The VAT's external limits – a model for researchers and solicitors at comparison of the value-added tax act with the EU law

[Translation of the article *Mervärdesskattens yttre gränser – en modell för forskare och processförare vid jämförelse av mervärdesskattelagen med EU-rätten*, by Björn Forssén, published in original in Tidningen Balans fördjupningsbilaga (The Periodical Balans Annex with advanced articles) 3/2019, pp. 19-26.]

In this article Björn Forssén is going through a model for the judgment of questions on value-added tax, VAT, (Sw., mervärdesskatt, moms), regarding whether a rule in mervärdesskattelagen (1994:200), ML, the Swedish VAT act, is complying with the EU law in the field of VAT. He is illuminating situations where it may be discussed whether the Swedish national ML is contained within the EU law's external limits in the field. The review is meant to function as a support for the research in the field of VAT or for solicitors representing enterprises and organizations in tax law procedures and other cases concerning VAT.

Where the need of a reformation of the legislations in the field of VAT is concerned, Björn Forssén shows furthermore that the necessity of alterartions also exists on EU level, and he is making inquires for action from both the legislator and the researchers of such a more complete perspective on the subject.

In this article, I am starting from the schematic overview, in the diagram below, of the VAT's obligations and rights, and go through five different examples of fundamental questions for the VAT, where I treat whether the ML is exceeding the rights or is limiting compared to the external limits set up in these respects according to the EU law in the field, that is first in relation to the EU's VAT Directive (2006/112/EC).

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Where appropriate, I refer at the review of the questions to the numbers in the scheme. I mention numbers 1a)-4), but not the prohibitions of deduction according to number 5). The prohibitions of deduction in the ML have been questioned in various contexts in relationship to the EU law. It has in the first place been a matter of the prohition of deduction for input tax pertaining to expenses for permanent dwelling (Ch. 8 sec. 9 first para. no. 1 of the ML) and prohbition of deduction and limitation of the right of deduction för passenger cars and motorcycles (Ch. 8 sec:s 15 and 16 of the ML). The prohibitions of deduction in the ML are allowed in accordance with article 176 second para. of the VAT Directive as long as

otherwise not decided on EU level. The prohibitions of deduction mean only a limitation of the rights according to 3a) and 3b) in the scheme. If the prohibitions of deduction did not exist, that limitation of the side of the rights in the scheme would disappear and it would only Om avdragsförbuden inte fanns, skulle den begränsningen av rättighetssidan i schemat apply to the VAT's obligations and rights in general. Therefore, the prohibitions of deduction are not mentioned at the review of a model to judge whether a rule in the ML is complying with the EU law in the field of VAT. In this article it may suffice with mentioning that prohibitions of deduction exist in the ML by virtue of article 176 second para. in the VAT Directive, and that some of them still can be questioned under the EU law in the field of VAT.

The questions about certain rules in the ML by comparison with the VAT Directive

1. Any person who independently carries out an economic activity is *taxable person* (1a). On this point, the determination of the tax subject in Ch. 4 sec. 1 of the ML corresponds completely since 1 July, 2013 with the VAT Directive, by Ch. 4 sec. 1 first para. first sen. of the ML containing according to SFS 2013:368 the same wording for who is taxable person as the main rule in article 9(1) first para. of the VAT Directive: "Med *beskattningsbar person* avses den som, oavsett på vilken plats, självständigt bedriver en ekonomisk verksamhet, oberoende av dess syfte eller resultat" (Eng., 'Taxable person' shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity). If the taxable person makes a *skattepliktig omsättning* (taxable transaction) of goods or service (2a), the person becomes *skattskyldig* [tax liable or, with the wording of the directive, 'person liable for payment of VAT'], according to the main rule in Ch. 1 sec. 2 first para. no. 1 (with reference to sec. 1 first para. no. 1) of the ML which corresponds with the main rule in article 2(1) a and c of the VAT Directive, and shall thereby account for and pay output tax on the tax amount (by application of the actual VAT rate). In my licentiate's dissertation from 2011, *Skattskyldighet för mervärdesskatt – en analys av 4 kap. 1 § mervärdesskattelagen* (Tax liability to value-added tax – an analysis of Chapter 4 section 1 Value Added Tax Act), I questioned that Ch. 4 sec. 1 of the ML was complying with article 9(1) first para. of the VAT Directive. The connection that then existed in Ch. 4 sec. 1 no. 1 to the concept *näringsverksamhet* (business activity) in Ch. 13 *inkomstskattelagen (1999:1229)*, IL, the Swedish Income Tax Act, namely meant that a legal person constituted tax subject accoring to the ML without that the prerequisites in the main rule for who is taxable person, article 9(1) first para. of the VAT Directive, were fulfilled. It was due to that all legal persons have *näringsverksamhet* (business activity) according to Ch. 13 sec. 2 of the IL, regardless whether the subjective prerequisites for *näringsverksamhet* according to Ch. 13 sec. 1 first para. of the IL are fulfilled. That meant a difference between the determination of the tax subjct according to the ML regarding on the one hand natural persons and on the other hand legal persons, and that the ML for the latter category of persons exceeded the external limit that the VAT Directive sets up in that respect according to the main rule for who is taxable person. The legislator did not note that I as side issues to that main question in the thesis brought up that also the use of the expressions *skattskyldighet* (tax liability) and *skattskyldig* (tax liable) respectively for the determination in the national legislations on VAT of the right of deduction for input tax and of who is liable to register for VAT respectively also can be questioned in relation to the EU law in the field of VAT. I come back in this item of the present article to the previously mentioned of these two questions and in the next item I come back to the latter question.

According to article 168 a of the VAT Directive a taxable person has *right of deduction for input tax* on acquisitions or imports in his activity already when he is making acquisitions or imports aiming at making taxable transactions in the activity. According to the Court of Justice of the EU's (CJEU) case 268/83 (Rompelman), item 23, it is not necessary for taxable transactions actually occurring before the right of deduction emerges. The question is whether the main rule for the scope and emergence of the right of deduction in the ML, Ch. 8 sec. 3 first para. (3a), is complying with the CJEU's case-law, regarding when the right of deduction emerges. The question is in the same way relevant for the relationship between Ch. 10 sec. 11 first para. of the ML and article 169 of the VAT Directive concerning so-called right of reimbursement for input tax (3b) in an activity where from taxation qualified transactions of goods or service take place (2b).

The problem with Ch. 8 sec. 3 first para. of the ML in relation to the CJEU's case-law concerning the determination of when the right of deduction emerges for input tax is that the rule contains the expression *skattskyldighet* (tax liability), whereas article 168 a of the VAT Directive uses taxable person for the same determination. *Skattskyldig* (tax liable) corresponds with *betalningsskyldig* (person liable for payment) in the VAT Directive, and the wording of Ch. 8 sec. 3 first para. of the ML can thereby be interpreted as there would be a demand for taxable transactions of goods or service actually occurring, before the right of deduction for input tax on acquisitions or imports emerges. Thus, the main rule for right of deduction in Ch. 8 sec. 3 first para. of the ML is not EU conform in the present respect. The wording of Ch. 8 sec. 3 first para. of the ML is: "Den som bedriver en verksamhet som medför skattskyldighet får göra avdrag för den ingående skatt som hänför sig till förvärv eller import i verksamheten" (Anyone who carries out an activity causing tax liability may deduct the input tax pertaining to acquisitions or imports in the activity). Thus, if the concept *skattskyldighet* (tax liability) is not abolished from Ch. 8 sec. 3 first para. and replaced with a formulation to determine the emergence of the right of deduction, where *skattskyldighet* has been replaced *beskattningsbar person* (taxable person), the main rule in the ML is limiting that right in relation to the main rule on the scope and emergence of the right of deduction in article 168 a of the VAT Directive.

A taxable person (1a) shall not have to wait to exercise the right of deduction (3a) or reimbursement (3b) for input tax on acquisitions or imports, if he is aiming at making taxable (2a) or from taxation qualified exempted (2b) transactions of goods or services with his acquisitions or imports. He shall have that right according to item 23 in the CJEU's case 268/83 (Rompelman) already due to that intention. The use of the concept *skattskyldighet* (tax liability) in Ch. 8 sec. 3 first para. of the ML opens for an interpretation where the taxable person would have to wait to exercise the right of deduction or reimbursement of input tax iúntil taxable or from taxation qualified exempted transactions actually have taken place in the enterprise. In that way, the ML is not contained within the limits set up in the VAT Directive for the individual's rights regarding the VAT. I mention this as an example of when the ML is transgressing the external limits of the VAT according to the EU law, in this case in a fiscal respect.

2. The rules on liability to register for VAT purposes are to be found in Ch. 7 of *skatteförfarandelagen (2011:1244)*, SFL, the Swedish Taxation Procedure Act, and

nearest corresponding rules in the VAT Directive are to be found in articles 213-216. Also in this respect is the use of the expression *skattskyldig* (tax liable) in the Swedish national legislation casuing problems in relation to the EU law, when it is stated in Ch. 7 sec. 1 first para. no. 3 of the SFL that *Skatteverket* (SKV), the tax authority, shall register a person who is *skattskyldig* (tax liable) according to the ML, whereas article 213 of the VAT Directive is suing the concept *beskattningsbar person* (taxable person) in that respect – that is not that with *skattskyldig* (tax liable) corresponding concept *betalningsskyldig* (person liable for payment).

A taxable person can invoke the written rule in the SFL and omit to register for VAT, as long as the person is not actually making any taxable transaction of goods or service. The principle of legality for taxation measures in Ch. 8 sec. 2 first para. no. 2 of *regeringsformen (1974:152)*, RF, i.e. the 1974 Instrument of Government, is limiting in the present case an EU conform interpretation of the rule in the SFL on the liability register for VAT purposes. An EU conform interpretation shall be made of the national rules, but it does not mean any obligation for the Member States' authorities and courts to interpret them in conflict with their wordings (contra legem). That is also the CJEU's opinion, according to item 110 in the CJEU's case C-212/04 (Adeneler et al.). In this case, the Swedish national legislation in the field of VAT is limiting the individual's obligations, but an alteration of Ch. 7 sec. 1 first para. no. 3 of the SFL should be made so that the SKV's possibilities of control will not be obstructed concerning the liability to register and neither the individual's – the entrepreneur's – possibility to plan ahead be made worse in the same respect. That would risk leading to competition distortions, and is thus in conflict with the for the VAT fundamental principle of a neutral VAT according to recital 4 of the preamble to the VAT Directive, article 1(2) of the VAT Directive and article 113 of the Treaty on the Functioning of the European Union (TFEU).

Thus, in my opinion should Ch. 7 sec. 1 first para. no. 3 of the SFL be altered, so that the liability to register for VAT purposes would be connected to the concept *beskattningsbar person* (taxable person), instead of to the concept *skattskyldig* (tax liable). The SKV's possibilities of control and the invidual's possibility to plan ahead that otherwise are made worse consist of the following. A taxable person (1a) who from the beginning is only aiming at making from taxation unqualified exempted (2c) transactions of goods or services has neither right of deduction nor right of reimbursement for input tax on acquisitions or imports (4). However, that person should be liable to register in the VAT register, and not only in the general tax register. Although the CJEU's case-law does not clearly express that also taxable persons only aiming at making from taxation unqualified exempted transactions are liable to register for VAT purposes according to articles 213-216 of the VAT Directive, problems exist today as well for the SKV's control activity as for the planning ahead for the entrepreneur, whether the entrepreneur shall register first if he is going over to – only or also – make taxable (2a) or from taxation qualified exempted (2b) transactions.

Although the principle of legality for taxation measures in the RF entails that the obligations under the VAT can be limited in relation to the VAT Directive due to national legislation's wording, it means in my opinion, regarding the liability to register for VAT purposes, that the VAT's external limits are systematically transgressed, when it leads to undesired competition distortions, if that in the EU's

secondary law and primary law established principle of a neutral VAT is disregarded in the way described. In the context, it may be mentioned concerning the primary law that a directive shall be binding for each Member State regarding the result that shall be achieved by it, and the so-called rest competence which remains on national level applies only for the determination of form and methods for the implementation of the directive, according to article 288 third para. TFEU. Inter alia from the CJEU's case C-437/06 (Securenta), item 35, it may be considered following that when a rule in the VAT Directive does not constitute a sufficient material for intrepretation at an EU conform interpretation of a rule in national legislation regarding VAT the Member States are obliged to exercise their authority to apply national interpretation rules with regard of the purpose and systematics of the Sixth VAT Directive (77/388/EEC), nowadays the VAT Directive. I consider that the described problems with the liability to register to VAT are determined by the use of the concept *skattskyldig* (tax liable) in Ch. 7 sec. 1 first para. no. 3 of the SFL causing that the SFL can be interpreted and applied in conflict with the VAT Directive (secondary law), and that the resulting competition distortion means that the SFL in the present respect also is in conflict with the EU's primary law in the field of VAT however not only regarding article 113 TFEU, but also with respect of article 288 third para. TFEU.

3. If an ordinary private person, that is a consumer/tax carrier (Ib), can be comprised by the VAT according to the ML (or the SFL), it is in conflict with the basics of what is meant by VAT according to the EU law. Fundamental for the VAT is namely that a distinction – fixing of a border – shall be made between on the one hand the tax subjects (1a), that is taxable persons (in principle entrepreneurs) and on the other hand the consumers (1b), that is those who shall be burdened by the tax (tax carriers). Then must the so-called representative rule for tax and payment liability to VAT in *enkla bolag* (approx. joint ventures) and *partrederier* (shipping partnerships), Ch. 6 sec. 2 of the ML (and Ch. 5 sec. 2 of the SFL), be altered, so that an ordinary private person (consumer) cannot be given the character of *skattskyldig* (tax liable) according to the ML *via* that Ch. 6 sec. 2 first sen. of the ML would be applicable for an ordinary private person, only because that he is partner in a legal figure which constitutes *enkelt bolag* (approx. joint venture) or *partrederi* (shipping partnership) – a legal figure which by the way does not constitute a legal entity. It is thus in conflict with the basics of the VAT, that is in conflict with article 9(1) first para. of the VAT Directive, since the distinction between 1a) and 1b) thereby is not upheld consequently by the rules in the ML.

   In the doctor's thesis from 2013, *Skatt- och betalningsskyldighet för moms i enkla bolag och partrederier*, Tax and payment liability to VAT in *enkla bolag* (approx. joint ventures) and *partrederier* (shipping partnerships), I name the mentioned interpretation result regarding Ch. 6 sec. 2 of the ML as extreme, since the basics for the VAT system susch as it is determined by the EU law are disregarded. An ordinary private person would be given the right to VAT deduction on his expenses, for example at purchases in the grocer's shop. The VAT is a tax on consumption and the tax shall be carried by the consumer, who usually is a private person and who, unlike the tax subjects, shall not get any deduction for input tax at purchases of for instance food-stuffs. A person who for example has a retaurant carries out economic activity, and has – as a tax subject – right of deduction for input tax on purchases of inter alia food-stuffs. He charges in his turn VAT on the restaurant bill to the guest, who in the capacity of consumer does not get any claim againts the State corresponding the VAT

in the bill. If the consumers could make a claim on the VAT against the State, it would be a matter of some sort subsidy from the State, and not of an input tax like a tax subject's claim againts the State. Such a claim would in my opinion not be comprised by any protection worthy interest according to the principle of legality for taxation measures in Ch. 8 sec. 2 first para. no. 2 of the RF, and could taken by itself not be exercised by the consumer against the SKV. However, in my opinion may an alteration of the law still be demanded, since it risks leading to such competition distortions that mean that the national rule exceeds the VAT's external limit systematically and is thus in conflict with the EU law in the field of VAT concerning as well secondary law as primary law.

4. If it instead would be a matter of a taxable person (1a) making from taxation unqualified exempted transactions of goods or services (2c), and thus not having right of deduction or reimbursement (4), still be given right of deduction or reimbursement for input tax (3a/3b), it would be a matter of an illicit subsidy from the State to such taxable persons (entrepreneurs) according to article 107(1) TFEU, since the competion is distorted also in that way. This follows by item 59 in the CJEU's case C-172/03 (Heiser) of 3 March, 2005, where the CJEU considered that such an illicit subsidy from the State existed, when the circumstance that the services provided by a physician were transformed from being taxable (2c) not led, according to Austrian VAT legislation, to that in article 20 of the Sixth VAT Directive (77/388/EEC) – nowadays articles 184-192 of the VAT Directive – prescribed taxation measure, which would consist of reduction of the right of deduction for input tax due a changed use of the Capital goods.[1]

   If the ML would give right of deduction or reimbursement regarding activities where from taxation unqualified exempted transactions are made, like concerning health care or social care according to Ch. 3 sec:s 4-7, it would also mean that the ML is transgressing the VAT's external limit accordin to the EU law concerning as well secondary law as primary law and if so with regard of an EU conform interpretation of such a rule in relation to the rules in the articles 184-192 of the VAT Directive, that is without that it would be necessary with an interpretation regarding the purpose of and systematics concerning the VAT Directive as a whole.

5. For the determination of the tax object should the same technique for making rules – systematics – be used in the ML as in the VAT Directive. The VAT Directive does not contain any definition of goods or service. Instead, the directive contains rules on taxable transactions and about which transactions – supply of services (Sw., *leverans av varor*) and supply of goods (Sw., *tillhandahållande av tjänster*) – are exempted from taxation. The determination of the object of taxation or exemption is thus – unlike according to the ML – made without any preceding determination of whether it is a matter of good or service. Therefore should Ch. 1 sec. 6 be ablished from the ML, which instead also only should contain rules on taxable transaction and on exemption from taxation for certain transactins of goods or services, where the determination of the tax object or exemption from taxation is concerned.

[1] The CJEU refers in the case to article 92 of the EC Treaty, before the change of number of the article by the Amsterdam treaty, which became article 87 of the EC Treaty and which today is corresponded by article 107 TFEU.

The judgment of whether it is a matter of a transactipn of goods or a transaction of service should be made with regard of the concept of ownership, and that it is a composite concept. For example means letting of goods only letting of the right to use the goods. Such a transaction constitutes transaction of service, since a complete transfer of all the rights to the goods in question forming the concept ownership – transer of ownership – does not occur. Compare the main rules of what is constitution *supply of goods* and *supply of services* respectively, articles 14(1) and 24(1) respectively in the VAT Directive: 'Supply of goods' shall mean the transfer of the right to dispose of tangible property as owner, whereas 'supply of services' shall mean any transaction which does not constitute a supply of goods..

The negated determination of supply of services starts from material assets. Thus, a supply of a service can occur in the way described above, by it not leading to a transfer of ownership regarding a material assets. However, the negated determination does not mean any obstacle for a supply of a service itself emerging and without any reference to a material asset – it is still a matter of a transaction that does not constitute a supply of goods. Precisely as with the forming of goods can services exist in an infinite number of variations. The scope of the VAT consists according to the diagram above partly in a subject side with a division of persons into various VAT status, where the taxable persons are comprised by it, whereas consumers fall outside, partly in an objective side, where transaction of goods or service should not be looked at only two-dimensional. The object side is also to be denoted as three-dimensional, why the squares 2a, 2b and 2c in the diagram above should be looked at as profound or in other words as boxes without back piece. In principle, it is possible – in a figurative sense – to put in these boxes a limitless variation of goods and services.

A transaction of goods is rather easy to establish, since it concerns material assets – i.e. something which (simplified expressed) is possible to touch. Regarding transaction of services the difficulty lies in categorizing these to accomplish a division between on the one hand those entitling to right of deduction or reimbursment (3a/3b), i.e. taxable (2a) and from taxation qualified exempted (2b), and on the other hand those that do not entail such right (4), i.e. from taxation unqualified exempted transactions (2c). Therefore, I may mention an idea from my VAT books of 1993 and 1994,[2] which means that I divide the services into five categories (I-V), whereby I use *föremål* (things) and *objekt* (objects) respectively, to state when a reasoning concerns a judgment of transaction of goods and transaction of service respetively.[3] It is also an idea that can be deleloped, and make more effective the model – the tool – that I bring up in this article to make easier the analysis that shall be made at a research effort or in a taxataion procedure regarding one or more VAT questions.

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[2] See *Mervärdeskatt En läro- och grundbok i moms* (Value-added tax A text and basic book in VAT), Publica 1993, pp. 64etc. and *Mervärdesskatt En handbok Andra upplagan* (Value-added tax A handbook Second edition), Publica 1994 pp. 88etc. (the contents of both books are available on www.forssen.com – under Böcker m.m.). Since there is no translation into English of those two books, I refer readers of this article, where the five categories of services (I-V) are concerned, to pp. 72etc. in my book Goods and services at composite transactions – interpretation and application according to the Swedish VAT Act and the EU's VAT Directive, which is available in full text on www.forssen.com – under PFS Böcker, code 038Blå.

[3] Since the recently mentioned two books of mine are not translated into English, I refer readers of this article, where the five categories of services (I-V) are concerned, to pp. 72etc. in my book Goods and services at composite transactions – interpretation and application according to the Swedish VAT Act and the EU's VAT Directive, which is available in full text on www.forssen.com – under PFS Böcker, code 038Blå.

In my opinion, the mentioned clearer division of supply of services in the VAT Directive gives a more foreseeable determination of the tax obejct than what nowadays is the case by the determination in the artciles 6-9 of the Concil's implementing regulation (EU) No 282/2011 – the so-called Implementing Regulation – regarding what is meant with supply of services according to the articles 24-29 of the VAT Directive. Above all regarding electronically supplied services, since the determination of them in article 7 of the Implementing Regulation is made by a casuistic enumeration of what shall be included in particular and of what shall not be comprised. Thus, that the interpretation and application of what shall be comprised by transaction of services according to Ch. 2 of the ML is determined by two EU law legislations in the field of VAT worsen the foreseeability and thereby the legal certainty compared to if the regulation of supply of services only is made in the VAT Directive and with the modification of the directive I am suggesting. Sweden should abolish Ch. 1 sec. 6 from the ML and the EU should reform the secondary law in the field of VAT as I am suggestting, to decrease the risk of above all the mentioned casuistic determination of what is meant with electronically supplied services leading to the VAT's external limits being limited in relation to the basic idea that all sorts of transactions of goods and services in principle constituting tax obejcts according to what is meant with VAT according to the EU law. A casuistic determination of the tax object is on the whole counterproductive for the determination of such a richly varying tax obejct, since the development above all in precisely a field of technique like services which are electronically supplied quickly can make such a determination obsolete.

Concluding viewpoints

The review of the five questions above is meant to show how models – tools – to carry out an analysis of one or more VAT questions can be developed. Such a model can be used as support at the analysis of problems on fixing a border as well for the judgment of the VAT's external limits, that is concerning what those rights and obligations can regard at the most, as for the judgment of the internal problems on fixing a border regarding the rules in the ML, the SFL and above all the VAT Directive. A model like the diagram in this article can be used by researchers within the VAT law, regardless whether the model – the way of approach – for their studies is law dogmatic or empirical. The legislator should also acquire such a model. The VAT is complex, and above all can solicitors, researchers and the legislator have difficulties realizing how the rights and the obligations are connected. If the legislator had used the mentioned diagram, which is to be found in a previous version in *Skattskyldighet för mervärdesskatt – en analys av 4 kap. 1 § mervärdesskattelagen* (Tax liability to value-added tax – an analysis of Chapter 4 section 1 Value Added Tax Act), p. 21, the legislator would have had support in that respect of a simple tool and at least probably not have missed that the side of the rights in the ML is limited by the expression *skattskyldighet* (tax liability) being used in that context (Ch. 8 sec. 3 first para. of the ML) instead of the VAT Directive's concept *beskattningsbar person* (taxable person). The reform that was introduced concerning the determination of the tax subject on the obligation side on 1 July, 2013 (SFS 2013:368) solved so to speak only half the problem, since the side of the rights in the ML still is limited in conflict with CJEU's conception about the emergence of the right of deduction according to article 168 a of the VAT Directive.

Some of the questions I am mentioning in this article should be subject to efforts from the legislator on the national level, whereby the ML and the SFL should be altered in the parts

exceeding the VAT's external limits according to the EU law. That applies to the questions 1-4. Other questions should be brought up by Sweden on EU level. That applies to question 5 and my suggestion on a reform meaning a return to the central secondary legsilation in the ield of VAT being the VAT Directive, whereby the Implementing Regulation thus would be abolished. However, the legislator can on the national level also bring up the question on an abolishment of Ch. 1 sec. 6 from the ML.

On the whole should in my opinion both the legislator and the researchers apply a more complete perspective on the subject VAT, where the need of alterations of the legislations are treated as well on the national level as on EU level. I have for instance in my doctor's thesis from 2013, *Skatt- och betalningsskyldighet för moms i enkla bolag och partrederier*, Tax and payment liability to VAT in *enkla bolag* (approx. joint ventures) and *partrederier* (shipping partnerships), brought up that Sweden should raise on EU level whether the main rule on who is taxable person, article 9(1) first para. of the VAT Directive, should be altered so that also non-legal entities like *enkla bolag* (approx. joint ventures) and *partrederier* (shipping partnerships) are comprised by the concept taxable person, and the special so-called representative rule, Ch. 6 sec. 2 of the ML, thereby no longer being necessary (cp. question 3 above). In that respect, I have also suggested that such a suggestion on EU level from Sweden should be made in consultation with Finland, where the so-called *sammanslutningarna* – which neither constitute legal entities – actually are treated as tax liable (*skattskyldiga*) in accordance with *mervärdesskattelagen (1501/1993)*, the Finnish VAT Act, unlike what apply in Sweden for the *enkla bolagen* (approx. joint ventures) and *partrederierna* (shipping partnerships) according to the ML.[4]

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[4] See p. 226 in the doctor's thesis and p. 34 in the therein concluding summary of both my theses.