The Making of Tax Laws – Law and Language issues

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PREFACE

This book, *The Making of Tax Laws – Law and Language issues,* is an edited offprint of Part D of *The Entrepreneur and the Making of Tax Laws – A Swedish Experience of the EU law: Second edition*. In that book I presented The Making of Tax Laws, meaning fiscal sociology aspects on the tax rules as such, as thusly a new branch of fiscal sociology concerning certain aspects regarding the making of tax laws. It concerns primarily studies about the process of the making of tax law**s** and mustn't be confused with studies on the making of tax law, which primarily concerns e.g. studies about law history.

This book concerns Communication Distortions within tax rules and Use of language in law, hence the title *The Making of Tax Laws – Law and Language issues*. The underlying issue concerns *how* communication distortions occur between the legislator's intentions with tax rules and the perception of them within a general context of the use of language in law. It's about linguistics and pedagogy with respect of the topic law and language. In this book I'm mainly leaving out systematic imperfections concerning the making of tax laws and consequences of communication distortions. Instead I'm reasoning here from the linguistic law and language perspective about *why* a text containing e.g. an imperative to pay tax may as such make a poor tool to convey that intention of the legislator to the tax subject, e.g. to an entrepreneur. Thereby a resulting question is whether there's any pedagogy to support a decrease of a risk of the described communication distortions occurring by way of a method of text processing that makes the final text – making the present tax rule – more likely to correspond in terms of communicative precision with the legislator's intention. Thus, this book chiefly concerns avoiding the described communication distortions by first and foremost avoiding textual imperfections in the mentioned communicative respect regarding the making of tax laws.

Thus, in this book the focus is set more on the language issue itself than on imperfections in the system which is supposed to convey the legislator's intentions with tax rules.

Stockholm in January 2016
Björn Forssén

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ABBREVIATIONS

art., article
BKA, Book-keeping Act
C, curia (about the CJEU)
Ch., chapter
Cit., citation
CJEU, Court of Justice of the EU
CTP, Code of Taxation Procedure
EC, the European Community
ECHR, the European Convention of Human Rights
ECR, European Court Reports
EEC, European Economic Community
e.g., exempli gratia, for example
et al., and others
etc., etcetera
EU, (the) European Union (or the Union)
F, (in F-tax), *företagare* (i.e. entrepreneur)
FS, fiscal sociology
GST, goods and services tax
HD, *Högsta domstolen* (the Supreme Court)
HFD, *Högsta förvaltningsdomstolens* (the SAC); also concerning the HFD's yearbook
HST, harmonized sales tax
i.e., id est, that is
IT, information technology
ITA, Income Tax Act
LFT, Logic Function Tree
LSt Stockholm, *Länsstyrelsen i Stockholms län* (i.e. the County Administrative Board of Stockholm)
Moms, abbreviation of *mervärdesskatt* (compare: VAT)
No., number
OECD, Organization for Economic Co-operation and Development
p., page; pp., pages
para., paragraph
PBL, problem-based learning
POTB, passing on the tax burden
Rec., *Recueil de la Jurisprudence de la Cour*
ref., report case
REG, *Rättsfallssamling från EU-domstolen, Tribunalen och Personaldomstolen*
RÅ, *Regeringsrättens årsbok* (from 2011 HFD)
SAC, the Supreme Administrative Court
SC, Swedish Constitution
SE, Sweden
sec., section
SFS, *svensk författningssamling*, Swedish Code of Statutes
SKV, *Skatteverket* (i.e. the tax authority)
TFEU, Treaty on the Functioning of the EU
UK, United Kingdom
US, United States
v., versus
VAT, value added tax
VATA, Value Added Tax Act
www, world wide web

1. OUTLINE OF THE BOOK

In the main book, i.e. Forssén 2015 (1), I've mentioned in parts A-C that the topic of the making of tax laws borders e.g. the disciplines linguistics and pedagogy.[1] In part D, i.e. in this book, the focus is set on the language itself, where I analyse the issue on *how* communication distortions occur between the legislator's intentions with tax rules and the perception of them within a general context of the use of language in law. Thereby this book connects mainly to Part B in Forssén 2015 (1) and concerns linguistics and pedagogy with respect of the topic law and language. Thus, in this book I'm mainly leaving out systematic imperfections concerning the making of tax laws and consequences of communication distortions, which are dealt with in parts A and C in Forssén 2015 (1).

In this book I'm reasoning from the linguistic law and language perspective about *why* a text containing e.g. an imperative to pay tax may as such make a poor tool to convey that intention of the legislator to the tax subject, e.g. to an entrepreneur. A resulting question thereby is whether there's any pedagogy to support a decrease of a risk of the described communication distortions occurring by way of a method of text processing that makes the final text – making the present tax rule – more likely to correspond in terms of communicative precision with the legislator's intention. Thus, this book chiefly concerns avoiding the described communication distortions by first and foremost avoiding textual imperfections in the communicative respect recently mentioned regarding the making of tax laws.

This book contains the following:

- Chapter 2, LAW AND LANGUAGE AND THE MAKING OF TAX LAWS, with sections: 2.1, Introduction; 2.2, The use of language in law; and 2.3, Communication distortions within tax rules.

- Chapter 3, PEDAGOGY TO DETECT IMPERFECTIONS WITHIN TAX RULES INCREASING RISKS OF COMMUNICATION DISTORTIONS, with sections: 3.1, Introduction; section 3.2, Suggested models for detection of risks of communication distortions regarding the use of the concept tax liable instead of taxable person in the main rule on VAT deduction and in the representative rule (which I often

[1] See Forssén 2015 (1): Part A, sec:s 1.2 and 4.2, Part B, sec. 1.3 and Part C, sec. 1.1.

refer to as the models);[2] 3.3, Some more examples for using the models in the process of the making of tax laws regarding communication distortions caused by the use of the concept tax liable instead of taxable person; 3.4, Example of the use of the models to detect risks of communication distortions regarding restrictions of rights in the VAT Directive allowed by the EU law if such restrictions are in conflict with the VAT principle itself; 3.5, The models described as logic function trees; 3.6, Seriation as a supplementation to the models; and 3.7, Tax audit or the process of the making of tax laws supported by software based on the models adapted into logic function trees.

- Chapter 4, SUMMARY AND CONCLUDING VIEWPOINTS, with sections: 4.1, Summary; and 4.2, Concluding viewpoints.

[2] See sec. 3.2 and also Forssén 2015 (1): Part B, sec:s 3.3.2.2, 3.3.2.3, 4.1 and 4.2.

2. LAW AND LANGUAGE AND THE MAKING OF TAX LAWS

2.1 INTRODUCTION

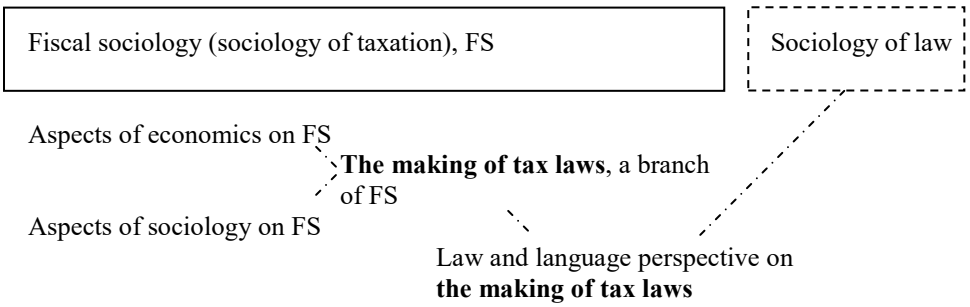
A legal theorist may argue for all interpretation beginning with a text.[3] That's true – at least were the EU and e.g. Sweden are concerned – about tax rules being rules that are required to be determined by texts, since the principle of legality for taxation measures of the Swedish Constitution 1974 means that interpretations of such rules mustn't be made in conflict with their wordings, i.e. an interpretation mustn't be made *contra legem*.[4] However, laws aren't generally written norms. Thereby I refer to Endicott 2014, where inter alia the following is stated: "Laws are not linguistic acts, or even communicative acts. They are standards of behaviour that can be communicated (and may be made) by using language".[5] That's important to remember when reading this book, since I'm *not* reasoning here about problems with establishing the current law meaning of a tax rule, but instead first and foremost about the conveying of the legislator's intentions with a tax rule establishing obligations or rights regarding taxation and distortions occurring concerning the individual's perception of the present rule. Such communication distortions may be detected by legal theorists or courts interpreting the current law meaning of the present tax rule, but that's not the only way of identifying them. Communication distortions may also be discovered by those applying the rule and they may – or may not – raise the problems before or without going to court, e.g. in the press or by addressing trade unions or employers' organizations. This calls for fiscal sociology studies in the meaning of this book, i.e. the concept sociology of taxation (fiscal sociology) restricted to the meaning tax rules as a proper tool for the purpose of transmitting the legislator's intentions with a tax rule.

In the latter meaning of fiscal sociology parts A-C of Forssén 2015 (1) have been about *how* communication distortions occur between the legislator's intentions with tax rules and the perception of them. However, in this book I'm restricting my fiscal sociology reasoning another step to an analysis of such distortions within a general context of the use of language in law, where in the first place comments in the latter respect from Endicott 2014 serve as underpinning reasons to *why* a text making a tax rule may poorly convey the legislator's intentions with it to the tax subject.

[3] Compare Ståhl et al. 2011, p. 41. See also Forssén 2011, p. 68.
[4] See Forssén 2015 (1): Part A, sec. 1.3.
[5] See Endicott 2014, sec. 2.1.

The latter mentioned language question – i.e. *why* etc. – exists regardless of the system in which those making the tax laws are working. Therefore, this book leaves out questions about systematic imperfections concerning the making of tax laws [Part A of Forssén 2015 (1)] and consequences of communication distortions [Part C of Forssén 2015 (1)], but connects instead to Part B of Forssén 2015 (1), where I mention experiences of *how* communication distortions in the meaning of this book occur.

Forssén 2015 (1) is about sociology aspects on the tax rules as such and presents thereby a new branch of fiscal sociology, which I name the making of tax laws. I'm not introducing it as a new subject, since that might cause confusion with the broader concept sociology of taxation, i.e. fiscal sociology, but if I would deem the making of tax laws a subject in its own right I'd name it sociology of tax laws. Thus, I don't regard the making of tax laws a subfield to fiscal sociology, but a bridge between aspects of economics and of sociology on fiscal sociology in these broader senses. Issues mentioned in this book, i.e. aspects on the making of tax laws from a perspective of law and language, may be referred under the subject of sociology of law. Since fiscal sociology is a subject in its own right and primarily dealing with aspects of economics and sociology regarding it, not necessarily with laws on taxation, I distinguish fiscal sociology from sociology of law. I consider, as mentioned, the making of tax laws a branch of fiscal sociology, but the law and language perspective on the making of tax laws should of course also be deemed a topic within sociology of law. Sociology of law seeks universal knowledge on the causality between legal and society factors. Thereby the law is examined partly as a product of society factors, partly as a factor that itself influences society. Sociology of law uses empirical methods which in general isn't the case with law dogmatic studies.[6] By the figure below I elucidate the position of the making of tax laws in the respects mentioned:



[6] See Forslund 1978, p. 59. See about the law dogmatic method: Forssén 2015 (1) Part A, sec. 1.3.

In section 2.2 I'm mentioning problems in general with the use of language in law and in section 2.3 I'm reasoning from the linguistic law and language perspective about *why* a text containing e.g. an imperative to pay tax may as such make a poor tool to convey the legislator's intentions with a tax rule to the tax subject, e.g. to an entrepreneur. In Chapter 3 I'm reasoning about whether there's any method to support a decrease of a risk of the described communication distortions occurring. Thereby it's in this book still not a matter of any law dogmatic analysis of the current law meaning of a tax rule,[7] but only a matter of reasoning about a pedagogy for the sake of a text processing that makes the final text – making the present tax rule – more likely to correspond in terms of communicative precision with the legislator's intention.

2.2 THE USE OF LANGUAGE IN LAW

In this section I'm mentioning, based in the first place on Endicott 2014, some problems in general with the use of language in law.

No legal system consists only of linguistic acts, A written act may be giving legal force to the civil code and to the criminal code in a civil law system. However, the validity of the written constitution will depend on a norm which isn't created by the use of signs, namely the rule that *that* text is to be treated as setting out the constitution. Therefore, law isn't an assemblage of signs, but – in the sense that's relevant here – law is the systematic regulation of the life of a community by standards treated as binding the members of the community and its institutions.[8]

Another conclusive reason not to say that a law is an assemblage of signs is that when a lawmaking authority does use language to make law the resulting law isn't an assemblage of signs. A general fact about communication is namely that a communicative act is the *use* of an assemblage of signs to some effect. The law made by an authority using words to make law is a standard or standards whose existence and content are determined by the legal effect that the law ascribes to that use of words. Thus, when a law is made by a lawmaking authority – as when a legislature uses a lawful process to pass an enactment that is within its powers – and it's thereby using signs to make law that law is a standard for conduct – not an assemblage of signs.[9]

Thus, as mentioned in the previous section, laws are not linguistic acts, or even communicative acts. They are standards of behaviour that can

[7] See Forssén 2015 (1): INTRODUCTION, concerning part B.
[8] See Endicott 2014, sec. 2.1.
[9] See Endicott 2014, sec. 2.1.

be communicated (and may be made) by using language. In e.g. Endicott 2014 a case from the UK in the mid 1900's, *Garner v. Burr*, is used to illustrate the problems with language and interpretation in the present respect.[10] I summarize those problems here and get back to it for comparison in the next section:

- The subject of *Garner v. Burr* was the definition of *vehicle*. A farmer had strapped wheels to his chicken coop and towed it along the road with his tractor. However, those wheels were ordinary iron tyres, not pneumatic tyres, and therefore liable to damage the roads. This was considered contrary to a rule in the *Road Traffic Act* 1930, forbidding the use of vehicles without rubber tyres on the public highway. When prosecuted, the farmer's successful defence was that his chicken coop was not a *vehicle*, and on those grounds the magistrates acquitted him. On appeal, the appeal court reversed that decision. The Lord Chief Justice accepted that a *vehicle* is primarily a means of conveyance with wheels or runners used for the carriage of persons or goods, and noted that neither persons nor goods were being carried in the poultry shed at the relevant time. He nevertheless held that an offence had been committed, and considered that the magistrates: "[...] ought to have found that this poultry shed was a vehicle within the meaning of s1 of the Road Traffic Act of 1930".[11]

- The magistrates and the appeal court disagreed over the effect of principles, namely a principle that the purposes for which Parliament passed the statute ought to be pursued and a principle that statutes ought only to be read as imposing criminal liability if they do so unequivocally. Assuming those principles are *legal* principles, in the sense that a decision in accordance with the law must respect them, the tension between the principles might be resolved in two ways according to Endicott 2014. There it's also presumed, since the magistrates' reasons aren't known, that the magistrates resolved the tension in the first way (1.) and that the appeal court resolved it in the second way (2.), namely:

  1. by concluding that Parliament's purposes can be respected appropriately while still construing the prohibition strictly, so that it is no offence to use something on the road that is not unequivocally within the meaning of the term *vehicle*, or

[10] See Endicott 2014, sec. 2.2. See also Charnock 2007, sec. 6.2.
[11] See Endicott 2014, sec. 2.2 and Charnock 2007, sec. 6.2.

2. by concluding that Parliament's purpose is sufficiently clear that it can be pursued without jeopardising the principle that criminal liabilities ought to be clearly spelled out, even if someone might reasonably claim that a chicken coop on wheels is not a *vehicle*.[12]

- This is a common sort of disagreement in law and it shows that language might be of no particular importance in law, since the two courts didn't disagree over any question of language, but only over whether they ought to give effect to Parliament's evident purpose (of protecting roads) by convicting, or whether it would be unfair to the farmer. Instead they disagreed over the legal effect of the *use* of a word, i.e. *vehicle*. This sort of disagreement is common and according to Endicott 2014 we seem to find a paradox: competent speakers of the English language presumably share a knowledge of the meaning of the word *vehicle*, yet they disagree over how to *use* the word.[13]

- To resolve the apparent paradox, it's suggested in Endicott 2014 that what speakers of the English language share is an ability to use a word like *vehicle* in a way that depends on the context. Endicott 2014 argues for that a question of whether a chicken coop on wheels counts as a *vehicle* would be a different question – and might have a different answer – if another statute or regulation e.g. imposed a tax on *vehicles*. The Lord Chief Justice was right that a dictionary definition of *vehicle* couldn't conclude the question of whether the chicken coop was a *vehicle* in *Garner v. Burr*, since the purpose of a dictionary definition is to point the reader to features of the *use* of the word that can be important in a variety of more-or-less analogical ways in various contexts. Furthermore Endicott 2014 argues for that a definition of *vehicle* as a mode of conveyance offers the reader one central strand in the *use* of that word, but does not tell the reader whether a more-or-less analogical extension of the word to a chicken coop on wheels is warranted or unwarranted by the meaning of the word.[14]

- Endicott 2014 also offers another way of stating the mentioned resolution of the apparent paradox, namely to distinguish between the meaning of a word (which the magistrates and the appeal judges all knew) and a decision about how to interpret a communicative act *using* the word (over which they disagreed):

[12] See Endicott 2014, sec. 2.2.
[13] See Endicott 2014, sec. 2.2.
[14] See Endicott 2014, sec. 2.2.

What the courts in *Garner v, Burr* shared was a knowledge of the meaning of the word *vehicle*, and what they disagreed over was the effect of the statute.[15]

- Endicott 2014 notes that it's the importance of the *context of* the word's *use* that requires anyone addressing the problem in *Garner v. Burr* to make evaluative judgments, just to apply the putatively descriptive term *vehicle*. The *context of use* is a criminal prohibition imposed for a presumably good public purpose of protecting road surfaces. To determine in that context whether the word *vehicle* extends to a chicken coop on wheels, it's necessary to address and to resolve any tension between the two principles mentioned above: The importance of giving effect to the statutory purpose, and the importance of protecting people from a criminal liability that has not been unequivocally imposed. The importance of that context means that the question of the meaning and application of the language of the statute cannot be answered without making judgments on normative questions of how those principles are to be respected.[16]

- Endicott 2014 also notes inter alia that the dependence of the effect of legal language on context is an instance of a general problem about communication, which philosophers of language have approached by distinguishing semantics from pragmatics, thereby trying to distinguish the meaning of a linguistic expression from the effect that is to be ascribed to the *use* of the expression in a particular way, by a particular user of the language, in a particular context. Language has a context-dependence, and I agree that the distinction mentioned is of interest for the work of legal scholars and theorists in defending particular interpretations of legal language. Of course, I too agree to the conception mentioned in Endicott 2014 amongst philosophers, meaning that law has one special feature that distinguishes it from ordinary conversation, namely that legal systems need institutions and processes for adjudication of the disputes about the application of language that arise – partly – as a result of its context-dependence.[17]

Although agreeing with Endicott 2014 in the senses recently mentioned, note that I'm not emphazising interpretation of language when reasoning about fiscal sociology in the meaning of this book, i.e. when reasoning about *how* communication distortions occur between the

[15] See Endicott 2014, sec. 2.2.
[16] See Endicott 2014, sec. 2.2.
[17] See Endicott 2014, sec. 2.2.

legislator's intentions with tax rules and the perception of them. It's not a matter of any law dogmatic analysis of the current law meaning of a tax rule, but communication distortions may, as mentioned, also be discovered by those applying the rule and they may – or may not – raise the problems before or without going to court. Therefore, I'm making comparisons in the next section with the ideas mentioned from Endicott 2014, but first and foremost for the sake of reasoning about *why* a text containing e.g. an imperative to pay tax may be a poor tool to convey the legislator's intentions with a tax rule to the tax subject. The experiences mentioned from Endicott 2014 about the *context of use* of words in the perspective of language and interpretation of law show in my opinion that answers to the mentioned question *why* must be based on methodology regarding the use of words for the making of laws, e.g. tax laws. Therefore, I'm reasoning in the next chapter from the pedagogy viewpoint about whether there's any method to support a decrease of a risk of the described communication distortions occurring.

2.3 COMMUNICATION DISTORTIONS WITHIN TAX RULES

Comparing with the general aspects on the use of language in law mentioned in the previous section and with some of the experiences mentioned in Part B of Forssén 2015 (1) about *how* communication distortions in the meaning of this book occur where the making of tax laws is concerned, I'm reasoning in this section from the linguistic law and language perspective about *why* a text making a tax rule may as such make a poor tool to convey the legislator's intentions with it to the tax subject, e.g. to an entrepreneur.

To have made the rule in the *Road Traffic Act* 1930 more precise regarding its scope in order to fulfil the Parliament's evident purpose of protecting roads, the *context of use* of the word *vehicle* should have been more clarifying already by the wording of the rule itself. Thereby the magistrates would most probably have reached the same conclusion as the appeal court in *Garner v. Burr*. A dictionary definition is of course not the solution to the problem of a sufficient precision of the rule. The situations which would be fair to take to court prosecution must be covered by language with respect of language having a context-dependence as described in the previous section in relation to *Garner v. Burr*. Thus, the rule should prohibit the use of any vehicle or means of transport (transport facilities) on wheels not made of rubber on the public highway, regardless whether any carriage of persons or goods actually takes places with the vehicle or the means of transport when in traffic or parked.

> The latter could e.g. refer to a situation were there's no person at all involved when the public road is damaged by the iron tyres on the chicken coop, namely if the

farmer's tractor towing the chicken coop or the chicken coop itself moves (rolls) but not voluntarily. For e.g. insurance purposes the tractor or the chicken coop could then be deemed being in traffic. Therefore, it would not be unfair to make the farmer responsible also for damages to the public road caused by him parking without making sure that the tractor with the chicken coop or the chicken coop won't get loose, not only when he's causing such damages actually driving the tractor towing the chicken coop.

There's also an issue whether the prohibition in question is relevant at all during winter time when roads – in the UK as well as in Sweden – could be covered with snow and therefore the snow would protect the public road from the iron tyres used on the chicken coop.

However, even the above mentioned precision with respect of the language having a context-dependence might not be a sustainable solution over time, since the context in terms of reality undergoes changes over time. The case *Garner v. Burr* concerns the reality in the UK in the mid 1900's. Today the 1930's rule in the *Road Traffic Act* should take in consideration the protection of the environment and risks of pollution damaging people (and animals) – not only the protection of the public roads themselves. The use of iron tyres will of course break loose particles from a road's surface and such particles come out into open air and damage the lungs of people breathing polluted air. In that respect the rule protecting public roads would be in my opinion also fair to apply to the use of e.g. studded tyres today, not only to iron tyres. I refer thereby to several Swedish cities working today for the introduction of local prohibitions against the use of studded tyres. According to the Swedish Transport Administration studded tyres contribute the most to particles from rubbed off asphalt: Particles from local sources represent up to 85 per cent of the so called PM10-release (particulate matter 10-release), i.e. microscopic small particles (less than 10 micrometer in diameter) likely to get into the lungs of people; and studded tyres cause ten times more PM10-release than not studded tyres for winter use.[18] In other words, today it would be a whole other scope of protection worthy situations to consider both when making the rule in question and when construing it. Diverse reactions to violations of it would also be necessary. The incitement not to violate a prohibition of the use of studded tyres is, e.g. according to the County Administrative Board of Stockholm, supposed to be an economical one, by taxes or fees – not by prosecution.[19]

Thus, I see two major conditions for the sake of making the conveying of a legislator's intentions with a certain rule more likely to be sufficiently precise, where the individual's perception of the text is concerned. The text must be made:

[18] See www.trafikverket.se, i.e. the website of the Swedish Transport Administration.
[19] See LSt Stockholm Report 2012:34, pp. 7 and 17.

- with respect of language having a context-dependence; and

- with respect of the scope of what the text is supposed to describe becomes sustainable over time, considering that context in terms of reality undergoes changes over time.

These conditions also apply for the making of tax laws and I compare with some of the experiences mentioned in Part B of Forssén 2015 (1):

- In Part B, I give two examples from the Value Added Tax Act 1994 of communication distortions with regard of the use of the concept tax liable, whereas taxable person is used in the VAT Directive (2006/112), i.e. distortions of the taxation intended by the directive and its rules occurring at the implementation by the Swedish legislator in the process of making of tax laws. I've also suggested models – tools – in that respect to use to handle those communication distortions, which I will get back to in the next chapter.[20]

- The experiences in Part B about *how* communication distortions occur where the making of tax laws is concerned show the importance of upholding the respect of language having a context-dependence also in the process of the making of tax laws. In my opinion, the answer to the question *why* a text making a tax rule may as such make a poor tool to convey the legislator's intentions with it must be sought in that process, not in the first place by study of grammar etc. Of course the legislator is anxious to use proper language in that respect. The two examples mentioned from Part B of Forssén 2015 (1) prove instead that the legislator is lacking where the *context of use* of words is concerned:

    - In my licentiate's dissertation 2011,[21] I raised as the main problem of making the general determination of the tax subject in the Value Added Tax Act 1994 complying with the main rule on who's a *taxable person* in article 9(1) first paragraph of the VAT Directive (2006/112). This was resolved by the reform of the 1st of July 2013, but not, as mentioned in the third edition of my doctor's thesis,[22] with regard of the two side issues in my licentiate's dissertation, namely concerning the use in that act of the concept *tax*

[20] See Forssén 2015 (1): Part B, Ch. 2.
[21] Forssén 2011.
[22] Forssén 2015 (2).

liable to determine the right of deduction and to determine who's liable to register to VAT, i.e. the side issues D and E. These issues weren't even mentioned in the preparatory work leading to the reform mentioned by SFS 2013:368, although side issue D concerned the same phenomenon causing the EU Commission already in 2008 to notify Sweden of breaching the EU law.[23]

- An important establishment in my licentiate's dissertation, which I came back to in my doctor's thesis 2013, is that an ordinary private person cannot be considered having the character of *taxable person* according to the main rule article 9(1) first paragraph of the VAT Directive. Therefore, it's a major problem with the mandatory part of the so called representative rule in the Value Added Tax Act 1994 containing the concept *tax liable* in a text leading to the interpretation that an ordinary private person, i.e. a consumer, can be deemed tax liable merely because of his role as partner in an *enkelt bolag* (approximately translated joint venture) or a *partrederi* (shipping partnership). This is namely not in compliance with the directive rule mentioned on who's a taxable person.[24]

- The first mentioned example from Part B of Forssén 2015 (1) of the use of *tax liable* instead of *taxable person* shows that the legislator doesn't respect the importance of the language having a context-dependence when implementing the rule on the right of deduction in article 168(a) of the VAT Directive into used into Chapter 8 section 3 first paragraph of the Value Added Tax Act 1994. The legislator should e.g. consider that an EU law rule – like article 168(a) – must be placed in its context and interpreted in the light of the EU law as a whole.[25] The second example shows that the legislator also in a situation were it's not a matter of implementing a certain rule in the VAT Directive into the Value Added Tax Act 1994 uses tax liable in a context where the concept leads to a breach of the principle of neutrality in the VAT Directive: An ordinary private person being able to be comprised by the VAT is in conflict with the principle of neutrality, since the main rule on who's a taxable person, article 9(1) first paragraph of the VAT

[23] See Forssén 2015 (1): Part B, sec. 2.2.
[24] See Forssén 2015 (1): Part B, sec. 2.3.2.
[25] See Prechal 2005, pp. 32 and 33 and van Doesum 2009, p. 20. See also Forssén 2015 (2), p. 76.

Directive, is supposed to have the fundamental function of distinguishing the tax subjects, i.e. the entrepreneurs, from the consumers.[26] Thus, in both situations described by the two examples from Part B of Forssén 2015 (1) the problem is that the legislator is disregarding the *context of use* of the concept *tax liable*.

- Since the *context of use* of words wasn't respected by the legislator, the help was neither to be sought in the first place in matters of grammar etc. Instead models to detect risks of communication distortions should have been in place in the process of the making of laws. Matters of grammar won't resolve the communication distortions in question if the *context of use* of words and concepts is disregarded, i.e. the legislator may have used proper grammar when using the concept *tax liable*, but nevertheless causing such distortions by using it out of context – instead of using *taxable person* and thereby using the proper concept for the relevant context.

- Problems strictly from a grammar perspective are in my opinion in the first place to be referred to procedural law, but a respect of matters of grammar may of course support the process of the making of tax laws. In the proceedings there may, as mentioned in Part A of Forssén 2015(1), occur misconceptions between the parties' about circumstances in the case at hand and they might be caused e.g. by the civil servant at the tax authority not making a proper enough distinction between nouns and verbs when writing the tax authority's decision. The rule of thumb should in my opinion be that the civil servant doesn't try to use a concept, label or some kind of noun before knowing more about the relevant verbs in the case at hand, since taxation usually is about activities. I've suggested a research effort to investigate legal uncertainties in relation to this phenomenon.[27] This should preferably be made in the perspective of law and language mentioned in this book. The mentioned grammar aspects are of course also important to respect in the process of the making of tax laws. However, proper grammar etc. won't resolve the problem of communication distortions in the present meaning occurring, if the *context of use* of words and concepts is disregarded anyway. Therefore, I'm focusing in this book on the *context of use* of words in the process of the making of tax laws

[26] See Forssén 2015 (1): Part B, sec. 2.3.2.
[27] See Forssén 2015 (1): Part A, sec. 3.3.1.

and I'm thereby considering matters of grammar etc. only as supporting issues in that process.

- With regard of the second condition mentioned above, i.e. that the text making a rule must be made taking in consideration that the scope of what e.g. a tax rule is supposed to describe will be sustainable over time, I refer to the above mentioned about the *Road Traffic Act* 1930 becoming out of date due to context in terms of reality undergoing changes over time. A taxable person may, according to the main rules of defining the tax subject for VAT purposes, i.e. Chapter 4 section 1 of the Value Added Tax Act 1994 and article 9(1) first paragraph of the VAT Directive, be any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity. Thus, the number of persons comprised by the concept taxable person are countless. Therefore, I deem it proper to talk about an entrepreneur in common parlance when describing the scope of who's a taxable person, and to reserve taxable person as an expression for legal parlance used in more formal situations – e.g. in writs to the tax authority or to courts, in decisions and verdicts made by authorities and courts or in textbooks. However, I've concluded, with reference to the VAT principle according to article 1(2) of the VAT Directive, that there's no reason to exclude enterprises conducted by *enkla bolag* (joint ventures) and *partrederier* (shipping partnerships) from the ennobling chain of entrepreneurs under that article only because those figures aren't legal persons. I've concluded that it's in conflict with the principle of neutrality to do so. In my opinion, the problems with those figures and VAT would be resolved if the EU would alter article 9(1) first paragraph of the VAT Directive so that it would be clarified that the expression *any person who* in the article comprises also non-legal persons, if they fulfil the prerequisites of taxable person in that article.[28] It would also resolve the problem with making the making of tax laws sustainable over time; as long as the fundamental function of the recently mentioned directive rule distinguishing the tax subjects, i.e. the entrepreneurs, from the consumers is upheld, there shouldn't be any difference between entrepreneurs who are non-legal persons and entrepreneurs who are legal entities, i.e. natural or legal persons, where the determination of the scope of the concept taxable person is concerned. Thus, by the suggested alteration of article 9(1) first paragraph of the VAT Directive (and implementation into Chapter 4 section 1 of the Value Added Tax Act 1994) would over time various, unforeseeable

[28] See Forssén 2015 (1): Part B, sec. 3.3.1.

forms of figures conducting business be more likely to be covered by the concept taxable person.

- However, as long as there's no such clarification made as recently mentioned concerning the view on non-legal persons according to the main rule on who's a taxable person, article 9(1) first paragraph of the VAT Directive, I suggest in Part B of Forssén 2015 (1) e.g. tools to handle cases of communication distortions regarding the representative rule and I will get back to those tools below in Chapter 3.[29] There I also mention some more situations regarding the compliance of the Value Added Tax Act 1994 with the EU law.

[29] See Forssén 2015 (1): Part B, sec. 3.3.1.

3. PEDAGOGY TO DETECT IMPERFECTIONS WITHIN TAX RULES INCREASING RISKS OF COMMUNICATION DISTORTIONS

3.1 INTRODUCTION

In the previous section I conclude that matters strictly of grammar character may only serve as support in a process of decreasing risks of communication distortions in the present meaning occurring. Proper grammar etc. won't resolve the problem of communication distortions occurring in the process of the making of tax laws, if the *context of use* of words and concepts is disregarded anyway by the legislator. Therefore, I only mention here that e.g. so called parsing may serve as such a support and I'm focusing instead on models to detect risks of communication distortions, where the legislator's intentions with a text making a rule in e.g. the Value Added Tax Act 1994 in relation to the VAT Directive is concerned. Thereby I come back here to models – tools – from Part B of Forssén 2015 (1) to detect such risks and try to develop them further.

> In the latter mentioned respect, parsing may serve as a support and therefore I will only mention (very) shortly the following: Parse is Latin meaning part of speech (*pars orationis*) and parsing means to divide a sentence into grammatical parts and identify the parts and their relations to each other;[30] parsing is used in computer science,[31] and a natural language parser is a program that works out the grammatical structure of sentences, for instance which groups of words go together (as *phrases*) and which words are the subject or the object of a verb.[32]

Thus, I refer problems to be resolved by parsing in the first place to the procedural law. Thereby, I'm not saying that parsing won't be supportive to the models presented for the process of the making of tax laws; depending on the development of these models parsing and computer science might be suitable to attach to them in the future. However, for the reasons mentioned I'm leaving out parsing in the further presentation of models – tools – to detect risks of communication distortions in the present meaning.

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[30] See www.merriam-webster.com/dictionary/parse.
[31] See Beal.
[32] See The Stanford NLP Group. I also recommend a lecture (of 10,5 minutes) via the Internet: Dependency Parsing Introduction, given by Christopher Manning at Stanford University.

Note that you are in fact using parsing when searching on the Internet for electronic libraries etc. and information to your research etc. Search engines like e.g. Google contain algorithms.[33] Since they are built by using it,[34] parsing is of course supporting when using IT, e.g. the Internet, for research efforts concerning fiscal sociology in the meaning of this book.

Thus, in this chapter I'm trying to make a pedagogy reasoning about models – tools – to function as methods to support a decrease of risks of communication distortions occurring in the process of the making of tax laws by detecting such risks. The focus is still on rules in the Value Added Tax Act 1994; the models aim to support the detection of imperfections within certain rules of that act in relation to supposedly corresponding rules in the VAT Directive (2006/112) or to the intentions following by the principles of the VAT Directive – e.g. mentioned in the recitals of its preamble.[35] That correspondence is meant to increase by way of the use of such models as a method of text processing making the final text – making the present tax rule – more likely to correspond in terms of communicative precision with the legislator's intention determined as the intentions following by the rules or principles of the VAT Directive, which the legislator is supposed to implement into the Value Added Tax Act 1994.

I begin with the issues from Part B of Forssén 2015 (1) mentioned in the previous section and the models used in that respect, i.e. concerning communication distortions regarding the use of the concept *tax liable* in the rules on the right of deduction, Chapter 8 section 3 first paragraph, and on the so called representative rule for VAT in *enkla bolag* (joint ventures) and *partrederier* (shipping partnerships), Chapter 6 section 2 of the Value Added Tax Act 1994 instead of the concept *taxable person* in article 9(1) first paragraph of the VAT Directive (see below section 3.2).

In section 3.3 below, I give, to elucidate further the necessity of models (tools) to detect risks of communication distortions in the present meaning, some more examples of the use of *tax liable* in the Value Added Tax 1994 and in the Code of Taxation Procedure 2011, where the supposedly corresponding rules of the VAT Directive use *taxable person*, namely:

[33] See e.g. Seipel 2010, pp. 197, 198 and 235.
[34] See e.g. Kegler 2014, presenting his new parser algorithm, Marpa, and thereby also giving a historic overview of parsers (algorithms), from Ned Irons publishing his ALGOL parser in 1961 to e.g. Jay Earley's parser algorithm (from 1968), i.e. Earley's parser or Earley's algorithm, which is – for requests of today – mentioned as a powerful parser algorithm.
[35] See Forssén 2015 (1): Part A, sec. 1.3 and Part B, sec. 1.1.

1. the rule on the liability to register to VAT, Chapter 7 section 1 first paragraph number 3 of the Code of Taxation Procedure 2011;

2. the rule on so called intra-Union acquistions of goods, Chapter 2 a section 3 first paragraph number 3 of the Value Added Tax Act 1994;

3. the special rules on intermediaries and on producers' enterprises (selling at auctions), Chapter 6 section 7 and Chapter 6 section 8 of the Value Added Tax Act 1994; and

4. the special rule in Chapter 9 section 1 of the Value Added Tax Act 1994 on voluntary tax liability for letting out of business premises etc.

   Regarding 3. and 4.: There are 'special rules on who's tax liable in certain cases' (*särskilda bestämmelser om vem som i vissa fall är skattskyldig*) in Chapter 6, Chapter 9 and Chapter 9c of the Value Added Tax Act 1994 (which follows by Chapter 1 section 2 last paragraph). These three cases are about tax liability beside the main rule, Chapter 1 section 1 first paragraph number 1, to which the main rule on who's tax liable, Chapter 1 section 2 first paragraph number 1, refers.[36]

In section 3.4 below, I mention rules on prohibition of deduction for certain entrepreneurs acquisitions of e.g. vehicles in the Value Added Tax Act 1994 in relationship to the VAT Directive, where risks of communication distortions may also occur concerning implementing of rules with restrictions allowed by the EU if they cause application in conflict with the intentions of the VAT principle itself.

In section 3.5 below, I propose some use of so called logic function trees when structuring the process of the making of tax laws by using the suggested models to detect risks of communication distortions.

In section 3.6 below, I suggest so called seriation as a supplementation to the models and compare thereby with law history etc.

In section 3.7 below, I suggest development of software based on the models adapted into logic function trees for the purpose of supporting tax audits and/or detection of risks of communication distortions in the process of the making of tax laws.

[36] See also Forssén 2015 (1): Part B, sec. 2.3.2.

3.2 SUGGESTED MODELS FOR DETECTION OF RISKS OF COMMUNICATION DISTORTIONS REGARDING THE USE OF THE CONCEPT TAX LIABLE INSTEAD OF TAXABLE PERSON IN THE MAIN RULE ON VAT DEDUCTION AND IN THE REPRESENTATIVE RULE

In sections 3.3.2.2 and 3.3.2.3 in Part B of Forssén 2015 (1) I present some models that I've used in my licentiate's dissertation (2011) and in my doctor's thesis (2013), see figures 1-3 below (Figure 3 used in both theses; Figures 1 and 2 used in the doctor's thesis). See also Figure 4 below, which illustrates the essentials of the VAT principle according to article 1(2) of the VAT Directive, i.e. the VAT principle according to the EU law, presented in section 3.2.1 in Part B of Forssén 2015 (1) and also in my mentioned theses. I often refer to figures 1-4 below as the models.

Figure 1

Test	**Result**	**Relevance of aims for trial of the concept *tax liable* in the representative rule**
Tax liable in the rule complying with art. 9(1) first para. of the VAT Dir.?	Expanding {rule competition; also between the rule and 1:1 first para. 1 ML and art:s 2(1)(a) and (c) and 193 of the VAT Dir.}	EU conformity and legal certainty incl. legality according to the EU law aren't relevant: The rule has no equivalent in the VAT Dir. _____ **Note** If *tax liable* in the rule isn't made compatible with art. 9(1) first para. of the VAT Dir., procedural solutions are necessary: - The individual may invoke that art. 9(1) first para. has direct effect {extreme interpretation result that a private person (consumer) would be comprised by tax liable; in conflict with the basic principles in art. 1(2) of the VAT Dir.} - The state may invoke the principle of prohibition of abusive practice in accordance with Halifax et al. (Case C-255/02). _____ **Note.** COM or another Member State might go to the CJEU claiming breach of treaty, if tax liable distorts the competition on the internal market, according to art. 113 TFEU, which also would be in conflict with the neutrality principle according to the preamble to the VAT Dir. and art. 1(2) of the VAT Dir. and with the aim of a cohesive VAT system (COUNCIL DIRECTIVE 2006/112/EC […] on the common system of VAT).

Figure 2

<table>
<tr><td>Enkelt bolag/partrederi</td><td></td></tr>
<tr><td rowspan="2">A –partner/representative
B – partner
A and B apply by the SKV for A to account for VAT in enkla bolaget or partrederiet</td><td>S – supplier to A or B in their capacities of partners in enkla bolaget/partrederiet</td></tr>
<tr><td>T – customer to A or B in their capacities of partners in enkla bolaget/partrederiet</td></tr>
<tr><td rowspan="3">C
Eventual additional partner in enkla bolaget or partrederiet. Alternatively may C be a non-partner, e.g. someone of S, T, U, X or Y</td><td>U – person with an indirect relation to A or B in their capacities of partners in enkla bolaget</td></tr>
<tr><td>X – supplier to A or B regarding their other activities</td></tr>
<tr><td>Y – customer to A or B regarding their other activities</td></tr>
</table>

Figure 3

<table>
<tr><td colspan="4">Persons</td></tr>
<tr><td colspan="3">(1) Taxable person
(carries out independently an economic activity)</td><td>Others are consumers/tax carriers</td></tr>
<tr><td colspan="3">Supply of goods or services</td><td>Not right of deduction/ reimbursement of input tax</td></tr>
<tr><td>(2) Taxable</td><td>From taxation qualified exempted</td><td>From taxation unqualified exempted</td><td></td></tr>
<tr><td>(3)
Right of deduction of input tax</td><td>Right of reimbursement of input tax</td><td>Not right of deduction/reim-bursement of input tax</td><td></td></tr>
<tr><td colspan="2">Purchase which is comprised by prohibition of deduction: Not right of deduction/reimbursement of input tax</td><td></td><td></td></tr>
</table>

In Figure 3 the prerequisites are numbered for tax liability and right of deduction respectively regarding the main rules in Chapter 1 section 1 first paragraph number 1 and Chapter 8 section 3 first paragraph respectively in the Value Added Tax Act 1994. By (1) and (2) in Figure 3 the structure of the prerequisites for tax liability in the Value Added Tax Act 1994 and the VAT Directive respectively is shown. It confirms that the main rule for tax liability in that act, Chapter 1 section 1 first

paragraph number 1, are conform with the corresponding main rules in that respect in the directive, i.e. with articles 2(1)(a) and (c) and 193 (compare the mid column in Figure 1). However, it's not directive conform – EU conform – that the act's main rule on the right of deduction, Chapter 8 section 3 first paragraph, use the concept *tax liable* (tax liability), instead of taxable person as in the corresponding main rule of the directive, article 168(a), which I mentioned as side issue D in my licentiate's dissertation and come back to below.

In e.g. section 3.3.2.3 in Part B of Forssén 2015 (1) I use by examples the ennobling chain projected on the VAT principle according to the EU law and the thereof deriving principles, i.e. the principle of a general right of deduction, the principle of reciprocity and the passing on the tax burden principle (the POTB-principle), where problems concerning the representative rule, Chapter 6 section 2 of the Value Added Tax Act 1994. I illustrate the mentioned ennobling chain by Figure 4 below.

Figure 4

Entrepreneur 1	→ **Entrepreneur 2 and so on**	→ **The consumer**
Entrepreneur 1 charges VAT,	…which will be deducted by Entrepreneur 2 who in his turn charges VAT (and so on).	The sum of VAT in the ennobling chain burdens the consumer.

If one or several of the entrepreneurs in the ennobling chain is erroneously denied to exercise the right of deduction there will arise a so called cumulative effect, i.e. a tax on the tax effect, and the problem with the use of *tax liable* in the main rule on the right of deduction of VAT, Chapter 8 section 3 first paragraph of the Value Added Tax Act would probably have been identified by the legislator, if the legislator had tried the concept tax liable in the context of concepts following by the structure illustrated in Figure 3 compared to the prerequisites for the right of deduction in article 168(a) of the VAT Directive. If so the legislator would easily have realized that it is *taxable person* (1) which is *préjudiciel* to the determination of *the right of deduction* of VAT (3) in the corresponding rule in the VAT Directive, i.e. in article 168(a). *Tax liable* is instead used in the VAT Directive for the liability to pay VAT, where the presuppositions are that the *taxable person* (1) makes a *taxable transaction*, i.e. a taxable supply of goods or services (2). I conclude in section 4.1 (Issue No.1) in Part B of Forssén 2015 (1) that the reason why the Swedish Government hasn't done anything yet most likely is that it believes that the problem in question was resolved by the reform of the 1st of July 2013 implementing taxable person into Chapter 4 section 1 of the Value Added Tax Act 1994, where the determination

of the tax subject is concerned. The EU Commission, who raised the issue in 2008, is probably of the same notion, i.e. the Swedish Government and the EU Commission are speaking over each others' heads. Neither one of them are probably aware that the problem still exists.

Thus, the issue about the main rule on the right of deduction shows that the use of models – tools – representing the proper context for the use of tax concepts would decrease risks of communication distortions in the present meaning, i.e. where the making of rules in the Value Added Tax Act 1994 are concerned for the sake of conveying the intentions following by the rules or principles of the VAT Directive. Compare section 2.3 concerning language having a context-dependence: Tax liable was used out of its proper context and Figure 3 would have revealed this for the legislator, if e.g. that figure would have been used in the process of the making of laws by the legislator.

Concerning the problems with the representative rule, Chapter 6 section 2 of the Value Added Tax Act 1994, Figure 1 and Figure 2 could serve as pedagogy models to decrease risks of communication distortions in the process of the making of tax laws, if the legislator would at all address those problems:

- Regarding the mandatory part of the representative rule, i.e. Chapter 6 section 2 first sentence, the problem is that it can be interpreted as giving an ordinary private person the character of tax subject, disregarding the fundamental function of the VAT principle distinguishing taxable persons (entrepreneurs) from consumers like ordinary private persons.

- I made Figure 1 as a model – tool – to be used by inter alia national courts, the tax authority or individuals to handle this or similar communication distortions with extreme interpretation results regarding the Value Added Tax Act 1994 compared to the VAT Directive.

- Figure 1 may serve as such a tool – a supplementary pedagogy structure – to handle in practice the described and similar extreme interpretation results regarding the Value Added Tax Act 1994 compared to the VAT Directive. The interpretation result regarding the main rule on who's a taxable person according to Chapter 4 section 1 of that act before the reform of the 1st of July 2013 was extreme compared to the main rule on who's a taxable person according to the VAT directive, i.e. article 9(1) first paragraph, since it opened for ordinary private persons, i.e. consumers, to be comprised by the VAT. In the far

right column of Figure 1, I mention what can be done in practice if tax liable (tax liability) in the representative rule in the Value Added Tax Act 1994 isn't compatible with the main rule on who's a taxable person, article 9(1) first paragraph of the VAT Directive. This might also inspire the legislator to some effort in the sense of the making of tax laws regarding the representative rule. I've mentioned in my doctor's thesis that besides registered *enkla bolag* there's an undiscovered number of them, which I consider are reason enough for fiscal sociology studies in the present sense rather than waiting for case law to deal with problems concerning *enkla bolag* and *partrederier*.

- In this context it's also of interest that Figure 1 may serve as such a tool as recently mentioned only as long as the principle of the EU law's supremacy over national law isn't codified in an EU Constitution which comes into force. Until then an interpretation result that is directive conform – EU conform – may still be restricted by the wording of a rule in the Value Added Tax Act, since an interpretation mustn't violate the constitutional principle of legality for taxation in the meaning that it's made in conflict with the wording of a tax rule; the interpretation mustn't – as mentioned – be made *contra* legem.[37] Thus, that constitutional principle – of the Swedish Constitution 1974 – may limit also an EU conform interpretation of a national tax rule governed by EU law, since the CJEU has established that the Member States aren't obliged to interpret the national law *contra legem*.[38] In the mean time I'm suggesting in another book a constitutional model that also considers certain procedural implications and which I call *Europatrappan* (the European staircase or the European stepladder), by which I'm aiming to structure constitutional problems etc. concerning issues on Swedish rules on tax law and criminal law in relation to European law, i.e. to both the EU law and the ECHR (and its Protocols).[39] However, these aren't of interest here, since e.g. the present problems with communication distortions concerning the conveying of the legislator's intentions would exist also if EU law's supremacy over national law would become codified in an EU Constitution; the present problems would still concern the relationship between the Value Added Tax Act 1994 and the VAT Directive as long as the process of the making of tax laws

[37] See sec. 2.1 and Forssén 2015 (1): Part A, sec. 1.3.
[38] See para. 110 in *Adeneler et al*. (C-212/04). See also Forssén 2015 (1) Part A, sec. 1.3 and Forssén 2013, p. 38.
[39] See Forssén 2015 (3), sec. 10.4, which section – with my trial to make the mentioned constitutional model – was inspired first and foremost by Nergelius 2009 and Nergelius 2012.

in this respect are about implementing rules in the directive into that act.

- Regarding the voluntary part of the representative rule, i.e. Chapter 6 section 2 second sentence, I've created what I call the ABCSTUXY-model, illustrated by Figure 2, which may serve as a supplementary pedagogy structure to handle in practice issues concerning relations between *enkla bolaget* or *partrederiet* and its customers and deliverers and concerning internal relations between its partners. Thereby, it's a matter of using that model as a tool from a pedagogy perspective – like with PBL – to analyse complex problems regarding the application of the main rules on tax liability for VAT and right of deduction of VAT on *enkla bolag* or *partrederier* and their partners. The pedagogy point, with naming the persons in my model A, B, C, S, T, U, X and Y, is to make it easier to remember each person in the model and their respective role by using the acronym A-B-C-STUXY.

3.3 SOME MORE EXAMPLES FOR USING THE MODELS IN THE PROCESS OF THE MAKING OF TAX LAWS REGARDING COMMUNICATION DISTORTIONS CAUSED BY THE USE OF THE CONCEPT TAX LIABLE INSTEAD OF TAXABLE PERSON

From Part C of Forssén 2015 (1) I remind about questions about *tax liable* used instead of the VAT Directive's *taxable person* concerning the liability to register to VAT and concerning the liability to account for so called intra-Union acquistions of goods (formerly intra-Community acquisitions of goods), which are of interest for comparison with the same question regarding the main rule on the right of deduction of VAT (Chapter 8 section 3 first paragraph of the Value Added Tax Act 1994):

1. In my licentiate's dissertation (2011) the liability to register to VAT, which today is to be found in Chapter 7 section 1 first paragraph number 3 of the Code of Taxation Procedure 2011, were, along with the mentioned question about the right of deduction of VAT as side issue D, a side issue, E.

   - Chapter 7 section 1 of the Code of Taxation Procedure 2011 should for the registration liability refer to *taxable person* instead of *tax liable*, which would be in accordance with article 213 of the VAT Directive.[40]

[40] See Forssén 2015 (1): Part A, sec. 3.2.1.2.

- Mainly for control reasons I argue in section 4.1 (Issue No.1) in Part B of Forssén 2015 (1) for the liability to register to VAT no longer connecting to the concept *tax liable* in Chapter 7 section 1 first paragraph numbers 3 and 4 of the Code of Taxation Procedure 2011.

- I compare with Figure 3 in the previous section and *taxable person* determining the emergence of the right of deduction due to what character of transactions the taxable person intends to make with his acquisitions. Since the liability to register to VAT is determined in the VAT Directive by article 213 using the concept *taxable person*, the concept *tax liable* in Chapter 7 section 1 first paragraph numbers 3 and 4 of the Code of Taxation Procedure 2011 should be replaced by *taxable person*.

- However, the legislator does not seem to be aware of this issue either. A model like Figure 3 with its illustration of the material rules would most likely be supportive in the process of the making of tax laws so that the legislator identifies the problem of the use of the concept *tax liable* in the context of the taxation procedure issue about the liability to register to VAT.

2. Regarding the issue on intra-Union acquisitions of goods, *tax liable* was used in the main rule for such acquistions, Chapter 2 a section 3 first paragraph number 3 of the Value Added Tax Act 1994, until the mentioned reform of the 1st of July 2013 by SFS 2013:368.

   - Thereby, alterations were, as mentioned, made in that rule and its second paragraph meaning inter alia that *tax liable* regarding the vendor was replaced with the concept *taxable person*. However, in the preparatory work to SFS 2013:368 this was merely commented as Chapter 2 a section 3 first paragraph number 3 and second paragraph of the Value Added Tax Act 1994 thereby getting an improved formal correspondence with article 2(1)(b)(i) of the VAT Directive.

   - In my opinion, the fiscal sociology question to be asked regarding the recently mentioned assertion in the preparatory work to SFS 2013:368 is whether the legislator would have identified at all a necessity to replace *tax liable* with *taxable person* in Chapter 2 a section 3 first paragraph number 3 and second paragraph of the Value Added Tax Act 1994, if the problems had not been raised in the courts.[41] This is, as

[41] See Forssén 2015 (1) Part C, sec. 1.3, where I mention e.g. case B 1378-96 (29 may 1997) and a lecture I gave in 2001, Forssén 2001 (3).

mentioned, particularly conspicuous when compared with the issue regarding the use of *tax liable* in the main rule on the right of deduction of VAT: Would the legislator also describe a future reformation of Chapter 8 section 3 first paragraph of the Value Added Tax Act 1994 in that respect merely as a formal improvement in relation to article 168(a) of the VAT Directive? Probably not, and my point is that the legislator would most likely have made a better tax rule of Chapter 2 a section 3 first paragraph number 3 and second paragraph already at Sweden's EU accession in 1995, i.e. by respecting that *taxable person* was the proper concept for this context, if a model like Figure 3 would have been available then: *Tax liable* is a *taxable person* (1) who's making *taxable transactions* (2), a *taxable person* making *from taxation qualified or unqualified exempted transactions* isn't *tax liable*.

3. In e.g. Chapter 6 of the Value Added Tax Act 1994 there are more special rules which, like the mandatory part of the representative rule (Chapter 6 section 2 first sentence), contain the concept *tax liable* (or *tax liability*). Thereby the special rules on tax liability for intermediaries and on producers' enterprises selling at auctions, i.e. Chapter 6 section 7 and Chapter 6 section 8 of the Value Added Tax Act 1994, are of interest by comparison here, since they can be said sharing a common history with the representative rule. It would carry to far to make an analysis of the special rules for intermediaries and producers' enterprise. Instead I will give som reflections over the issue of language concerning those special rules in the Value Added Tax Act 1994.

   - The VAT Directive extends the supply of goods or the supply of services in relation to the main rules in articles 14(1) and 24(1) to comprise e.g. the transfer of goods pursuant to a contract under which commission is payable on purchase or sale [article 14(2)(c)] and by stating that where a *taxable person* acting in his own name but on behalf of another person takes part in a supply of services, he shall be deemed to have received and supplied those services himself [article 28].

   - Articles 14(2)(c) and 28 have a supposedly corresponding rule in the Value Added Tax Act 1994, namely Chapter 6 section 7. There's also Chapter 6 section 8, but since it's essentially referring to section 7 I will only mention Chapter 6 section 7, which I name the rule on *6:7-cases*.

   - The special rule on tax liability for *6:7-cases* comprise the situations of articles 14(2)(c) and 28, but the tax authority also

uses to argue for this special rule to apply to intermediaries only because the invoice issued by an intermediary not revealing the identity of his. Then the tax authority has been known to assert that it doesn't matter if a commission contract exists or if the intermediary instead shall be considered an ordinary agent comprised by the ordinary rules in the Value Added Tax Act 1994; according to them the content of the invoice makes the situation a *6:7-case*, i.e. application of that special rule instead of the main rule on tax liability, Chapter 1 section 1 first paragraph number 1.

- The tax authority's opinion means that the content itself of the invoice would be a sufficient prerequisite for the intermediary also being deemed making the mandator's sale of the goods or services in question and not just supplying the intermediary service. Assuming a commission of 10 on a sale of goods or services of 100, the intermediary's tax base increases by ten times, if the tax authority's opinion would rule.

- My opinion is that *6:7-cases* or similar expressions supposedly extending the intermediaries being equalled with commission cases in a civil law sense, and thereby equalled with vendors selling their own goods or services, isn't used at all in business parlance. Businessmen in various sectors aren't even aware of the special rule existing and usually don't know at all what the tax authority is meaning when referring to Chapter 6 section 7 of the Value Added Tax Act 1994 e.g. in an auditing memorandum.

- Thus, I suggest fiscal sociology research about *6:7-cases* in the respects mentioned: Why make tax laws by using a language which isn't part of the parlance of businessmen? That would most likely not have been the case at all, if the entrepreneurs and their organizations would – in the way I suggest in section 2.4 of Part A of Forssén 2015 (1) – have taken active part in the making of the rules in the Value Added Tax Act 1994. Today it's usually only the big players who are asked for their opinion by the Government presenting them a government official report on various topics before proposing laws in a Government bill. In my opinion, there's a democratic deficit that should be examined in this respect and this is one reason for me to suggest research efforts by fiscal sociology studies about the making of tax laws. In other words: A systematic change of the process of the making of tax laws – as I suggest in Part A of Forssén 2015 (1) – is necessary to make the legislator inviting also indies to take part in that process, otherwise I believe it's hard to achieve a democratic playing field.

By the way, I recommended a systematic change in line of my ideas in section 2.4 of Part A of Forssén 2015 (1) already in 2007, where I mention 'the spirit of Saltsjöbaden' (*saltsjöbadsandan*) as an expression of corporatism working against a level and thereby democratic playing field for small entrepreneurs as well as for the big players; 'the spirit of Saltsjöbaden', the spirit of a meeting at which lasting agreement was reached in 1938 on the labour-market.[42] In political parlance the expression means in short that the big players on the employer-side and their organizations dominate that market together with the trade unions.[43] In my opinion, this – still existing Swedish political spirit – is not benefitting today's demands on flexibility in society. It presents instead a harmful obstacle for an influence on the process of the making of tax laws by new players on the market, naturally often starting as small enterprises. Therefore, along with my suggestions on research efforts, I remember about mentioning in 2007, as one topic of interest to the issue of corporatism, the question how lobbying has influenced the process of the making of tax laws in the field of corporate taxation, e.g. regarding VAT.[44]

- Thus, in my opinion there's a need to go through and to abolish or update concepts established in the tax laws before Sweden's EU accession in 1995. Thereby, it's of interest especially for fiscal sociology research purposes concerning Chapter 6 section 7 of the Value Added Tax Act 1994 that this special rule can, as mentioned, be said sharing the same history as another special rule, namely the representative rule, i.e. Chapter 6 section 2 of the same act. Both rules originate from legislation preceding the first Swedish VAT act of 1969, i.e. from the general goods tax (*allmänna varuskatten*) of 1959.[45]

  Figure 2 about the representative rule could perhaps inspire to research on *6:7-cases*: Why not try such cases for the persons in Figure 2, e.g. for the characters C and U, as intermediaries belonging to the *6:7-cases*? In Figure 2 C and U respectively represents eventual additional partners and persons with an indirect relationship to the partners in *enkla bolag* and *partrederier*, and who may – as mentioned – cause certain problems regarding the representative rule.[46] Already by using the ABCSTUXY-model to try the representative rule in relation to the main rules I proved in my doctor's thesis that the complexity concerning that rule should be considered more than enough for the legislator to do something about it. When suggesting research efforts concerning *6:7-cases*, where Figure 2 perhaps may serve as an inspiration, I'd also like to mention another common historical denominator of interest for *6:7-cases* and the representative rule, namely that civil law

[42] See Dictionary of Norstedts 1993, p. 776.
[43] See Forssén 2007, pp. 276, 277 and 287.
[44] See Forssén 2007, p. 277.
[45] See, for comparison with Chapter 6 section 2 and Chapter 6 section 7 of the VATA 1994, section 12 item 2 and the third paragraph first sentence of the instructions to section 12 of the *Kungl. Maj:ts förordning (1959:507) om allmän varuskatt*, which came into force in 1960.
[46] See Forssén 2015 (1): Part B, sec:s 3.3.2.3 and 4.1 (Issue No. 2).

books on intermediary issues contain – at least to my knowledge – nothing about *6:7-cases*, which also was the situation regarding *enkla bolag* (and *partrederier*) concerning the representative rule before my doctor's thesis.[47]

4. In section 3.3.1 of Part A of Forssén 2015 (1), I mention another special rule using the concept *tax liable* (tax liability) in the Value Added Tax Act 1994, Chapter 9 section 1, which cause communication distortions regarding the relationship to the concept *taxable person* in the VAT Directive, in this case not in the main rule but in the facultative articles 12 and 137(1)(d). The voluntary rule in article 137(1)(d) applies to *taxable persons*, who may choose to become *tax liable* for the leasing or letting of immovable property.

   - I've concluded in my doctor's thesis that there's no support by articles 12 and 137(1)(d) of the VAT Directive for the existing Chapter 9 section 1 of the Value Added Tax Act 1994 to open for also an ordinary private person, i.e. a consumer, being comprised by the possibility for voluntary tax liability (for letting out of business premises etc.).[48]

   - In this case the facultative rule article 12 concerns the tax subject and is in fact extending the scope of the VAT to comprise other persons than taxable person (compare Figure 3), e.g. ordinary private persons. However, the voluntary tax liability described by the Value Added Tax Act 1994 goes to far anyway, by opening for voluntary tax liability also for e.g. ordinary private persons, since the facultative rule article 137(1)(d) concerning the tax object is restricted to apply for taxable persons. Because of the rule on the tax object the legislator must do something to make Chapter 9 section 1 of the Value Added Tax Act 1994 complying with the main rule on taxable person, article 9(1) first paragraph; article 137(1)(d) is redirecting legislators of the Member States to that main rule by the use of the concept *taxable persons*, which, if not otherwise stated, must be considered referring to the general meaning of taxable person in article 9(1) first paragraph of the VAT Directive and thereby not including others than taxable persons in that sense – not in the meaning of article 12. In other words, the legislator has been redirected to the limitations of the scope of the VAT according to the directive's main rules, which are – as mentioned – corresponding with the prerequisites of the main rule on tax liability in Chapter 1 section 1 first paragraph

[47] In e.g. Mattsson 1974 is the representative rule according to the VAT regulation of 1968 (SFS 1968:430) mentioned only once, by a brief commentary in a note on p. 137.
[48] See Forssén 2013, pp. 159, 160, 215 and 216.

number 1 of the Value Added Tax Act 1994, and would perhaps have realized this by structuring the process of the making of tax laws by models like those represented by Figure 1 and Figure 3.

Compare section 2.3, where I refer to procedural experiences in practice mentioned in section 3.3.1 in Part A of Forssén 2015 (1) and suggest as a rule of thumb that a civil servant writing a tax decision shouldn't use a concept, label or any noun before having enough information about the situation at hand to be able to use the relevant verbs. Such *parse thinking* is in fact made when sorting out article 12 as referring to the tax subject and article 137(1)(d) referring to the tax object while noting that the latter contains the noun taxable persons and concluding it must refer to the concept's general meaning etc. Thus, although I refer problems to be resolved by parsing in the first place to the procedural law, parse is in order as support for the use or making of models for the process of the making of tax laws (see also section 3.1).

- Thus, in my opinion, Chapter 9 section 1 is – as mentioned in Part A of Forssén 2015 (1) – another topic for reformation of the Value Added Tax Act 1994 missed by the legislator. I suggest research efforts also regarding this topic and both law dogmatic and fiscal sociology studies might be appropriate – e.g. with support of parsing.

3.4 EXAMPLE OF THE USE OF THE MODELS TO DETECT RISKS OF COMMUNICATION DISTORTIONS REGARDING RESTRICTIONS OF RIGHTS IN THE VAT DIRECTIVE ALLOWED BY THE EU LAW IF SUCH RESTRICTIONS ARE IN CONFLICT WITH THE VAT PRINCIPLE ITSELF

In this section I mention problems where the VAT Directive allows restrictions of the right of deduction of input tax (see the box at the bottom of Figure 3). There might occur communication distortions also in that respect, so that the implementation of such rules into the Value Added Tax Act 1994 cause such unintended distortions in relation to the principles of the VAT Directive. In 2007 I also mentioned the rules on prohibition of deduction in the Value Added Tax Act 1994.[49] In this section I come back to a CJEU case mentioned then, which elucidates the present problem with rules allowed by the VAT Directive to restrict the general right of deduction but which might cause conflict with the VAT principle itself, described by Figure 4 above, namely *Ampafrance et al.* (Cases C-177/99 and C-181/99).

In parts B and C of Forssén 2015 (1) I mention *Rompelman* (Case 268/83), whereby it was made *acte éclairé* by the CJEU – construing the predecessor to article 168(a) of the VAT Directive – that it's already the purpose by a taxable person to create taxable transactions that's

[49] See Forssén 2007, sec. 6.3.

decisive for the *emergence* of his right of deduction. The communication distortion that exists in relation thereto, due to the use of the concept tax liable instead of taxable person in the main rule on the right of deduction in the Value Added Tax Act 1994, Chapter 8 section 3 first paragraph, raise – as mentioned in section 3.2 and in my licentiate's dissertation (side issue D) – a demand of the legislator addressing that distortion. That problem could by the model Figure 3 be described as The right of deduction or reimbursement of input tax, i.e. (3), not correlating to Taxable person, i.e (1). The issue with regard of *Ampafrance at al.* concerns instead the prohibition of deduction or reimbursement although a taxable person intends to make taxable or from taxation qualified exempted transactions – compare (2) and the box at the bottom of Figure 3.

Prohibition of deduction (or reimbursement) of VAT is possible to retain in the Value Added Tax Act 1994 for the time being after Sweden's EU accession in 1995 according to article 176 second paragraph of the VAT Directive. The Value Added Tax Act 1994 contains mainly the following prohibitions in that respect, namely concerning:

- acquisitions referable to permanent dwelling, Chapter 8 section 9 first paragraph number 1;

- expenses for the purpose of entertainment and similar for which the tax liable isn't entitled to deduction at the income taxation (according to Chapter 16 section 2 of the Income Tax Act 1999), Chapter 8 section 9 first paragraph 2; and

- acquisitions of passenger cars and motor cycles, Chapter 8 section 15 number 1.

In *Ampafrance et al.* the CJEU considered that national French legislation wasn't EU conform, since therein, with support of article 27(1) of Sixth Directive (77/388) – nowadays article 395(1) of the VAT Directive – for avoidance of tax evasion and tax loss, exemption from the general right of deduction in article 17 of the Sixth Directive – nowadays article 168(a) of the VAT Directive – was introduced concerning the tax subject's acquisitions for entertainment of goods and services. Divergence from the rules in the directive can according to the CJEU not be accepted, if they mean that a limitation of the right of deduction is based on the objective character of an acquisition without respect of whether it in the actual case can be proven that it's concerning expenses which have occurred in the economic activity. If the individual at application of the deduction limiting rule has no possibility to prove that tax evasion or avoidance doesn't exist, and

thereby not being able to exercise the right of deduction, the rule constitute, “as Community law now stands”, as the CJEU put it, not a mean which, according to the so called principle of proportionality, stands in proportion to the aim to prevent tax evasion and avoidance, and influence then the aim and principles of the Sixth Directive – nowadays the VAT Directive – in a far too large extension.

The CJEU’s interpretation of article 27 was made in comparison to article 17(6) second paragraph of the Sixth Directive, nowadays article 176 second paragraph of the VAT Directive, where the court inter alia stated: ”It is settled case-law that the right of deduction provided for in Article 17 et seq. of the Sixth Directive is an integral of the VAT scheme and in principle may not be limited”. According to the CJEU is the Common law rules concerning the VAT scheme only compatible with the principle of proportionality if the rules in the directive or regulation is necessary for the achievement of the specific aims of the directive or regulation and if they ”have the least possible effect on the objectives and principles of the Sixth Directive”, i.e. inter alia the POTB-principle and neutrality principle. The prohibitions of deduction may thus not limit the otherwise general right of deduction in a non-EU conform way so that the basic VAT principles are set aside.

I mentioned in 2007 some problems regarding the prohibition of deduction with Chapter 8 section 9 first paragraph 2 of the Value Added Tax Act 1994 connecting to the income taxation (Chapter 16 section 2 of the Income Tax Act 1999); the main issue thereby is still whether a non-EU conform evolution of the case law and actual practice concerning inter alia the right of deduction for entertainment and similar due to that connection. For research efforts on this topic the models of Figure 3 and Figure 4 can work together for the purpose of structuring the testing of whether the prohibition rule limits the general rule on deduction, which is fundamental for the VAT principle itself. Thereby, I suggest the following test:

- If research proves that the application of the present prohibition rule entails that a taxable person has no possibility to prove that tax evasion or avoidance doesn’t exist and that the expenses instead have occurred in his economic activity, an undesired cumulative effect – tax on the tax effect – will occur in the ennobling chain and by this test result the prohibition rule should be considered obsolete with regard of the EU law in the field of VAT.

Since the test should consider application according to both case law and an actual current law (i.e. with regard of verdicts by courts of lower instances or decisions by the tax authority), I suggest that the research

efforts on this topic should be done by both law dogmatic and fiscal sociology studies.

3.5 THE MODELS DESCRIBED AS LOGIC FUNCTION TREES

In this section I propose some use of so called logic function trees (LFT) to further structure the use of the suggested models to detect risks of communication distortions in the process of the making of tax laws. Thereby I come back to Figure 3 and Figure 4 from section 3.2 and some of my remarks there about them and also to section 3.4.

"There are seven basic logic gates: AND, OR, XOR, NOT, NAND, NOR, and XNOR."[50] Models like those in section 3.2 could be described by such logic gates. Since I use AND and OR functions in LFT adaptations below of the models according to Figure 3 and Figure 4, I mention here – for comparison – the AND gate and the OR gate:

- In the AND gate 0 is "false" and 1 is "true", and the output is "true" when both inputs are "true". If not both inputs are "true", the output is "false".

- In the OR gate the output is "true" if either or both of the inputs are "true". If both inputs are "false", the output is "false".[51]

AND gate

Input 1	Input 2	Output
0	0	0
0	1	0
1	0	0
1	1	1

OR gate

Input 1	Input	Output
0	0	0
0	1	1
1	0	1
1	1	1

Compare the AND gate with the part of Figure 3 describing the tax liability:

- By (1), Taxable person; and (2), a Taxable or from taxation qualified exempted transaction the tax liability for VAT is determined according to the main rules in the Value Added Tax Act 1994 and the VAT (see section 3.2).

[50] See The Electronics glossary.
[51] See The Electronics glossary.

- The latter equals Input 1 being 1 AND Input 2 being 1 in the AND gate to give the Output 1 (tax liability). If both Input 1 and Input 2 are 0 or one of either is 0 the Output is 0 (no tax liability).

Compare the OR gate with (2) and (3) of Figure 3:

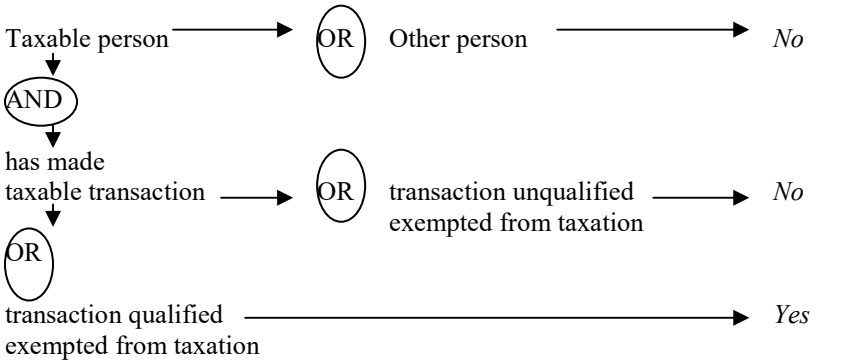
- If a taxable person intends to make taxable or from taxation qualified exempted transactions (Input 1) OR has made such transactions (Input 2) the taxable person has the right to deduction/reimbursement of VAT on his acquisitions (Output). If both Inputs are false (0) the Output is false (0), i.e. no right to deduction/reimbursement. [Note the regard of CJEU case law by consideration of the mentioned intention.]

However, I suggest a combined structure for the models in Figure 3 and Figure 4, by splitting them and making LFT:s which give a more holistic overview of the complexity of the liabilities and rights regarding the VAT.[52] Thereby I use, as mentioned, as nodes AND and OR functions, which gives the following LFT:s for Figure 3 and Figure 4:

LFT 1, Tax liability (main rule)

Question

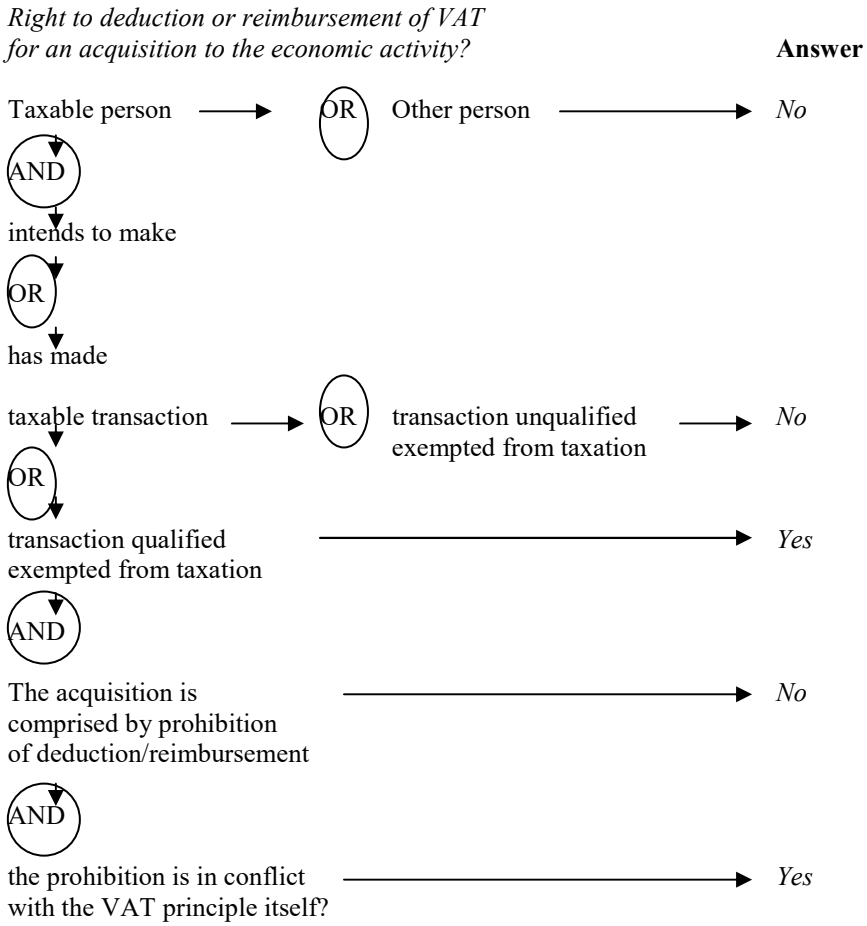
Tax liability for VAT for a transaction? **Answer**



[52] Compare Blaauw et al. 1991, sec. 4.1

LFT 2, The right of deduction or reimbursement (main rule with regard of the rules on prohibition of deduction/reimbursement)

Question



These two examples of suggestions to adapt the models of figures 3 and 4 by LFT are of course not to be regarded as complete or final, but show only an idea of how to go further and develop useful tools for the process of the making of tax laws, i.e. to develop the models to detect risks of communication distortions in that process by adding logic analysis to them:[53]

- LFT 1 is rather simple as LFT and contains the upper part of Figure 3, which concerns the main rule on tax liability.

- LFT 2 is more complex, since it's an attempt to combine Figure 3 with Figure 4 concerning the main rule of the right of

[53] Compare Blaauw et al. 1991, sec. 4.1

deduction or reimbursement and the rule of prohibition of this right in accordance with the EU law in the field of VAT.

By the way, the development of the mentioned tools may also be *supported* by parsing. LFT:s or logic gates are used e.g. to construct algorithms in computer science, where parsing is used. By the same token a *parse thinking* may be *supportive*, as recently mentioned, in the present respect although the models (tools) – and not parsing taken by itself – are used in the first place to put a concept in a text making a rule in e.g. the Value Added Tax Act 1994 in its proper context with regard of the VAT Directive.

3.6 SERIATION AS A SUPPLEMENTATION TO THE MODELS

Where law history is concerned for the process of the making of tax laws, I'd like to come back to that I gave, in connection with the analysis in my doctor's thesis of the representative rule in the Value Added Tax Act 1994, a historical background to the rule, which form a simple review meant to give a background to how the representative rule has been written over the years. Thereby I referred to Lyles 2007, where it's stated that the historical task is to shed light on a development process, a stage during which the observed object changes and, if you will, develops.[54] That rule has namely, as mentioned under item 3 in section 3.3, its origin in a legislation from the time already before the first Swedish VAT act of 1969, i.e. in the general goods tax (*allmänna varuskatten*) of 1959.[55] Regarding VAT the EC's First Directive didn't come until 1967. Thus, the need was obvious to consider also law history when analysing the representative rule, although the analysis was primarily law dogmatic. By the same token the historical perspective was also necessary when making a comparative analysis of the rule – with e.g. the Finnish VAT law – and also for the purpose of an overview regarding *enkla bolag* and *partrederier* from a civil law perspective.[56]

A legal theorist using a law dogmatic analysis is interested in the fiction of current law as something static, i.e. an on-the-spot account of current law, whereas the law historian is interested in the continuous movement – the process – that has shaped the law as we know it today. The method to capture that process is the so called law generic method, according to which the legally relevant causes to the development of a legal institute, a principle, a theory or some other legally relevant fact shall be clarified. Thereby it's not the motivation in the law sources that's of

[54] See Lyles 2007, p. 74. See also Forssén 2015 (2), pp. 36 and 37.
[55] See Forssén 2015 (2), p. 37.
[56] See Forssén 2015 (2), p. 37.

interest, like with a law dogmatic analysis, but the motives which have given rise to the existence of the present rule.[57]

The case mentioned in section 2.2, *Garner v. Burr*, and my reflections, in section 2.3, about the purpose of protection of public roads having changed to be more about protection of people today due to changes in society since the time of the *Road Traffic Act* from 1930 and the time of the case, i.e. the mid 1900's, show, in my opinion, that the law generic method is necessary to use for the purpose of not only regarding case law when examining current law, but also for capturing the meaning of an actual current law (i.e. with regard of verdicts by courts of lower instances or decisions by the tax authority). What I'm suggesting in this book regarding models – tools – to improve the process of the making of tax laws is in line with the law generic method. By the systematic alterations suggested in Part A of Forssén 2015 (1) and by providing the recently mentioned tools, I aim to make that process more accessible for the legislator: It's a matter of means for the legislator to capture the relevant motives to uphold today a certain rule on e.g. VAT. Thereby what I'm suggesting is meant to improve the legislator's capacity to detect risks of communication distortions in relationship to the reasons for a corresponding rule in the VAT Directive or the principles of the VAT Directive. Thus, my objective is also to improve the legislator's capacity to capture the existence of an actual current law by the tax authority with regard of its application of a tax rule whose content might never be clarified in terms of current law expressed by case law. By the way, the mentioned tools may of course also be useful in procedural matters and for law dogmatic analyses.

The tools that I suggest for the process of the making of tax laws can be completed with law history, but I propose in the first place some additional component for my fiscal sociology approach, because a concept might be the same today as a long time ago, whereas society has changed and thereby altered today's motives for a rule. For example the Income Tax Act 1999 contains for some situations still the concept *rörelse* (business activity), which emanates from the original Municipal income tax act of 1928.[58] Thus, the concept I'm looking for has more to do with systematics. However, the latter as a concept may lead to the misconception that a study of the making of tax laws is supposed to be a law dogmatic analysis, since it's considered that the main task of law dogmatic is to interpret and systematize current law.[59] To get a special fiscal sociology concept for the relevant systematic purpose of the

[57] See Lyles 2007, pp. 79, 80 and 87.
[58] See Ch. 2 sec. 1 and sec. 24 ITA 1999.
[59] See Forssén 2015 (2), sec. 1.2.1. Compare also Forssén 2015 (1) Part A, sec:s 1.3 and 3.2.1.2; Forssén 2015 (1) Part B, sec:s 1.1, 1.3, 3.2.1 and 4.2; and sec:s 2.1, 2.2, item 4 in sec. 3.3 and sec. 3.4.

process of the making of tax laws, and thereby making a distinction in relation to both law history in general and systematics regarding law dogmatic, I borrow a concept from archaeology, namely *seriation*. Seriation means the arrangement of a collection of artifacts into a chronological sequence.

Thus, I propose *seriation* as a *supplementary mean* to the models – tools – that I'm suggesting for the process of the making of tax laws, where seriation in this fiscal sociology sense may function as a mean to capture the continuous movement of tax concepts. For instance could seriation concern concepts relevant for the determination of the tax subject in corporation taxation and be described by the following figure:

Seriation concerning Swedish corporate taxation and the tax subject in relation to the EU law [Note: This figure only concerns natural persons]

The VAT Directive (2006/112)		VATA 1994		ITA 1999		CTP 2011
Taxable person	→	Taxable person	→	Person carrying on a business	→	Person carrying on a business
		(Entrepreneur, abolished on the 1st of July 2013)				Entrepreneur

Instead of a chronological sequence, the figure describes a sequence of relevant laws with regard of issues concerning the determination of the tax subject for corporation taxation purposes. The order of the sequence from left to right is made with respect of the EU law, since this book as a whole is about the entrepreneur and the making of tax laws with regard of Swedish experiences of the EU law.[60] Other and more complex examples can of course be made, and with the figure above I only want to make the point that it would benefit the process of the making of tax laws to introduce seriation as a special fiscal sociology concept which is distinguished from concepts within law history in general and law dogmatic. This is not a method in its own right, but a supplementation to the suggested models – tools – for improvement of the process of the making of tax laws and, if you like, in line with the law generic method. I'm not saying that such a figure as the one above is something new, but I'm presenting a special fiscal sociology concept by borrowing the concept seriation and it might be developed and proven useful for the sake of decreasing the risk of communication distortions in the process of the making of tax laws.

[60] By art. 113 TFEU there's a demand of harmonisation of the Member States' legislations on VAT while art. 115 TFEU only stipulates approximation of laws with regard of e.g. income tax [see Forssén 2015 (1) Part B, sec. 1.1.]

Based on the figure above I reason as follows about the aspects made previously, in section 3.2.1.2 in Part A of Forssén 2015 (1), about the rule introduced in 2009 in the Income Tax Act 1999, giving a certain acknowledgement of what's agreed between the entrepreneur and the mandator for the purpose of judging whether someone is *a person carrying on a business* and thereby also an *entrepreneur* according to the predecessor to and – nowadays – the Code of Taxation Procedure 2011:

- The rule introduced in 2009 was, as mentioned, only a codification of the current case law of that time.

- Then the equivalent of *taxable person* in the Value Added Tax Act 1994 was determined by reference to the concept *business activity* in the Income Tax Act 1999, which integrated the non harmonized income tax law in the Value Added Tax Act 1994. This connection for the purpose of determining who's a taxable person was abolished on the 1st of July 2013, which was in line with what I recommended in my licentiate's dissertation.

- However, the legislator missed at the reform on the 1st of July 2013 what the EU commission was criticizing Sweden about in 2008 concerning the use of tax liable instead of *taxable person* for the determination of the emergence of the entrepreneur's right to deduct input tax, which was side issue D in my licentiate's dissertation 2011 (see section 3.2). The legislator should, as mentioned, rather have focused on this than working on problems already solved by the case law.

- Thus, the legislator has, as mentioned, missed the opportunity of making a reform to get the Value Added Tax Act 1994 fully conform with the VAT Directive (2006/112) concerning the determination of who's a *taxable person and* of the emergence of such a person's rights.

- At the reform of 2009 the legislator had, in my opinion, the wrong focus when zeroing in on the prerequisites for who's *a person carrying on a business* for income tax purposes: That issue was already solved in the case law. When reforming the legislation on taxation procedure and introducing the Code of Taxation Procedure 2011 in 2012 the legislator missed the problem with the use of the concept tax liable instead of taxable person concerning the determination of the emergence of the right of deduction of VAT again, and missed it once more on the 1st of July 2013, when reforming the Value Added Tax Act 1994

by introducing *taxable person* for the determination of the tax subject and also abolishing *entrepreneur* – which was used e.g. for foreign entrepreneurs.

- If the legislator would have made the seriation of above it would probably have been clear that the determination of the tax subject for corporate taxation is *préjudiciel* for tax liability and the right of deduction etc. It's a mistake to use a concept regarding the result of the activities by the tax subject instead of the concept determining who's a tax subject; *taxable person* is *préjudiciel* to tax liable and to the right of deduction. In the same way the concept *entrepreneur* is the necessary prerequisite to be able to be registered for F-tax, according to the Code of Taxation Procedure 2011.

- By the same token the problem, which I mentioned as side issue E in my licentiate's dissertation, would probably also have been observed better by the legislator in 2012 or on the 1st of July 2013, if the legislator would have made something like the seriation of concepts above. In that respect should namely, as mentioned, also Chapter 7 section 1 of the Code of Taxation Procedure 2011, for the liability to register for VAT purposes, refer to *taxable person* instead of tax liable (see item 1 in section 3.3). Thereto is also the concept *person carrying on a business* still used in the rule stating that a person who's liable to register shall report for registration by the tax authority before the activity starts etc., Chapter 7 section 2 first paragraph of the Code of Taxation Procedure 2011: It should, in consequence of the recently mentioned, be used for other measures of registration than concerning the VAT.[61]

- The reform of 2009 was mainly motivated by RÅ 2001 ref. 25 (17 Jan. 2001), which, as mentioned, meant that a farmer temporarily helping another farmer with his or her work during absence on account of vacation or illness was deemed an entrepreneur. Since the rule introduced thereby was only a codification of the current case law of that time, there might occur, as also mentioned, a conflict with the intended current law. Instead of putting the issue on the determination of the tax subject in a broader process, where the making of tax laws is concerned, the legislator may only have increased the risk of communication distortions. This also proves the necessity to introduce seriation – or something similar – into the process of the making of tax laws.

[61] See Forssén 2015 (2), p. 292.

It was not wrong of the legislator in a law historic perspective to look at the conditions for a farmer when making the reform of 2009. Farmers have been equal to entrepreneurs for income tax purposes since the Municipal income tax act of 1928 and since the income tax reform of 1990 the concept *person carrying on a business* or *entrepreneur* comprise e.g. the concept farmer. For VAT purposes this is also in line one of the necessary prerequisites for taxable person according to article 9(1) first paragraph of the VAT Directive, namely the concept *economic activity* which according to article 9(1) second paragraph comprises inter alia agricultural activities, i.e. farmers. To compare with the mentioned case *Garner v. Burr*, which also happened to concern a farmer, and the concept vehicle, it's still relevant to look at farmers' conditions when reasoning about the tax subject for corporate taxation. However, the reform of 2009 should in the latter sense have had a broader perspective regarding the question of the determination of the tax subject, since the motives for it must be considered having changed, e.g. because of the introduction of VAT in Sweden in 1969, Sweden's EU accession in 1995 and the fact that farmers already before 2009 had come to represent a relatively small part of the enterprises in general in Sweden.[62] This may be compared with the purpose of protection of public roads having changed to be more about protection of people today.

Thus, I argue for the use of seriation before a law historic perspective in the process of the making of tax laws; a law historic perspective may still be relevant in that process but should typically be completed with seriation or something similar.

In conclusion, I propose seriation of tax concepts to bring out that continuous movement referred to about the law generic method also in the process of the making of tax laws; by seriation as a supplementation that process will probably become more living, which might not be the case if only e.g. the model represented by Figure 3 from section 3.2 or LFT 2 from section 3.5 are used as tools to detect a risk of communication distortions like the one concerning the right to deduct VAT. In other words, those tools will become more elucidating by the comparison with other taxes when using seriation supplemental.

[62] According to Statistics Sweden (*Statistiska Centralbyrån*) the Swedish population was 9 804 082 on the 31st of July 2015 (www.scb.se). According to Statistics Sweden's register of enterprises the number of enterprises was 1 158 349 in 2014 (www.scb.se). According to the Swedish Board of Agriculture (*Jordbruksverket*) Sweden's farm labour force in 2013 was about 172 700, which was circa 6 000 less than in 2010 (www.jordbruksverket.se).

To give an elucidating example of the recently mentioned, I refer to issue C in my licentiate's dissertation (2011), which concerned the tax object's eventual influence for the determination of the tax subject. Until 2014 Chapter 3 section 3 first paragraph number 5 of the Value Added Tax Act 1994 contained the concept parking activity to describe letting of places for parking as taxable transactions, which according to the preparatory work to the VAT reform of 1991 could lead to the interpretation that the concept parking business activity from the income tax law was *préjudiciel* for the rule on the tax object (i.e. the recently mentioned rule on taxable transaction). Thus, the law historic connection in the rule on the tax object to the concept parking business activity could, due to the determination of the tax subject in Chapter 4 section 1 number 1 of the Value Added Tax Act 1994 connecting to the concept business activity in the Income Tax Act 1999 before the reform of the 1st of July 2013 [see section 3.2.1.2 in Part A of Forssén 2015 (1)], lead to the determination of the tax subject a second time because of the influence from the determination of the tax object, which was in conflict with the VAT Directive.[63]

A study of LFT 1 would probably have helped the legislator avoiding the risk of the recently mentioned communication distortion between the Value Added Tax Act 1994 in relation to the VAT Directive, since the arrows in LFT 1 point from the tax subject (taxable person) to the tax object (taxable or from taxation qualified exempted transactions), not in the opposite direction. By the way, compare with a *parse thinking*: It's a taxable person who makes a supply (transaction), not the other way around. Thus, an LFT trial shows that a sequence of concepts used for the tax subject transgressing into the boxes regarding the tax object (in Figure 3) cause a definite risk of communication distortions. In other words: If the legislator would have used LFT with a supplementation by seriation in the process of the making of tax laws, the legislator would probably have detected that risk long before the abolishment of the concept parking activity in Chapter 3 section 3 first paragraph number 5 of the Value Added Tax Act 1994 in 2014.

I propose the described approaches to detect a risk of communication distortions in the process of the making of tax laws concerning comparative law studies too. Also concerning the field of VAT may of course an international outlook from the Swedish horizon regard both other EU Member States and countries outside the EU. However, if such a comparison concerns VAT one should note that the OECD's information that almost 150 of the circa 200 countries of the world have VAT doesn't distinguish VAT according to the EU law from other taxes

[63] See Forssén 2011, p. 213.

called VAT, and the OECD also mention that their number includes countries with GST. I mention this in my licentiate's dissertation.[64] Thereby I also mention that the VAT principle according to article 1(2) of the VAT Directive makes the decisive distinction between on the one hand VAT according to the EU law and on the other hand GST, HST or other taxes actually called VAT but neither complying with the VAT principle according to article 1(2) of the VAT Directive which follow by legislations in countries outside the EU.[65]

3.7 TAX AUDIT OR THE PROCESS OF THE MAKING OF TAX LAWS SUPPORTED BY SOFTWARE BASED ON THE MODELS ADAPTED INTO LOGIC FUNCTION TREES

Since also the wordings of a tax rule is based on natural language you cannot break down all problems about the making of tax laws by processing symbols into an altogether computer science solution. The main problems thereby are the determination of the scope of tax concepts and the delimitations between them – compare also why parsing may serve only as support to the models of detecting risks of communication distortions in the process of the making of tax laws (see section 3.1). However, the models concerning the Value Added Tax Act 1994 in relation to the VAT Directive adapted into logic functions trees (LFT), as exemplified in section 3.5, may be used to make a software to support an audit of e.g. VAT problems in an enterprise or organization applying the Value Added Tax Act 1994. Such a software should, due to the limitations mentioned for the use of computer science in the present respect, aim to assist in finding the point of complexity that demands that the entrepreneur etc. go further by consulting tax consultants about the VAT problem at hand. In February 2005 I made such a checklist (program) for a VAT audit and I mention in short the main items here.

VAT audit by LGS-flow-analysis

Purpose

To find VAT specific problems in the enterprise – sector related or individual issues – the enterprise, i.e. the subject whose activity shall be VAT audited, does the audit without awaiting the yearly ordinary audit.

[64] See Forssén 2011, p. 279, where I refer to information under Consumption Tax on the OECD's website www.oecd.org (read on the 12th of November 2010).
[65] See Forssén 2011, pp. 71 and 279-297. See also Forssén 2015 (1): Part A, sec. 3.2.1. Regarding the VAT principle according to art. 1(2) of the VAT Directive: see sec. 3.2 and Forssén 2015 (1) Part B, sec. 3.2.1.

Aim

After having made the VAT audit the entrepreneur has a preview of the enterprise's VAT situation regarding the basic routines.

- The issues which may cause VAT problems can thereby be structured concerning:

  - the past, the present and the future.

- The entrepreneur (or organization) can judge whether it's time to further with a more detailed analysis of the necessity of measures concerning e.g.:

  - VAT registration or adjustment of the activity description by the tax authority and the Swedish Companies Registration Office;
  - request for a reconsideration or an appeal;
  - application for an advance ruling by the Swedish Board of Advance Tax Rulings;
  - guard of the development of case law and authorities et al., above all the tax authority's general guidelines;
  - lobbying, e.g. in co-operation or consultation with the entrepreneur's organization (employers' organizations etc.);
  - eventual problem solutions by the informal visiting form, where a dialogue takes place with the entrepreneur's local tax office and ends by the tax authority notifications being filed by the entrepreneur and the tax authority;
  - renegotiation and/or inserting a VAT clause in a contract, negotiate about invoicing in retrospect of VAT;
  - change invoicing routines; and
  - combinations of the above mentioned.

Method

VAT audit carried out by an LGS-flow-analysis, where L, G and S stands for flows in the enterprise of:

- **L**iquid assets, *material issues*, tax liability etc. and tempo issues, e.g. the invoicing frequency;
- **G**oods, *material issues* and *tempo issues*; and
- **S**ervices, *material issues* and *tempo issues*.

  - Those three – L, G and S – are basic on the checklist for testing whether tax liability has emerged by the entrepreneur or the organization or its counterpart etc., since the main rules, article

> 2(1)(a) and article 2(1)(c) of the VAT Directive, stipulate that the supply of goods (G) or services (S) for consideration (L) within the territory of a Member State by a taxable person acting as such shall be subject to VAT.

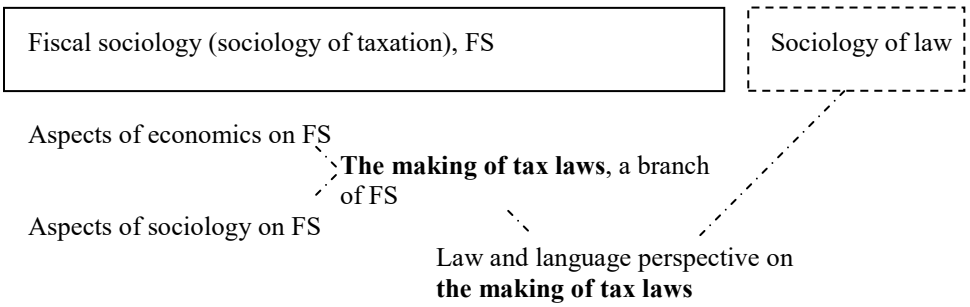
Thus, by processing some or all of the questions on the checklist, i.e. by carrying out the LGS-flow-analysis regarding various problems, the entrepreneur or the organization will get a preview of the VAT situation concerning the aspects subject to the VAT audit. If it's a rather simple VAT problem the LGS-flow-analysis might be sufficient to resolve it. If it's instead a more complex problem the LGS-flow-analysis may at least serve as a software aid for the entrepreneur or the organization to deem when it's time go further with the VAT problem at hand by consulting tax consultants. By the same token may such an aid also be used by the legislator to further refine the process of the making of tax laws for the purpose of detecting communication distortions.

I might update the program that I made in February 2005, but if not will hopefully others develop software to support tax audits or the process of the making of tax laws – like the LGS-flow-analysis described by the overview above and e.g. based on the models and LFT:s that I suggest.

4. SUMMARY AND CONCLUDING VIEWPOINTS

4.1 SUMMARY

Fiscal sociology is a subject in its own right and primarily dealing with aspects of economics and sociology regarding it, not necessarily with laws on taxation. Therefore, I distinguish fiscal sociology from sociology of law. I consider the making of tax laws a branch of fiscal sociology which forms a bridge between aspects of economics and of sociology on fiscal sociology in these broader senses. However, the law and language perspective on the making of tax laws should also be deemed a topic within sociology of law. Thus, by this figure I've elucidated the position of the making of tax laws in the respects mentioned:[66]



The overall conclusion in this book is that the legislator should put the concepts in their respective proper context before thinking about grammar etc, to decrease the risk of communication distortions in the process of the making of tax laws. Thereby the models presented in Chapter 3 by Figure 1, Figure 2, Figure 3 and Figure 4 (which I often refer to as the models) – and of course other similar models or tools – could in short be said offering a structure with boxes to aid the legislator in that process. Supportive to the process is also parsing or at least *parse thinking*. The models may also be adapted info logic function trees (LFT) to further structure the use of the suggested models to detect risks of communication distortions in the process of the making of tax laws. Thereby I give as examples LFT 1 and LFT 2 which are parts of or combinations of Figure 3 and Figure 4. In addition, I propose the introduction of so called seriation for the present topic and suggest also the use of checklists to make software that may aid application of tax laws by entrepreneurs or organizations and which may be used by the

[66] See sec. 2.1.

legislator too to further refine the process of the making of tax laws for the purpose of detecting communication distortions. In the latter respect I give a short overview about something I call an LGS-flow-analysis which I made in February 2005 for VAT purposes and perhaps will update. I summarize this book in this section as follows and give some concluding viewpoints in the next section:

- This book mainly concerns avoiding the mentioned communication distortions by first and foremost avoiding textual imperfections in the communicative respect regarding the making of tax laws. I'm reasoning from the linguistic law and language perspective about *why* a text containing a tax rule may make a poor tool to convey the intention of the legislator to the tax subject, e.g. to an entrepreneur. A resulting question thereby is whether there's any pedagogy to support a decrease of a risk of communication distortions between the legislator's intentions with a tax rule and how it's perceived by the tax subject. Thereby this book connects mainly to Part B of Forssén 2015 (1) and concerns linguistics and pedagogy with respect of the topic law and language, and I'm mainly leaving out systematic imperfections concerning the making of tax laws and consequences of communication distortions, which instead are dealt with in parts A and C of Forssén 2015 (1).[67]

- Of importance for examining the topic in this book are these two presuppositions:

    - Laws are not linguistic acts or even communicative acts, but they are standards of behaviour that can be communicated (and may be made) by using language.[68]

    - Language has a context-dependence.[69]

- In section 2.3 I compare with the general aspects on the use of language in law mentioned in section 2.2 and with some of the experiences mentioned in Part B of Forssén 2015 (1) about *how* communication distortions in the meaning of this book occur where the making of tax laws is concerned, and reason from the linguistic law and language perspective about *why* a text making a tax rule may as such make a poor tool to convey the legislator's intentions with it to the tax subject, e.g. to an entrepreneur.

[67] See Ch. 1.
[68] See sec. 2.1.
[69] See sec. 2.2.

- I'm not emphazising interpretation of language when reasoning about fiscal sociology in the meaning of this book, i.e. when reasoning about *how* communication distortions occur between the legislator's intentions with tax rules and the perception of them. It's not a matter of any law dogmatic analysis of the current law meaning of a tax rule, but communication distortions may also be discovered by those applying the rule and they may – or may not – raise the problems before or without going to court. I've concluded that proper grammar etc. won't resolve the problem of communication distortions occurring in the process of the making of tax laws, if the *context of use* of words and concepts is disregarded anyway by the legislator. Instead the solution of communication distortions in the present sense lies in reasoning about *why* a text containing e.g. an imperative to pay tax may be a poor tool to convey the legislator's intentions with a tax rule to the tax subject. In conclusion I'm arguing for the answers to that question *why* being based on methodology regarding the use of words for the making of laws, e.g. tax laws, whereby matters strictly of grammar character may only serve as support in a process of decreasing risks of communication distortions in the present meaning occurring.[70]

- Thus, I reason in Chapter 3 from the pedagogy viewpoint about whether there's any method to support a decrease of a risk of communication distortions occurring in the process of the making of tax laws.

- In the previous section I conclude that Matters strictly of grammar character may only serve as support in a process of decreasing risks of communication distortions; proper grammar etc. won't, as mentioned, resolve that problem, if the *context of use* of words and concepts is disregarded anyway by the legislator. Therefore may e.g. so called parsing only serve as such a support and I'm focusing instead on models to detect risks of communication distortions, where the legislator's intentions with a text making a rule in e.g. the Value Added Tax Act 1994 in relation to the VAT Directive is concerned. Thereby I come back in Chapter 3 to models – tools – from Part B of Forssén 2015 (1) to detect such risks and try to develop them further.[71]

[70] See sec:s 2.2 and 2.3.
[71] See sec. 3.1.

- I begin the work to develop the models with the models and issues from Part B of Forssén 2015 (1), i.e. concerning communication distortions regarding the use of the concept *tax liable* in the rules on the right of deduction, Chapter 8 section 3 first paragraph, and on the so called representative rule for VAT in *enkla bolag* (approximately translated joint ventures) and *partrederier* (shipping partnerships), Chapter 6 section 2 of the Value Added Tax Act 1994 instead of the concept *taxable person* in article 9(1) first paragraph of the VAT Directive.[72]

- To elucidate further the necessity of models (tools) to detect risks of communication distortions in the present meaning, I give some more examples of the use of *tax liable* in the Value Added Tax 1994 and in the Code of Taxation Procedure 2011, where the supposedly corresponding rules of the VAT Directive use *taxable person*.[73]

- I also mention rules on prohibition of deduction for certain entrepreneurs acquisitions of e.g. vehicles in the Value Added Tax Act 1994 in relationship to the VAT Directive, where risks of communication distortions may occur too concerning implementing of rules with restrictions allowed by the EU if they cause application in conflict with the intentions of the VAT principle itself.[74]

- To further structure the use of the suggested models – tools – I propose, as mentioned, the use of LFT:s and base them, due to the examples mentioned regarding communication distortions, on Figure 3 and Figure 4 from section 3.2 and my remarks there and in section 3.4. Thereby I use the logic gates AND and OR as nodes to build two examples of LFT:s, namely LFT 1 and LFT 2 which, as mentioned, are parts of or combinations of Figure 3 and Figure 4.[75]

- I also suggest, as mentioned, seriation as a supplementation to the models and compare thereby with law history etc. I argue for the use of seriation before a law historic perspective in the process of the making of tax laws. Although a law historic perspective may still be relevant in that process, it should typically be completed with seriation or something similar.[76]

[72] See sec. 3.2.
[73] See sec. 3.3.
[74] See sec. 3.4.
[75] See sec. 3.5.
[76] See sec. 3.6.

- Finally, I suggest development of software based on the models adapted into LFT:s for the purpose of supporting tax audits or further refining the process of the making of tax laws for the purpose of detection of risks of communication distortions in that process. Thereby I give, as mentioned, a short overview about something I call an LGS-flow-analysis which I made in February 2005 for VAT purposes and perhaps will update, where L, G and S stands for flows in the enterprise of **L**iquid assets, **G**oods and **S**ervices.[77]

4.2 CONCLUDING VIEWPOINTS

I restrict my concluding viewpoints about this book to some remarks with suggestions of first and foremost future fiscal sociology research based upon or inspired by it, where the overall purpose is to avoid communication distortions between the legislator's intentions with a tax rule and how it's perceived by e.g. the tax subject by working on how to minimize such distortions by avoiding textual imperfections in the communicative respect regarding the making of tax laws. Thereby may of course also the other parts of Forssén 2015 (1) be regarded, i.e. parts A-C (including their Epilogue), where it should be noted that Part D, i.e. this book, mainly connects to Part B [of Forssén 2015 (1)]. Thus, from this book I repeat some suggestions for research efforts about the topic of the making of tax laws in the present respect and make the following additional remarks:

- Especially concerning the field of VAT in relation to the EU law the model in Figure 4 with the ennobling chain of entrepreneurs until the consumer illustrates the basic VAT principle according to article 1(2) of the VAT Directive. It's also basic for testing whether the intentions of the VAT Directive are expressed by a tax rule in the Value Added Tax Act 1994: If e.g. there's an undesired risk for the text making the rule in the act leading to an application causing a cumulative effect in the ennobling chain, i.e. a tax on the tax effect,[78] a communication distortion in the process of the making of the tax laws has been identified. About problems where the VAT Directive allows restrictions of the right of deduction of input tax, I suggest a test of whether a prohibition rule in the Value Added Tax Act 1994 limits the general rule on deduction in violation of the VAT principle itself, namely this:

[77] See sec. 3.7.
[78] See sec:s 3.2 and 3.4.

If research proves that the application of the present prohibition rule entails that a taxable person has no possibility to prove that tax evasion or avoidance doesn't exist and that the expenses instead have occurred in his economic activity, an undesired cumulative effect – tax on the tax effect – will occur in the ennobling chain and by this test result the prohibition rule should be considered obsolete with regard of the EU law in the field of VAT.

- I suggest that the research efforts on this topic should be done by both law dogmatic and fiscal sociology studies, since that test should consider application according to both case law and an actual current law (i.e. with regard of verdicts by courts of lower instances or decisions by the tax authority).[79]

- By use of models – tools – like the model illustrated by Figure 3 the legislator would decrease the risk of communication distortions in the process of the making of tax laws: The erroneous use of the concept *tax liable* – instead of taxable person – in the main rule on the right of deduction of input tax would have been easily revealed as being out of context if the legislator would insert into that process the use of models like Figure 3 or better still the use of LFT:s based on such models, like LFT 1 and LFT 2 which are parts of or combinations of Figure 3 and Figure 4.[80]

- Since taxation usually is about activities and language has a context-dependence, the use of models or LFT:s should be used for research about e.g. the use of relevant verbs and nouns etc. in the process of the making of e.g. a rule in the Value Added Tax Act 1994, where the risk of communication distortions in the present meaning are concerned. The language's context-dependence affirms also the necessity of research in this sense suggested already in Part B of Forssén 2015 (1). I've suggested a research effort to investigate legal uncertainties in relation to this phenomenon.[81]

- To continue on the theme of the use of the concept *tax liable* in the Value Added Tax Act 1994, I suggest research efforts about e.g. the special rules on tax liability for intermediaries and on producers' enterprises selling at auctions, i.e. Chapter 6 section 7 and Chapter 6 section 8. Thereby could my research about the

[79] See sec. 3.4.
[80] See sec:s 3.5 and 4.1.
[81] See sec. 2.3 and Forssén 2015 (1): Part A, sec. 3.3.1.

representative rule in Chapter 6 section 2 be used by comparison, since those special rules can be said sharing a common history with the special rule Chapter 6 section 2. The problems about intermediaries and the VAT are rather complex and for a proper approach could the ABCSTUXY-model illustrated by Figure 2 serve as an inspiration.[82] Regarding the use of the concept *tax liable* (tax liability) in yet another special rule, Chapter 9 section 1 of the Value Added Tax Act 1994, I mention for research purposes that both law dogmatic and fiscal sociology studies might be appropriate.[83]

- Although a law historic perspective may still be relevant in the process of the making of tax laws, I argue for the use of seriation before a law historic perspective on that process; that process should typically be completed with seriation or something similar. I propose *seriation* as a *supplementary mean* to the models – tools – that I'm suggesting for the process of the making of tax laws, where seriation in this fiscal sociology sense may function as a mean to capture the continuous movement of tax concepts.[84] I've mentioned a number of issues that could have been discovered by the legislator if e.g. LFT and seriation would have been used in the process of the making of tax laws, and I refer to the reform of 2009 and later reforms, where the legislator, as mentioned, has missed e.g. side issues D and E about the use of the concept tax liable in the rules on the right of deduction of VAT and liability to register to VAT from my licentiate's dissertation. Thereby I make a figure illustrating seriation concerning Swedish corporate taxation and the tax subject in relation to the EU law.[85] Here I'd like to add another perspective on the same question – i.e. the determination of the tax subject – to my suggestion for research effort about also other indirect taxes than VAT, namely excise duties, to further show that the process of the making of tax laws should be completed by e.g. LFT and seriation to decrease the risk of communication distortions.

- The same problem as I mentioned as the main issue A in my licentiate's dissertation (2011) and which was adjusted by the reform of the 1st of July 2013, i.e. the abolishment of the connection to the concept *person carrying on a business* in the Income Tax Act 1999 for the determination of the tax subject for

[82] See sec. 3.3, item 3.
[83] See sec. 3.3, item 4.
[84] See sec. 3.6.
[85] See sec. 3.6.

> VAT purposes, still seems to exist concerning certain excise duties in the Swedish legislations, e.g. in the Energy Tax Act 1994 regarding the concept *professional activity*. In my opinion this calls for research about such connections to the Income Tax Act 1999 in relation to the EU's Excise Duty Directive (2008/118), where it follows by paragraphs 16 and 22 of the preamble to that directive that the tax subject shall be a *trader*. In the same way as with the connection from Chapter 4 section 1 number 1 of the Value Added Tax Act 1994 before the reform of the 1st of July 2013 could the connection that still exists in e.g. Chapter 1 section 4 of the Energy Tax Act 1994 mean that legal persons – unlike natural persons – are deemed tax subjects already by their status as legal persons, which wouldn't be conform with the EU's Excise Duty Directive. This may also cause problems concerning the VAT and input tax by the buyer, due a too high base for calculation of output tax (VAT) by a vendor caused by an erroneous excise duty inserted into the ennobling chain. I've mentioned inter alia these problems about excise duty in another book,[86] and I mention them here as additional topics for research efforts.

The main conclusion is that I find it important to open up the topic of the making of tax laws by moving the individual into the centre of that process by the suggestions I make in Part A of Forssén 2015 (1) on systematic changes of the process of the making of tax laws, where the interest of entrepreneurs is concerned; in this book I suggest models etc. to improve that process with regard of legal certainty, i.e. by making the process easier to audit and thereby easier to influence by e.g. the individual entrepreneur concerned by a rule containing the imperative pay tax. It's not a matter of deconstruction, where I would suggest to break down the Swedish tax system without presenting alternative solutions; by moving the individual into the centre of the process of the making of tax laws and suggesting a consistent use of models – tools – to uphold as well as examine it, I present an alternative system that better brings to light the legislator's motives for a tax rule. You can ask a politician for his or her opinion about some issue, but it's not possible to ask the legislator e.g. about the contemporary law political aims – i.e. motives – for a tax rule. In other words, I'm arguing for a system where it's possible to study and identify if those motives – intentions – by the legislator have changed, i.e. so that fiscal sociology studies rather than law dogmatic studies alone will become a way to detect communication distortions causing frustration by those applying a tax rule which poorly conveys the legislator's intentions with it. In short, by consistently using models like those suggested for the process of the making of tax laws

[86] See Forssén 2015 (4), sec:s 2.3 and 4.2. See also Forssén 2015 (5), p. 145.

the proposed system for it will most likely better fulfil demands on legal certainty – that process will thus become reflected by the tools supporting it and susceptible to influences from e.g. the entrepreneur.

- The recently mentioned will most likely also benefit the development of the EU system; e.g. would the use of LFT and seriation have made it clear for the legislator that case law made it possible already at the mentioned reform of 2009 to connect the income tax law to the VAT law regarding the determination of the tax subject for corporate taxation purposes.[87] By the way, the latter would – if done on the EU level too – provide well for the introduction of an EU tax.[88]

- The lack of tools is probably also why the legislator neither seems to realize there's a necessity to approach the EU about clarifying whether the concept taxable person in article 9(1) first paragraph of the VAT Directive applies or should apply also to non legal entities such as *enkla bolag* and *partrederier*.[89]

For procedural law aspects on evidence about the determination of the tax subject in corporate taxation, I've mentioned in my theses accounting questions in relation to the question whether the evidence is affecting that determination.[90] I suggest the development of software, like the LGS-flow-analysis described in section 3.7, based on LFT:s to support tax audits or the process of the making of tax laws, and thereby would most likely the procedural law benefit from i.e. the determination of the tax subject etc. being more closely integrated with the BKA 1999 and thus with the basis of evidence in enterprises.

The latter is also one way of breaking up the tradition of law dogmatic research in the field of taxation so that also fiscal sociology studies are used; there's a tradition of loyalty to preparatory work in Swedish law source law,[91] but for fiscal sociology studies in e.g. the field of VAT about detecting risks of communication distortions in the process of the making of tax laws it's more appropriate to first and foremost regard the intentions expressed by the VAT Directive's principles – e.g. mentioned in the recitals of its preamble.[92]

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[87] See Forssén 2011, sec:s 2.2.5 and 8.2.
[88] Compare the Epilogue to parts A-C of Forssén 2015 (1), Forssén 2011, pp. 269, 327 and 328 and Forssén 2015 (2), sec. 1.2.3.
[89] See Forssén 2015 (1) Part A, sec. 3.2.1.2 and Forssén 2013, pp. 209 and 222 and PAPER, p. 47.
[90] See Forssén 2011, pp. 33, 79, 80, 81 and 176–181 and Forssén 2013, PAPER, p. 20.
[91] See Forssén 2015 (1): Part B, sec. 3.3.2.2.
[92] See sec. 3.1.

> If the CJEU has made a verdict concerning a topic at hand interpretation problems may occur due to differences between the language of the case and other authentic languages within the EU. Thereby I've recommended in my licentiate's dissertation to compare the own language version of the verdict with the French so called original version and, if possible, with the language of the case.[93] I mention this only to remind that causes to communication distortions in the present meaning perhaps are to be sought already in the fact that the EU has various authentic languages. However, when eventual language differences are regarded it still remains to analyse the process of the making of tax laws to answer the questions *how* and *why* communication distortions occur between the legislator's intentions with tax rules and the perception of them, e.g. when implementing a rule from the VAT Directive into the Value Added Tax Act 1994. Since the various language versions of the VAT Directive have the same structure,[94] the problems about conveying the legislators' intentions are the same in the different Member States, where the *context of use* of words and concepts is concerned. Nevertheless, the CJEU case law should be regarded too to begin with to determine the purpose of the VAT Directive, since the intended result with it is binding for the Member States (and they are obliged to harmonise their VAT acts).[95] For example the mentioned comparison of language versions led me, regarding *Gregg* (Case C-216/97) where the language of the case is English (and I compared the Swedish, English and French language versions of paragraph 20 in that verdict), to the conclusion that the VAT law principle of neutrality has a general determination of providing neutrality concerning legal form and the scope of the activity carried out by the tax subject.[96]

I also propose the described approaches to detect risks of communication distortions in the process of the making of tax laws concerning comparative law studies, where both EU Member States and countries outside the EU are of interest for a comparison with the Swedish experiences mentioned in this book.[97] Thereby I remind too about previously mentioning Russia concerning research about difficulties to introduce a Financial Constitution and to raise taxes.[98]

Finally, I consider, as mentioned, the topic of this book, i.e. sociology of law aspects on the tax rules as such, a new branch of fiscal sociology concerning certain aspects regarding the making of tax laws – a bridge between aspects of economics and sociology on the fiscal sociology. In the recently mentioned respects this topic concerns a certain aspect on fiscal sociology fitting within the subject in those broader senses, e.g. regarding *the use of tax revenues* for social spending. Since the latter is considered a big deal concerning research efforts in the field of fiscal sociology,[99] I come back to this in Part E of Forssén 2015 (1), where I mention e.g. how the experiences from parts A-D may affect or inspire

[93] See Forssén 2011, p. 69 with references to Bernitz 2010 and to Mulders 2010.
[94] See Forssén 2011, p. 69.
[95] See Forssén 2015 (1): Part A, sec. 1.3; Part B, sec. 1.1; and Part C, sec. 1.1.
[96] See Forssén 2011, pp. 92, 93, 94, 247, 248 and 304.
[97] See sec. 3.6.
[98] See in that respect suggestions of research efforts also in the Epilogue to parts A-C of Forssén 2015 (1).
[99] See the Epilogue to parts A-C of Forssén 2015 (1).

studies of economics and sociology about the fiscal sociology. By the way, Part D, i.e. this book, should per se – at least to some extent – have an influence upon studies on sociology of law.

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