an element in models – tools – as support to judge complex questions, to, concerning different contexts where a certain concept occur, reason about various environments, like in the mentioned example on VAT with an imagined theatre where the play that shall be created could be performed. Objective signs which constitute connotations to for example a judgment of a rule on VAT can also consist of certain attributes connected to a certain person. I also brought up inter alia the following imagined example from the artists' world, which may illustrate how such a judgment can be made.

> The painter Michael Angelo wears a beret. He is an actor too, and wears also then his beret, which thereby constitutes an attribute to a character he is making on stage and on films. Therefore, the beret in itself can be sufficient to determine if he supplies a right according to sec. 1 of the URL, when he for instance is appearing in a stage play or a film. What then can be decisive is that he is wearing his beret in such an environment. Thus, the beret can, besides its practical function as a headgear, constitute an attribute, an objective sign that he is not only acting in the capacity of the private person Michael Angelo but rather as the artist Michael Angelo. Thus, the actor Michael Angelo can be deemed performing an artistic work already by him, when he performs in a stage play or in a film, wearing his beet, and thereby be deemed making a from VAT exempted transaction of service according to Ch. 3 sec. 11 no. 1 of the ML.[28]

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[25] By SFS 2019:261 was on 1 July, 2019 the third para. no. 8 altered into third para. no. 9 of Ch. 7 sec. 1 of the ML.
[26] See Forssén 2018c pp. 317-320.
[27] See SvSkT 2018 (pp. 646-658), *Kulturproduktion i enkla bolag och tillämpliga momssatser samt momssituationen för bolag som producerar artistframträdanden*, Cultural production in *enkla bolag* (approx. joint ventures) and applicable VAT rates and the VAT situation for *bolag* producing artistic performances (below Forssén 2018d), pp. 650-652.
[28] See Forssén 2018c pp. 323-325.