The Trap of Mathematics in the Research – regarding the VAT law

[Translation of the article *Matematikfällan i forskningen – avseende mervärdesskatterätten*, by Björn Forssén, published in original in Tidningen Balans fördjupningsbilaga (The Periodical Balans Annex with advanced articles – below *Balans fördjupning*) 2/2020, pp. 17–27.]

Björn Forssén has, in Balans fördjupning, presented inter alia The European stepladder (staircase) regarding the hierarchic relationship between national law and European law and questions about a so-called actual current law in the field of taxation beside precedents by the Swedish Supreme Administrative Court, i.e. Högsta förvaltningsdomstolen (HFD). In this article, he is warning for the research regarding value-added tax, VAT, (Sw., mervärdesskatt, moms), being developed into exercises in logic which makes it less useful for the appliers. Björn Forssén considers that the research in tax law is carried out in a super law dogmatic tradition which is not sufficiently stimulating the legislative work or the development of law.

In the field of VAT he sees a development with elements of logic and mathematics which is counterproductive, where law dogmatic studies, that is interpretation and systematization of current law, are not entailing a progressive development with respect of the research prerequisite usefulness. He is warning for a trap of mathematics, and suggests that the research considering the VAT law should be completed with legal semiotics, so that it becomes more useful for the legislator and the appliers. He also considers that the existence of an actual current law in the field of VAT should be subject to research – first by empirical studies.

In the article *Europatrappan – en normhierarkisk bild vid regelkonkurrens mellan svenska nationella och europarättsliga regler med skatterättsexempel* (The European stepladder – a norm hierarchic picture at rule competition between national and European law with tax law examples), published in *Balans fördjupning* 4/2017, I gave my viewpoint of the relationship between Swedish national lad the EU law in fields where the EU law determines the contents of Swedish rules, like regarding the VAT in the field of taxes. I took a European law perspective, by also regarding the European Convention of Human Rights, and stated that the formal power of law cannot be described as a norm hierarchic ladder, since a norm can be expressed by rules in more than one legislation, that is in legislations from a Swedish entity, the Parliament, the Government etc., from the EU and its institutions and from the Council of Europe. Therefore, I suggested to describe that rule competition in a norm hierarchic stepladder. In the book *Skatteförfarandepraktikan – med straff- och europarättsliga aspekter* (The Tax Procedure Handbook – with criminal- and European law aspects) I state, in connection with a review of the European stepladder, that a solution of the problem with the relationship between national law and the EU law would be to codify the principle of the EU law's primacy before national law in the Treaty of Eupean Union or in the Treaty on the Functioning of the European Union (TFEU). Until then, the solution of the problem is procedural – an aspect which is mentioned also in this article.

Starting from my theses, the licentiate's dissertation *Skattskyldighet för mervärdesskatt – en analys av 4 kap. 1 § mervärdesskattelagen* (2011), Tax liability to value-added tax – an analysis of Chapter 4 section 1 Value Added Tax Act, and the doctor's thesis *Skatt- och betalningsskyldighet för moms i enkla bolag och partrederier* (2013), Tax and payment liability to VAT in *enkla bolag* (approx. joint ventures) and *partrederier* (shipping partnerships),[1] where I point out lacks in *mervärdesskattelagen (1994:200)*, ML, the Swedish

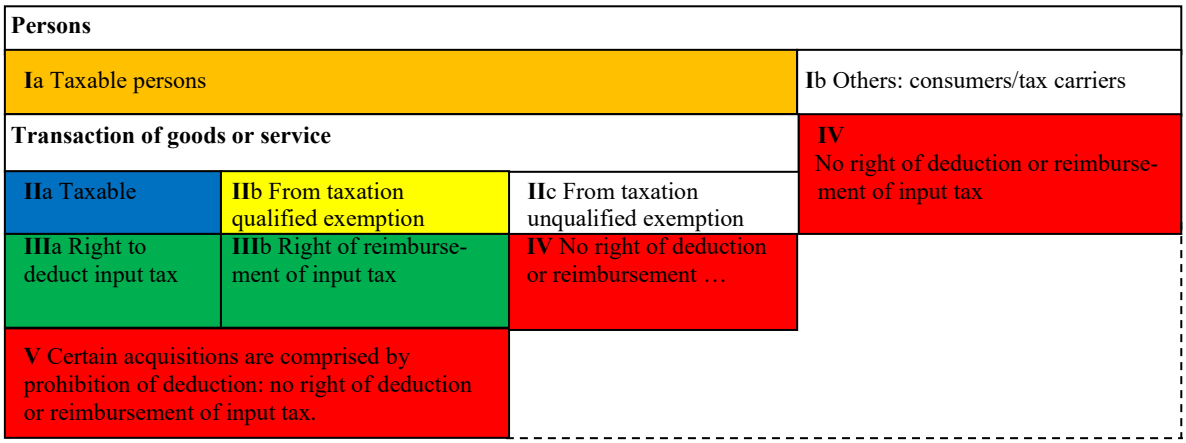
[1] Both theses are available in full text in the data base DiVA (www.diva-portal.org).

VAT act, in relation to the EU's VAT Directive (2006/112/EC), I see major problems with the EU law. Furthermore, I concluded The Tax Procedure Handbook by stating that the research should be made by sociology of law studies of the enterprises situation regarding constitutional and procedural issues rather than the tradition with purely law dogmatic studies continuing. In this article, I am warning for allowing logoc and mathematics becoming the method. I call it *the trap of mathematics* (Sw., *matematikfällan*), and recommend that logic should only be used as a tool (model) for the research within the VAT law, which thereby should be improved and more iseful for the appliers of law. It should also stimulate the legislator to make better rules for the purpose of commnuication and to avoid that gaps occur in them. I treat gaps in rules on VAT in the article *Lucka i tullagen öppnar för ej avsett momsavdrag på grund av två olika bestämningar av vem som är beskattningsbar person* (Gap in the customs act opens for not intended VAT deduction due to two different determinations of who is taxable person), published in *Balans fördjupning* 3/2018), and in the article *Luckor och andra brister i mervärdesskattelagen på fastighetsområdet* (Gaps and other lacks in the value-added tax act in the field of real estate, published in *Balans fördjupning* 1/2019).

The trap of mathematics in the research regarding the VAT law

In the article *Mervärdesskattens yttre gränser – en modell för forskare och processförare vid jämförelse av mervärdesskattelagen med EU-rätten* (The VAT's external limits – a model for researchers and solicitors at comparison of the value-added tax act with the EU law), published in *Balans fördjupning* 3/2019, I express a version of the schematic overview below of the VAT's obligations and rights, which I have used in various versions also in for example both my theses. I have used as a tool to analyse questions on certain rules in the ML in comparison with the VAT Directive. The basic question has been whether the rules are EU conform, and in this article I am using the tool – the model – to show the risk with allowing a tool to become the method itself for a jurisprudential study of the VAT law. I focus on the risk with the researcher using logic as a method for the analysis of a rule in the ML on the theme of EU conformity or of a rule in the VAT Directive on the theme of a deeper justification, instead of only using logic in the form of above all mathematics as a tool in connection with the method. Logic is also a tool for the solicitor at his or her analysis of the legal argumentation.

Diagram 1



The scheme (Diagram 1) shows what persons and transactions are comprised by the VAT:

- Taxable persons *can* be VAT laible, **I**a, but not consumers, **I**b, who instead are burdened by the tax and sometimes are called tax carriers.

- A taxable person is liable to VAT, if the person makes a taxable transaction of goods or service, **II**a. A taxable person who is aiming at making taxable transactions has a right of deduction for input tax on acquisitions or imports to the activity, **III**a.

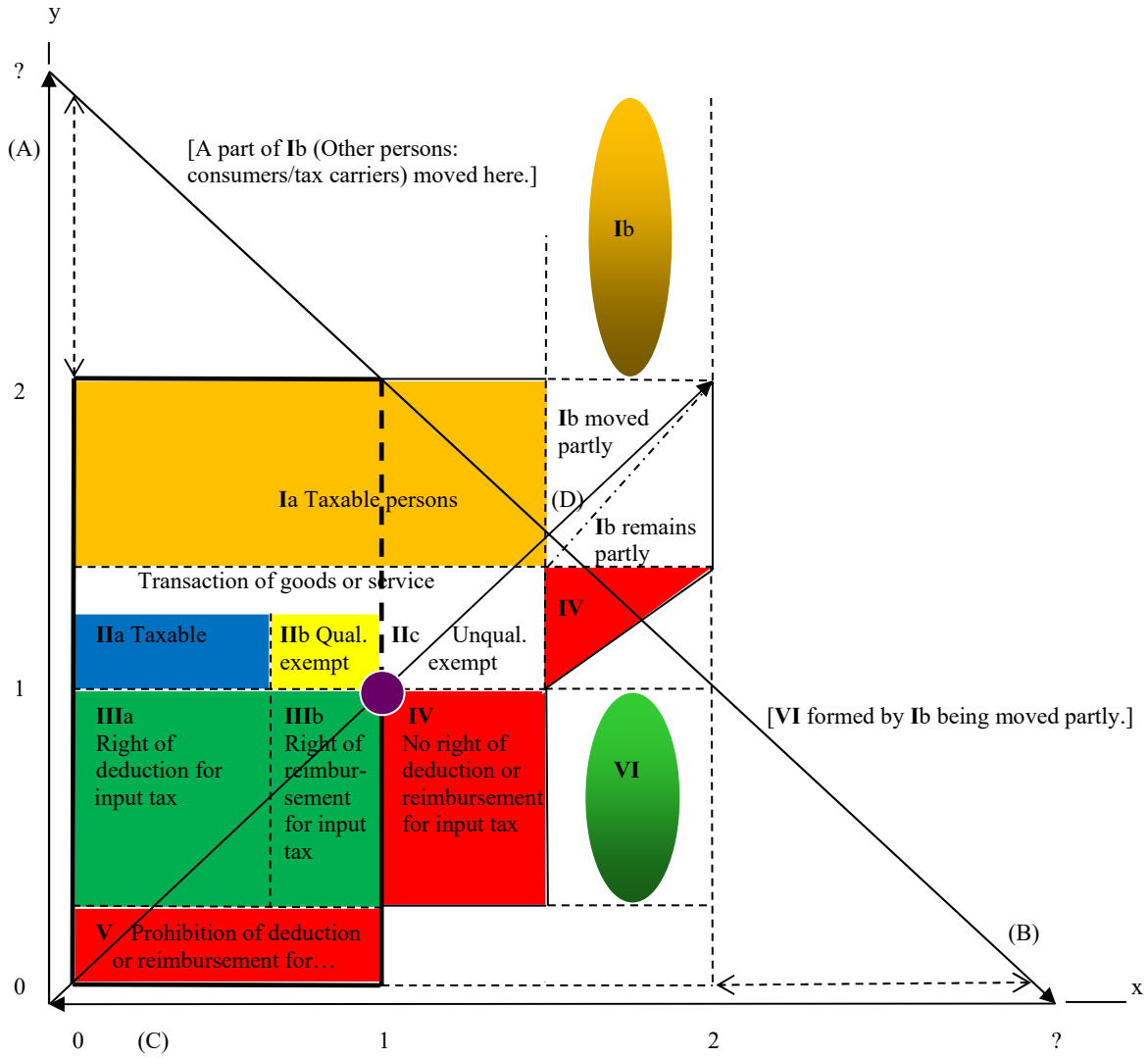
- A taxable person has a so-called right of reimbursement for input tax on acquisitions or imports to the activity, **III**b, if the person is aiming at making from taxation qualified transactions of goods or services, **II**b.

- A taxable person has neither right of deduction nor right of reimbursment for input tax on acquisitions or imports to the activity, **IV**, if the person is aiming at making from taxation unqualified transactions of goods or services, **II**c.

- For certain sorts of acquisitions a prohibition of deduction exist for input tax, **V**, regardless of what kind of transactions that a taxable person is aiming at making or makes to the person's activity.

The described structure of the VAT's obligations and rights corresponds between the ML and the VAT Directive after that the directive's concept taxable person was implemented in Ch. 4 sec. 1 of the ML for the determination of the tax subject on 1 July, 2013, by SFS 2013:368. However, it means that all the other rules in the ML – and *skatteförfarandelagen (2011:1244)*, SFL, the Swedish Taxation Procedure Act – are thereby also complying in a material sense with the rules in the VAT Directive. I mention this for example in my doctor's thesis and in *Momsreform – förslag för Sverige, EU och forskningen* (VAT reform – suggestions for Sweden, the EU and the research). In this article, I describe *how* the analysis should be made of the rules in the ML – and of rules concerning VAT in the SFL – on the theme of EU conformity and of the rules in the VAT Directive, so that various models will not become the method for such an analysis, but only tools to support the method. Thus, I am warning for allowing logic in form of mathematics becoming the method, instead of only being used as a tool, a model for the analysis of the rules. I call it, as above-mentioned, for *the trap of mathematics*, and develop here how wrong it can lead at for instance the analysis of a rule in the ML – or the SFL – on the theme of EU conformity or of a rule in the VAT Directive on the theme of deeper justification. I am starting from the scheme above and move around in it according to the following diagram:

Diagram 2



I have rearranged the scheme (Diagram 1) from a rectangle to a square (Diagram 2), where the square's left-side and bottom-side respectively runs along the y-axis and the x-axis respectively in the diagram above (Diagram 2). The square's nodes (corners) correspond with the corners of the rectangle, and I have given its sides an imagined value of 2 x 2 (=4) which shall represent *the VAT's frame of judgment* (Sw., *mervärdesskattens bedömningsram*) in a material and procedural sense. Thus, the square's nodes have the following co-ordinates on the x- and y-axes, red from left to right, from below upwards: (0, 0), (0, 2), (2, 0) and (2, 2).

I divide the persons who can or cannot be comprised by the VAT and transactions of different sorts and rights or limitations of the rights regarding the VAT into squares in the square. Since both the side of the rights and the circumstances forming the obligations regarding the VAT are equally important to describe the tax, I give on the one hand the side of the rights with limitations and on the other hand the persons and the transactions the same value in Diagram 2, that is 2 x 1 (=2). They get the following co-ordinates: (0, 0), (0, 1), (2, 0) and (2, 1) *and* (0, 1), (0, 2), (2, 1) and (2, 2) respectively. I start from these premises to try to evaluate *a method* (a way of approach) for analysis of *the scope of the VAT* as a logical function. I am going through the squares in the square and the rearrangement of the original conditions that I have made in Diagram 2 regarding Other persons than taxable persons for the application of *the method*.

Concerning the squares between the mentioned co-ordinates, I have divided the rights on the one hand into right of deduction and of reimbursement for input tax with the value 1 x 1 minus prohibition of deduction and of reimbursement (**III**a and **III**b minus **V**) and on the other hand into only a stylistic illustration of the limitation of the right of deduction and of reimbursement due to the purchaser of goods or service being a taxable person making from taxation unqualified exempted transactions of goods or services *or* another person than a taxable person (**IV**). The prohibitions of deduction and of reimbursement, **V**, mean a limitation of the right of deduction or of reimbursement, **III**a and **III**b, but are here only mentioned as a minus item, since they in principle only constitute the mentioned limitation and are lacking importance for the connection between obligations and rights at the determination of the VAT principle according to article 1(2) of the VAT Directive. The prohibitions of deduction in the ML are allowed according to article 176 second paragraph of the VAT Directive as long as otherwise is not decided on the EU level. Thus, the prohibitions of deduction are lacking importance in principle for the problemizing in this presentation of the way of approach for the analysis of VAT questions. Thus, I illustrate *the scope of the VAT* (Sw., *mervärdesskattens omfattning*) according to the EU law – and thereby also what it shall be according to the ML – with a frame with thicker unbroken and broken lines than the other lines in Diagram 2.

Concerning the persons and transactions of different sorts, I give only transactions which are entitling to right of deduction or of reimbursement (**II**a or **II**b) a value on the x-axis in Diagram 2 corresponding to the right of deduction and of reimbursement (**III**a and **III**b) without reduction for the prohibitions of deduction and of reimbursement (**V**), that is equal to the value 1. These circumstances form the mentioned frame, which illustrates *the scope of the VAT* (*'the external limits'*). All taxable persons (**I**a) are not making such transactions. It means that outside that frame fall taxable persons making from taxation unqualified exempted transactions (**II**c). They ae lacking right of deduction or of reimbursement for input tax (**IV**). Outside the frame in question fall also Other persons than taxable persons (**I**b). These persons are also lacking right of deduction or of reimbursement for input tax on their acquisitions (**IV**): the VAT constitutes for them a tax on consumption and they are so-called tax carriers.

In the same way as regarding the European stepladder Diagram 2 must concerning the obligations and rights regarding the VAT be completed with the procedural law. According to the Court of Justice of the EU's (CJEU) case 268/83 (Rompelman) emerges right of deduction or reimbursement for input tax on an acquisition or import already by the taxable person's intention of thereby making taxable or from taxation qualified exempted transactions of goods or services in his economic activity. According to the same case *Skatteverket* (the tax authority) has the possibility to investigate the objective circustances which can prove the existence of such an intention. I illustrate the law of procedure with a purple ball in Diagram 2, and I place it in the point of intersection with the co-ordinates (1, 1), where partly the obligations and rights, partly the rights and what is not comprised by the rights regarding VAT are separated.

In the mentioned article *Mervärdesskattens yttre gränser – en modell för forskare och processförare vid jämförelse av mervärdesskattelagen med EU-rätten* (The VAT's external limits – a model for researchers and solicitors at comparison of the value-added tax act with the EU law), I refer to item 59 of the CJEU's case C-172/03 (Heiser) of 3 March, 2005, where the court deems that an illicit subsidy from the State according t article 107(1) TFEU exists, if the national VAT legislation would allow right of deduction or of reimbursement for input tax on acquisitions which a taxable person makes to carry out from taxation unqualified exempted transactions of goods or services (**II**c), since it means that the competition becomes distorted.

That is a question which is typically tried in a tax case between the individual and *Skatteverket* (the tax authority). In that respect can also a procedural question exist regarding in what forum the trial of *the scope of the VAT* shall take place concerning whether the rights regarding the VAT are transgressed:

- If it instead is a matter of a taxable person in the capacity of vendor erroneously has levied VAT (output tax) on the person's transaction of goods or services to a taxable person who is making from taxation unqualified transactions in his activity (**II**c), and such a purchaser wants to try the issue he must make a lawsuit on compensation against the State. In accordance with a verdict in the Swedish Supreme Court, i.e. *Högsta domstolen (HD)* – NJA 2017 p. 589 (the Nordea case) – he however cannot try the issue in general administrative court, i.e. *allmän förvaltningsdomstol*. In accordance with the HD's point of view in that case does such a case not concern a question which has been entrusted to an administrative authority, like *Skatteverket*, to comprehensively and finally try. According to the HD, the general rules on reconsideration and appeal in the field of taxation should, taken by itself, be possible to use when it is a matter of repayment of tax that has been taken out in conflict with the EU law, but it presupposes that repayment is claimed by somebody who is tax liable for the erroneously levied VAT (output tax).

Thus, *the VAT's frame of judgment* (Sw., *mervärdesskattens bedömningsram*) – with the imagined value of 2 x 2 in Diagram 2 – has got a partly explanation regarding the side of the rights. The remaining question about the limit in relation to the frame set up by *the scope of the VAT* (*'the external limits'*), where the persons are concerned, concerns the relationship between the categories **I**a and **I**b and the above-mentioned rearrangement in Diagram 2 in that respect.

If the category **I**a, taxable persons, is developed, by a part of the category Other persons than taxable persons, that is a part of **I**b, being moved to the top of Diagram 2, is also the side of the rights in Diagram 2 built up by category **VI** being formed in that respect. I am trying to motivate it logically, mathematically and try the conclusions in relation to *the scope of the VAT* according to the EU law, whereby I am assuming the following:

- Obligations and rights regarding the VAT shall be tied together by the co-ordinates corresponding to the law of procedure, (1, 1), by the same number of lines as the sides of the square illustrating *the VAT's frame of judgment*, that is 4 and shall be connected. The problem has a logical solution, namely the following. The square can be illustrated with 9 co-ordinates according to Figure 1 in Diagram 3: (0, 0), (0, 1), (0, 2), (1, 0), (1, 1), (1, 2), (2, 0), (2, 1) and (2, 2). A solution of the problem is expressed in Figure 2 in Diagram 3:

Diagram 3

Figure 1

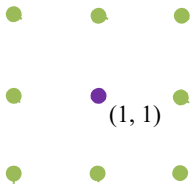
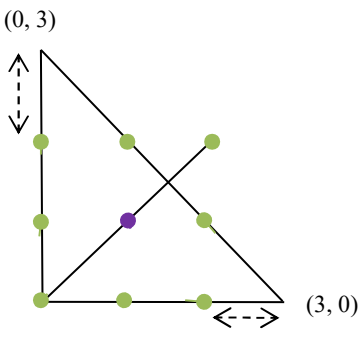


Figure 2



> The co-ordinates in Figure 1 can be seen as a box corresponding to the square illustrating *the scope of the VAT*. A solution of the problem is presented in Figure 2, by the lines being drawn outside the box. That presupposes addition of 2 co-ordinates, (0,3) and (3,0). Then the 4 lines can cross all co-ordinates in the square, and tie together the obligations and the rights by the purple ball (the law of procedure): compare the arrows A, B, C and D in diagrams 2 and 4.

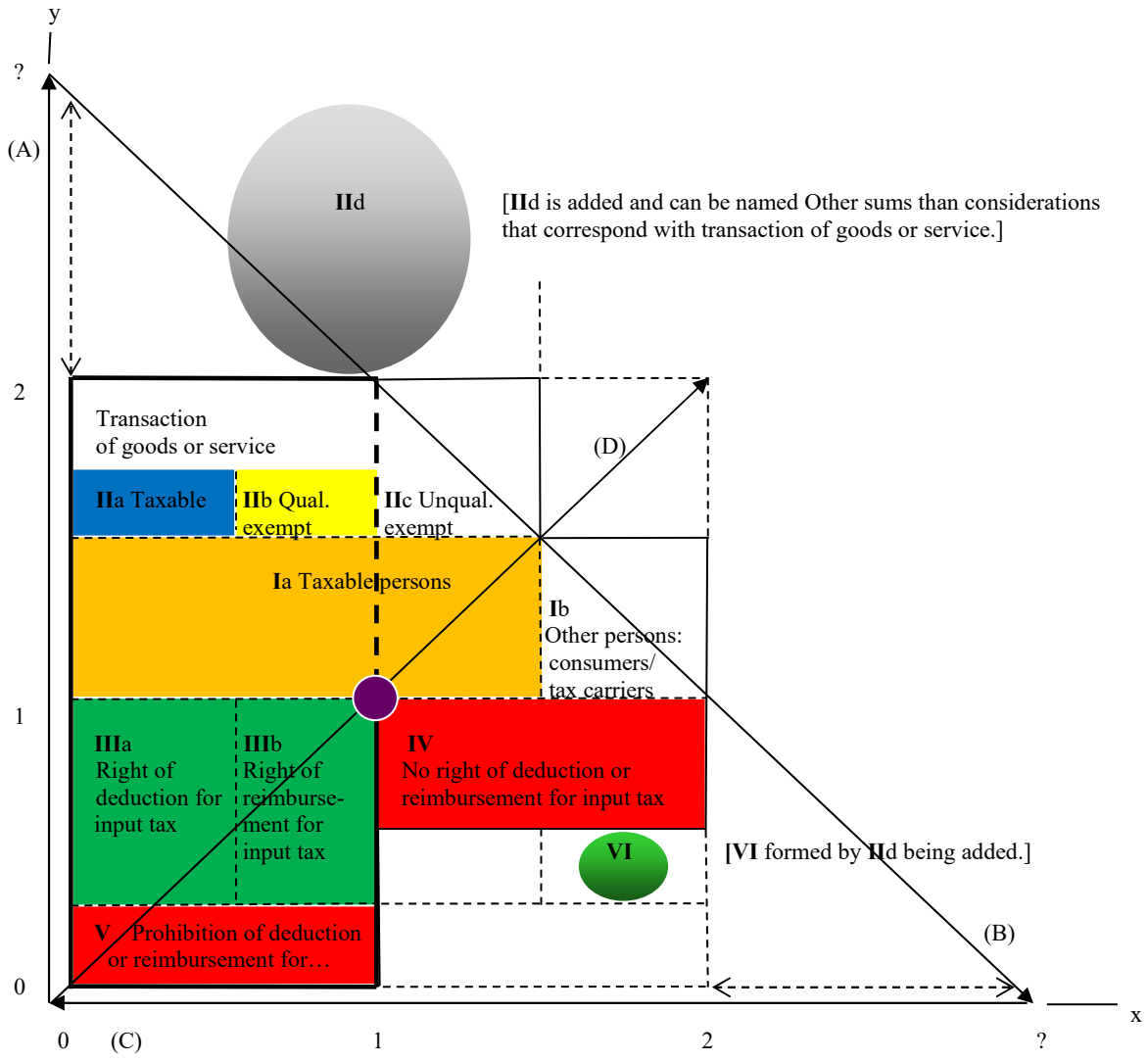
By thinking outside the box (outside the square with the imagined value of 2 x 2) the problem is getting a logical solution. It presupposes adding 2 co-ordinates, (0, 3) and (3, 0). Then the obligations and the rights regarding the VAT can be tied together by the law of procedure, the purple ball with the co-ordinates (1, 1). The question is whether this logical solution is valid, so that the additions can be given values compatible with *the scope of the VAT*. Therefore, I have put question-marks in diagrams 2 and 4, which correspond with the co-ordinates (0, 3) and (3, 0).

The answer is that the analysis is invalid regarding *the scope of the VAT*. In Diagram 2, I have made a rearrangement regarding the persons, so that a part of the category Other persons than taxable persons, that is a part of **I**b, has been moved to the top of Diagram 2 as an addition to the category taxable persons, **I**a. It corresponds with an addition on the y-axis of a value between the co-ordinates (0, 2) and (0, 3). Thereby has also an addition occurred on the x-axis regarding the side of the rights with a value between the co-ordinates (2, 0) and (3, 0). It corresponds with another category of rights of deduction or reimbursement of input tax, **VI**, which has been formed by **I**b being partly moved to add to the category which can be comprised by the VAT, that is the taxable persons (the tax subjects), with others than those persons. It would mean that an ordinary private person might be comprised by the VAT and thereby being entitled to refund of the VAT on his or her consumption from the State.

If an ordinary private person, a consumer/tax carrier (**I**b), could be comprised by the VAT, it would be in conflict with basis of what is meant by the tax according to the EU law. Fundamental for it is namely that a distinction – fixing of a border – shall be made between on the one hand the tax subjects (**I**a), taxable persons (in principle entrepreneurs), and on the other hand the consumers (**I**b), those who shall carry the tax. I mention this in the mentioned article *Mervärdesskattens yttre gränser – en modell för forskare och processförare vid jämförelse av mervärdesskattelagen med EU-rätten* (The VAT's external limits – a model for researchers and solicitors at comparison of the value-added tax act with the EU law) and in my theses. The described logical solution is invalid, since it leads to an addition of values exceeding *the scope of the VAT* according to the EU law. In the article and in my doctor's thesis, I state that the so-called representative rule in Ch. 6 sec. 2 of the ML can be interpreted meaning that an ordinary private person who is a partner (Sw., *delägare*) in an *enkelt bolag* (approx. a joint venture) or a *partrederi* (a shipping partnership) could be comprised by the VAT, but it would be a matter of some sort of sunsidy from the State, if a consumer thereby could make a claim of receiving VAT against the State. It would not be a matter of an input tax like a tax subject's claim on the State, why the demand would 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 *regeringsformen (1974:152)*, i.e. the 1974 Instrument of Government, and possible to exercise by the consumer against the State. *The scope of the VAT* is determined by the value for the rights on the x-axis in Diagram 2 not being possible to be as high as 2, but maximally 1. Otherwise, *the scope of the VAT* according to the EU law would be exceeded. By the way, the principle of legality for taxation measures means that the State cannot force through taxation against the will of the individual with support of an EU conform interpretation of a rule in the ML, if it is exceeding the wording of the rule.

If it instead would be a matter of an addition concerning the tax objects regarding what constitutes transaction for VAT purposes, such a category could, as is noted by **II**d in Diagram 4, be named Other sums than considerations that correspond with transaction of goods or service. It would comprise sums which a taxable person receives without any demand of an effort, like a deposit of money at the taxable person or a sum paid for damages to the taxable person [whereby it may be mentioned that in pursance of article 25 b of the VAT Directive also a commitment to refrain from an act constitutes a transaction (supply of service)]. I explain below that also an addition of category **II**d would lead to an invalid analysis regarding *the scope of the VAT*.

Diagram 4



An addition on the y-axis of category **II**d, and thereby of a value between the co-ordinates (0, 2) and (0, 3) in Diagram 4, also leads to the emergence of category **VI** on the x-axis regarding the rights – between the co-ordinates (2, 0) and (3, 0). It is also acceptable as a logical, mathematical solution according to what is described above, but it is at the same time equally invalid in relation to *the scope of the VAT* according to the EU law as the example with the rearrangement regarding the persons, by partly moving **I**b. In the same way, it is in conflict with the EU law to add to the side of the rights regarding the VAT, by category **VI** in this case being formed as a consequence of the addition of category **II**d to what can be deemed constituting a transaction of goods or service. The right of deduction or reimbursement for

input tax can only be based on a taxable person aiming at making or making a taxable or from taxation qualified exempted transaction. It follows by the articles 1(2), 2(1)(a) and (c) and 168 a of the VAT Directive and the CJEU's case 268/83 (Rompelman).

Concluding viewpoints

With this article, I want to show that research on the VAT law should be made with one's own methods and makings of theory for the subjectt. With *the trap of mathematics* (Sw., *matematikfällan*), I want to show that interpretation results in conflict with *the scope of the VAT* (Sw., *mervärdesskattens omfattning*) according to the EU law may occur. Logic and mathematics should only be used as models – tools – and not as the method (the way of approach) itself for jurisprudential studies of the subject. Researchers within the VAT law can use models from for instance the scientist's tool-box, but they should use their own methods and making of theory and avoid *counting with rules of law*: jurisprudence is another science than for instance natural science. Above all concerning questions on proof should by the way the subject of VAT be nearest compared with subjects like contract law, association law, intellectual property law and business law.

In the mentioned book, *Momsreform – förslag för Sverige, EU och forskningen* (VAT reform – suggestions for Sweden, the EU and the research), published in December 2018, I mention an example of how mathematics should be used in connection with the research regarding the VAT law, which is in line with what I state in this article. That is the doctor's thesis *Interaktionen mellem momsretten og indkomstskatteretten i forhold til hjemmel og EU-ret – det danske eksempel*, by Karina Kim Egholm Elgaard [Det juridiske fakultet Københavns universitet (2016)]. She uses logic only as a tool and not as the method itself and allows the method only to be inspired by the logic, mathematics. That is shown already by the headline to section 1.6.5.1 of *Inledningskapitlet*: *Interaktionsgrundmodel inspireret af den matematiske mængdelære* (Eng., Introduction: Basic interaction model inspired by the mathematical theory of sets. In an article in Tidskrift utgiven av Juridiska Föreningen i Finland [The journal published by the Law Society of Finland (abbreviated JFT)], *Juridisk semiotik och tecken på skattebrott i den artistiska miljön* (On signs of tax crime in an artistic environment), JFT 5/2018 pp. 307-328, I suggest that law dogmatic studies of for instance VAT law should be completed with legal semiotics – tax law semiotics – so that the method to carry out the study of a rule also regards the context in which it shall function. The analysis of a tax rule often does not only comes into contact with a semantic, syntactical or logical problem, and tax law semiotics would deepen the study. For example could the theory of sets be a tool for the comparison of rules which contain concepts that come into contact with differens contexts. However, it is above all a matter of not setting up two contradictory assertions, where one is false if the other one is true and vice versa, if a contradictory circumstance still means that both assertions cannot be true, but that both can be false. Then it is a matter of seeking other solutions to the problem.

In the mentioned article *Mervärdesskattens yttre gränser – en modell för forskare och processförare vid jämförelse av mervärdesskattelagen med EU-rätten* (The VAT's external limits – a model for researchers and solicitors at comparison of the value-added tax act with the EU law) and in my doctor's thesis, I state that 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. Then would the representative rule, Ch. 6 sec. 2, of the ML no longer be necessary. However, the question is whether such an alteration would mean any clarification

of what already can be deemed following of current law. I state namely also in the doctor's thesis (p. 208), that it is not possible to draw any definite conclusion from the CJEU's case-law and Swedish case-law concerning the question whether a non-legal entity for civil law purposes, like an *enkelt bolag* (approx. a joint venture) or a *partrederi* (a shipping partnership), can constitute a taxable person according to article 9(1) first para. of the VAT Directive. I consider that it is not possible to answer that question only by referring to that the expression "any person who" (Sw., "*den som*") in the directive rule would raise a contradictory circumstance on the subject side, so that non-legal entities fall outside *the scope of the VAT* (*'the external limits'*). Such a contradictory circumstance would furthermore mean that such legal figures as the recently mentioned already fall outside of what I above mention as *the VAT's frame of judgment* (Sw., *mervärdesskattens bedömningsram*). I iterate that Finland treats its so-called *sammanslutningar* (approx. joint ventures) – which neither constitute legal entities – as tax subjects for VAT purposes. Therefore, I state once again that Sweden and Finland should bring up the present question on EU level.

Until the directive rule has been altered, I deem that current law is not clear: there is reason to assume that a space could exist in article 9(1) first para. between various enterprise forms and consumers, where non-legal entities, with activities which for reasons of neutrality should be comprised by the VAT principle according to article 1(2) of the VAT Directive – that is of VAT according to the EU law – and considered as economic, are judged as taxable persons. That applies in the first place when economic activities are carried out by non-legal entities in the co-operation form *enkelt bolag* (approx. joint venture), since it should not exist any difference for VAT purposes between on the one hand *enkla bolag* (approx. joint ventures) and *partrederier* (shipping partnerships) and on the other hand companies constituting legal persons, that is *handelsbolag* (partnerships), *kommanditbolag* (limited partnerships) and *aktiebolag* (limited companies). The VAT Directive does not mention natural persons or different sorts of legal persons regarding the concept taxable person in the mandatory rule article 9(1) first para., but refer only to persons. That the facultative rule article 11 of the VAT Directive gives the Member States the possibility to regard "persons" who are legally independent, but closely bound to one another by fiancial, economic and organisational links as a single taxable person, which Sweden has used by introducing Ch. 6 a on so-called *mervärdesskattegrupper* (registered VAT groups) into the ML, does in my opinion not constitute any contradictory circumstance to that the main rule in article 9(1) first para. might comprise also companies which are not constituting legal persons, like *enkla bolag* (approx. joint ventures) and *partrederier* (shipping partnerships). The registered VAT groups demand instead special rules in the present respect in the VAT Directive, since they are not constituting any company at all.

In the licentiate's dissertation, I state (p. 259), that the Government's report SOU 2002:74, *Mervärdesskatt i ett EG-rättsligt perspektiv* (VAT in an EC law perspective), can be questioned due to it suggesting a *transaction thinking* (Sw., "*transaktionstänkande*") to replace an activity thinking (Sw., "*verksamhetstänkande*") in the ML, when there is no contradictory circumstance but both aspects can be relevant. I consider that the report's work hypothesis confirms that it does not lead any further to uncritically set up contradictory circumstances for analyses of the VAT law. The report did namely not meet the objectives in the Government's committee directive, Dir. 1999:10, and wrote shortly that there was no space for a complete technical and material overview of the ML (see SOU 2002:74 Part 1 pp. 17 and 186). Instead the report SOU 2002:74 focused on the accounting rules, which by the way has not led to any suggestion on legislation yet. In *Momsreform – förslag för Sverige, EU och forskningen* (VAT reform – suggestions for Sweden, the EU and the research), I mention that neither SOU 2002:74 nor the reports thereafter have led to any reform of the mateial tax rules in the ML on the theme of EU conformity. After my licentiate's dissertation has taken by itself the main rule on the determination of the tax subject in Ch. 4 sec. 1 of the ML been given the same wording as in article 9(1) first para. of the VAT Directive, by SFS 2013:368. That resolved the main question in my licentiate's dissertation, but my other questions regarding the ML and the SFL, which has replaced inter alia *skattebetalningslagen (1997:483)*, the tax payment act, remain. The questions in my doctor's thesis on *enkla bolag* (approx. joint ventures) and *partrederier* (shipping partnerships) and VAT are not treated in any investigation – and neither in the investigation according to the Government's committee directive, Dir. 2016:58, which shall be finished at the latest on 1 April, 2019. Also that investigation is disregarding the material taxation questions, and is only making a structural overview of the ML. I consider that the tradition with purely law dogmatic studies should be broken, and that for example my suggestions in this article can stimulate both the research and the legislator's work within the VAT law.

Thus, I consider that only deduction does not develop science within for example the VAT law, but for that is induction a demand. Just a logical study of a tax rule will only be descriptive and at the very most a handbook – not a jurisprudential analysis of the rule. In a jurisprudential study should descriptive elements be treated together in a special theory chapter, whereas the method – the way of approach – for the following judgments (the analysis) is stated already in the introduction chapter along with inter alia the chosen delimitation of the subject.

Finally, I suggest empirical studies regarding the existence of an actual current law within the VAT law. *Skatteverket* (the tax authority) or the county administrative courts (Sw., förvaltningsrätterna) and the administrative courts of appeal (Sw., kammarrätterna) establish by their application in the field of taxation an actual current law, which forms a practice beside the practice by the HFD which is considered expressing current law in a proper sense. Concerning the extent of that phenomenon there exist hidden statistics which entail research efforts, and then is first empirical studies a suitable method. I have given examples of the phenomenon in the folowing articles in *Balans fördjupning*: *Förvaltningsrätten baserar beslut på förväntad utgång i företrädaransvarsärende – hur rättssäkert är det?* (The county administrative court base decisions on the expected result of errands on personal liability of payment for representatives of legal persons – how does that comply with legal rights of the individual?), published in *Balans fördjupning* 4/2018, and Momsfråga om byggnadsentreprenader i samband med byggnadsentreprenör i konkurs (VAT question on building constructions in connection with bankruptcy of the building contractor), published in *Balans fördjupning* 1/2019. In both articles I am mentioning that I have brought up the existence of an actual current law also in the book *Ord och kontext i EU-skatterätten*: *En analys av svensk moms i ett* law and language-*perspektiv. Andra upplagan* (*från* 2017), Words and context in the EU tax law: An analysis of Swedish VAT in a law and language perspective. Second edition (from 2017).

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