

The VAT research in Sweden – where is it going?

Part 3

[Translation of the article *Momsforskningen i Sverige – vart är den på väg? Del 3*, by Björn Forssén, published in original in *Tidningen Balans fördjupning* (The Periodical Balans Annex with advanced articles) 2022, pp. 1–8. Translation into English by the author of this article, Björn Forssén.]

In a series of two articles in Balans fördjupningsbilaga (The Periodical Balans Annex with advanced articles) during the year of 2021 Björn Forssén has presented his view of the research on value-added tax in Sweden. In this article he develops his reasoning about that the VAT research in Sweden might be heading for no longer being treated as a jurisprudential subject and what consequences that entails and sets his focus on the position of the language within the research.

In *Balans Fördjupningsbilaga 2/2021* I have, in a series of two articles with the title *Momsforskningen i Sverige – vart är den på väg?* (The VAT research in Sweden – where is it going?), gone through method questions in that research, where Part 1 is to be found on pp. 22-28 (cit. Forssén 2021a) and Part 2 on pp. 29-36 (cit. Forssén 2021b). The two articles are based on my overview in a longer article in *Tidskrift utgiven av Juridiska Föreningen i Finland* [The journal published by the Law Society of Finland (abbreviated JFT)] 6/2020 (pp. 716-757). In that article, *Momsforskningen i Sverige – metodfrågor* (The VAT research in Sweden – method questions), cit. Forssén 2020, is my overall conclusion that the VAT research can be heading for no longer being treated as a jurisprudential subject. It is a matter of breaking that development of the research on the subject VAT law. Otherwise, the Swedish research results within the VAT law will not be useful for the legislators within the various EU Member States, for courts and tax authorities within the EU or for other appliers of law. It will altogether have an injurious effect on the realization of the EU project, above all in Sweden.

I followed up Forssén 2020 with an article in the JFT on the position of the Swedish language in relation to the English language in the VAT research in Sweden. That article by me, *Momsforskningen i Sverige – svenska språkets ställning* (The VAT research in Sweden – the position of the Swedish language), was published in JFT 6/2021 pp. 412-447 (cit. Forssén 2021c). With the present article I am building out my series of articles in *Balans fördjupning* (The Periodical Balans Annex with advanced articles) with a Part 3 regarding the question on where the VAT research in Sweden is going, by summarizing my conclusions from Forssén 2021c about the position of the Swedish language compared with English in the VAT research in Sweden, and how this relates to the method questions.

The languages in a European law perspective

In Forssén 2021c I have followed up my viewpoints regarding various choices of method in the theses on the subject VAT law in Sweden by presenting the perception I then also formed regarding the over-emphasizing of the English language which is made partly about the theses tendency to be written in English rather than in Swedish, partly regarding that other official languages within the EU also being pushed aside by the English in the research.

French, Italian, Netherlands and German became EU-languages – EEC-languages – when the EEC was established in 1958. The number of official languages have been enlarged when the EU has got new members, so that the EU now has 24 official languages. All residents or

citizens of the EU have the right to choose in which language they want to communicate with the EU's institutions, which must answer in the same language. Among the 24 official languages are also Danish, English, Finnish and Swedish included. Danish and English became official languages within the EEC in 1973, when Denmark, the United Kingdom and Ireland joined thereto, and Finnish and Swedish became official EU-languages in 1995, when Finland and Sweden accessed to the EU. By the United Kingdom's exit from the EU on 31 January, 2020, with a transitional period ending by turn of the year 2020/2021, the number of Member States of the EU has decreased from 28 to today's 27. English is however also thereafter an official EU-language, by English being an official language in the Member States Ireland and Malta.

The EU's legislations comprise in certain cases the whole of the EEA (European Economic Area), that is not only the EU's Member States, but also the other countries included in the EEA, three of the EFTA-countries: Norway, Iceland and Liechtenstein. In this broader European law perspective should not only Sweden, Finland and Denmark be interested of Swedish and Danish being promoted as official languages within the EU, since Swedish and Danish are included in the group of Scandinavian languages, whereto also Norwegian, Icelandic and Faeroese belong. Thereby should the Nordic Council act for the Finnish also being strengthened as an official EU-language.

The division of the VAT research in Sweden into two methodological main tracks

In Forssén 2020 I wrote, as mentioned above, about the VAT research in Sweden regarding the method questions, whereby I reviewed eleven theses from 1994 to 2020 (see Forssén 2020 pp. 732 and 733). I divided into two main tracks, namely:

- application of a comparative method or a law dogmatic method completed with a comparative method (Main track 1); and
- application of only a law dogmatic method (Main track 2).¹

Tendencies for a positive or a negative research result depending on the choice of method

Regarding the importance of the choice of method for a research result that will be useful for the legislators and the appliers of law within the EU, concerning a successful implementation of the EU law in the field of VAT and in the first place of the EU's VAT Directive (2006/112/EC), I mention in section 2.2 in Forssén 2021c that I in Forssén 2020 concluded that the following tendencies exist for the implementation question:

- Concerning Main track 1 the tendency is positive for the implementation question regarding expected research result, when a comparative method with an internal perspective on the EU law in the field of VAT is applied, that is when the comparison concerns VAT legislations in various EU Member States. That tendency is also positive, when a law dogmatic method completed with a comparative method is used,

¹ In Forssén 2020, I missed one doctor's thesis in Sweden regarding VAT: Mariya Senyk, Territorial Allocation of VAT in the European Union: Alternative approaches towards VAT allocation and their application in the internal market, Department of Business Law, School of Economics and Management, Lund University 2018 (cit. Senyk 2018). Thus, the number of theses on the subject VAT law in Sweden was twelve.in 2020. I refer Senyk 2018 to Main track 2 (see Forssén 2021c, section 2.1).

whereas the tendency is negative, when the EU's legislation in the field of VAT is viewed in an external perspective, by only being compared with third countries that have VAT-systems or GST-systems.

- Concerning Main track 2 the tendency is negative for the implementation question regarding expected research result, when only a law dogmatic method that is or is not what I call a purely law dogmatic method is used.

Positive or negative tendencies for the research result regarding the implementation question at different choices of method and information on choice of language in the theses

In section 2.3 in Forssén 2021c I come back to which theses have been written yet on the subject of VAT law in Sweden, and whether they have been written in the Swedish language or in the English language. In my opinion the attitude by the universities (Sw., *universitet* and *högskolor*) seem to be that what is lacking regarding method shall be considered compensated by the thesis being written in the English language. Thus, I state my view on whether the choice of method in the present theses can be expected to lead to positive or negative tendencies for the research result regarding the implementation question, which I mark with "Positive tendency" and "Negative tendency" respectively in footnotes to the division below of the theses into the two main tracks concerning the choice of method, and states in the footnote for each thesis also if it has been written in Swedish or English:

Main track 1

- Björn Westberg, *Nordisk mervärdesskatterätt – behandlingen av utländska företag, varor eller tjänster inom ramen för nationella lagar* (Nordic VAT law – the treatment of foreign entrepreneurs, goods or services within the frame of national laws), Juristförlaget JF AB 1994 (cit. Westberg 1994).²
- Eleonor Alhager (nowadays Kristoffersson), *Mervärdesskatt vid omstruktureringar* (Value-added tax at reconstructions), Iustus förlag 2001 (cit. Alhager 2001).³
- Pernilla Rendahl, *Cross-Border Consumption Taxation of Digital Supplies*, IBFD, Amsterdam 2009 (cit. Rendahl 2009).⁴
- Mikaela Sonnerby, *Neutral uttagsbeskattning på mervärdesskatteområdet* (Neutral withdrawal taxation in the field of VAT), Norstedts Juridik AB 2010. (cit. Sonnerby 2010).⁵

² Applied method: a *comparative method* is used. "Positive tendency". The thesis is written in Swedish and was submitted at the Stockholm University, Faculty of Law.

³ Applied method: a *law dogmatic method completed with a comparative method* is used. "Positive tendency". The thesis is written in Swedish and submitted at Jönköping International Business School, Department of Law.

⁴ Applied method: a *comparative method* is used, but the EU's legislation in the field of VAT is given an external perspective, by only being compared with third countries. "Negative tendency". The thesis is written in English and was submitted at Jönköping International Business School, Department of Law. The thesis is from 2008. I refer to the published book: Rendahl 2009.

⁵ Applied method: a *law dogmatic method completed with a comparative method* is used. "Positive tendency". The thesis is written in Swedish and was submitted at Uppsala University, Department of Law.

- Björn Forssén, *Skattskyldighet för mervärdesskatt – en analys av 4 kap. 1 § mervärdesskattelagen* (Tax liability for VAT – an analysis of Ch. 4 sec. 1 of the ML), Jure Förlag AB 2011 (licentiate's dissertation), cit. Forssén 2011, and *Skatt- och betalningsskyldighet för moms i enkla bolag och partrederier* [Tax and payment liability to VAT in (approximately) joint ventures and shipping partnerships], Örebro Studies in Law 4/2013 (doctor's thesis), cit. Forssén 2013.⁶
- Marta Papis-Almansa, *Insurance in European VAT On the Current and Preferred Treatment in the Light of the New Zealand and Australian GST Systems*, Lund University, Lund 2016 (cit. Papis-Almansa 2016).⁷

Main track 2

- Jesper Öberg, *Mervärdesbeskattning vid obestånd Andra upplagan* (Value-added taxation at insolvency Second edition), Norstedts Juridik AB 2001 (cit. Öberg 2001).⁸
- Oskar Henkow (deceased), *Financial Activities in European VAT A Theoretical and Legal Research of the European VAT System and the Actual and Preferred Treatment of Financial Activities*, Kluwer Law International 2008 (cit. Henkow 2008).⁹
- (Senyk 2018) Mariya Senyk, *Territorial Allocation of VAT in the European Union: Alternative approaches towards VAT allocation and their application in the internal market*, Department of Business Law, School of Economics and Management, Lund University 2018.¹⁰
- Mikael Ek, *Leveranser och unionsinterna förvärv i mervärdesskatterätten* (Deliveries and intra-Union acquisitions in the VAT law), Iustus Förlag AB 2019 (cit. Ek 2019).¹¹
- Giacomo Lindgren Zucchini, *Composite Supplies in the Common System of VAT*. Örebro Studies in Law 14/2020 (cit. Lindgren Zucchini 2020).¹²

The question whether the choice to write certain Swedish theses in English instead of in Swedish is used to compensate for lacks in the choice of method

⁶ Applied method: a *law dogmatic method completed with a comparative method* is used. "Positive tendency". The theses are written in Swedish and were submitted at Örebro University, School of Law, Psychology and Social work.

⁷ Applied method: a *law dogmatic method completed with a comparative method* is used. "Negative tendency". The thesis is written in English and was submitted at Lund University, Department of Business Law, School of Economics and Management.

⁸ Applied method: a *law dogmatic method* is used. "Negative tendency". The thesis is written in Swedish and was submitted at Stockholm University, Department of Law. The thesis is from 2000. I refer to the published book: Öberg 2001

⁹ Applied method: I denote it a *purely law dogmatic method*. "Negative tendency". The thesis is written in English and was submitted at Lund University, Department of Business Law. The thesis is from 2007. I refer to the published book: Henkow 2008.

¹⁰ Applied method: a *law dogmatic method* is used. "Negative tendency". The thesis is written in English and was submitted at Lund University, Department of Business Law.

¹¹ Applied method: a *law dogmatic method* is used. "Negative tendency". The thesis is written in Swedish and was submitted at Uppsala University, Department of Law.

¹² Applied method: I denote it a *purely law dogmatic method*. "Negative tendency". The thesis is written in English and was submitted at Örebro University, School of Law, Psychology and Social work.

The implementation question is about identifying and resolving a rule competition between the national VAT legislation and the VAT Directive. In sections 2.5.1-2.5.4.2 in Forssén 2021c I make in overview a commentary of my perception of the tendencies in the present theses for the research result regarding the implementation question at various choices of method according to the two main tracks. Thereby I set the language question in relation to the choice of method. Thus, I describe how the over-emphasizing of the English language which I deem exists in the VAT research in Sweden means that the theses tend to be written in English rather than in Swedish and that other official language in the EU also are pushed aside by the English language. For my overview of my review of the implementation question the mentioned issue raises the question whether the choice of the English language instead of Swedish when writing some of the theses so far in Sweden about the subject of VAT law – consciously or not consciously – have been used to compensate lacks in the choice of method (see Forssén 2021c, section 2.4).

Conclusions from the review of the theses according to the two main tracks regarding applied method and the language question

In section 2.6 in Forssén 2021c I conclude that the review in sections 2.5.1–2.5.4.2 of the choice between the Swedish language and the English language for the writing of the theses in relation to a "positive tendency" or a "negative tendency" for the research result at various choice of method supports my conception that English is used – consciously or not consciously – in the VAT research in Sweden to compensate a research result that could be negative for the implementation question due to the choice of method. This is having an injurious effect on the realization of the EU-project in Sweden, since the approach in the VAT research in Sweden entails that the research result will not be useful for the legislators and the appliers of law within the EU, where the question of a successful implementation of the EU law in the field of VAT and in the first place of the EU's VAT Directive is concerned. The relationship also gives negative repercussions in relation to other Member States.

Below I express from my conclusions the two tables where I give a schematic account for the two methodological main tracks in relation to whether the thesis is written in Swedish or in English, and if a "positive tendency" or a "negative tendency" can be deemed to exist for the expected research result regarding the implementation question.

Table – Main track 1

Thesis	Method	Tendency	Language
Westberg 1994	Comparative	Positive	Swedish
Alhager 2001	Law dogmatic completed with comparative	Positive	Swedish
Rendahl 2009	Comparative	Negative	English
Sonnerby 2010	Law dogmatic completed with comparative	Positive	Swedish
Forssén 2011	Law dogmatic completed with comparative	Positive	Swedish
Forssén 2013	Law dogmatic completed with comparative	Positive	Swedish
Papis-Almansa 2016	Law dogmatic completed with comparative	Negative	English

Table – Main track 2

Thesis	Method	Tendency	Language
Öberg 2001	Customary law dogmatic*	Negative	Swedish
Henkow 2008	Purely law dogmatic**	Negative	English
Senyk 2018	Customary law dogmatic*	Negative	English
Ek 2019	Customary law dogmatic*	Negative	Swedish
Lindgren Zucchini 2020	Purely law dogmatic**	Negative	English

*[In Öberg 2001 it is stated that a customary law dogmatic method is used, and in Senyk 2018 and Ek 2019 I read out that applied law dogmatic method also is to be understood as a – in the tax law research in Sweden – customary one.]

**[I used the term purely law dogmatic method for the first time in Forssén 2020.]

In *Main track 1* all theses written in Swedish show a "positive tendency", and the method in those cases is comparative or law dogmatic completed with a comparative method. Rendahl 2009 is written in English and the method is comparative, but the shows a "negative tendency" due to it lacking an internal perspective on the EU law in the field of VAT regarding the comparative analysis, unlike the theses written in Swedish. In Papis-Almansa 2016 that is written in English the method is law dogmatic completed with a comparative method, but it is also showing a "negative tendency" where the probability of the research result becoming useful for the legislators and the appliers of law within the EU regarding the implementation question is concerned. I base that on the EU's legislation in the filed of VAT being given an external – and not an internal – perspective also in Papis-Almansa 2016 regarding the comparative component of the method used. Papis-Almansa 2016 should not have been limited to solely regard the theses in Sweden written in English at the time, that is Henkow 2008 and Rendahl 2009. Any approach using more than one official language within the EU, for clarification when interpreting unclear EU-verdicts, is neither used in Rendahl 2009 or Papis-Almansa 2016, and I denote the openness to other languages than English in both the theses as weak. Thus, I deem the language question in connection with the theses of Main track 1 so that the English language is used in the VAT research in Sweden – consciously or not consciously – to compensate a research result that can be expected to become negative for the implementation question due to lacks at the choice of method.

In *Main track 2* it is also obvious regarding the language issue that English is used – consciously or not consciously – to compensate a probable negative research result for the implementation question due to lacks at the choice of method. Concerning the customary law dogmatic theses are Öberg 2001 and Ek 2019 written in Swedish, whereas Senyk 2018 is written in English. I have marked "negative tendency" for the usefulness of the research result of those, but Öberg 2001 in Swedish and Senyk 2018 in English cancel each other out regarding the language issue. The choice of a law dogmatic method without any completing comparative analysis in Öberg 2001 seems to be based on a misdirected conception therein of the EU law's importance for the subject, and the implementation question is not mentioned in

Senyk 2018, but the VAT is mentioned more in a perspective of economics therein. Although Senyk 2018 brings up questions on the placement of supply where deliveries and intra-Union acquisitions are concerned, it is namely in Ek 2019 that deliveries and intra-Union acquisitions in the VAT law are given a study *in* VAT law. It is the limited material therein that makes me consider that a "negative tendency" arise for the usefulness of Ek 2019 regarding the implementation question. Senyk 2018 is more of a study *about* the VAT law concerning which Member State that has the right of taxation regarding deliveries and intra-Union acquisitions, and has more the character of a handbook than a thesis where the implementation question is treated concerning such transactions or should Senyk 2018 be seen as a thesis about VAT in a perspective of economics. In the latter perspective it could have been more justified to write Senyk 2018 in English than if the thesis shall be perceived as a study *in* VAT law regarding the distribution of the right of taxation.

However, it is concerning the application of what I denote as a purely law dogmatic method in Henkow 2008 and Lindgren Zucchini 2020 that it becomes the most clear in Main track 2 that English is used – consciously or not consciously – to compensate a research result for the implementation question that can be expected to become negative due to lacks at the choice of method. In sections 2.5.1–2.5.4.2 in Forssén 2021c, I show namely that a purely law dogmatic method risks entailing that the research in the VAT law no more is treated as a jurisprudential subject. That cannot be compensated by the theses being written in English. Therefore, I consider that a development where English is set before Swedish within the VAT research in Sweden should be counteracted by the universities (Sw., universitet and högskolor), above all if it – despite my objections – would exist a continuous acceptance of law dogmatics as something that in a methodological sense is supposed to be especially suitable for jurisprudential studies in the subject VAT law.

I may also reconnect to Forssén 2021b (pp. 32 and 33), where I mention that I in Forssén 2011 (p. 93) mentioned, with the EU-case C-216/97 (Gregg) as an example, that French should be regarded for exactness at interpretation of EU-verdicts. I referred there in Forssén 2011 (p. 69) to professor Ulf Bernitz and Leo Mulders.¹³ English is, as mentioned, also after the United Kingdom's exit from the EU, one of the official languages within the EU, like for instance Swedish and French. In the "Gregg"-case the language of the case was actually English, but it was, as I mention in Forssén 2011 (p. 93) and come back to in Forssén 2013 (p. 72) and in Forssén 2020a (section 3.5), French that showed that the CJEU emphasizes the collection of VAT, that is the more general meaning of the principle of neutrality and not limited to the specific meaning of charging of VAT that follows by the English language version of the verdict. Thereby, I give evidence of the risk of over-emphasizing the importance of English for a thesis about the subject of VAT, like what has been done in Lindgren Zucchini 2020. I used at the interpretation of the "Gregg"-case the recommendation from Leo Mulders in the mentioned work (p. 58) concerning the use of language for exactness when interpreting EU-verdicts, which means that I interpreted and accounted for (on the pages 92-94 in Forssén 2011) item 20, which was decisive for the question in the case, in my own language Swedish, in the language of the case English, and in French. Then I could make the judgment that the question of the collection of VAT should be set before the question of the charging of VAT,

¹³ See pp. 78 and 84 in Ulf Bernitz, *Kapitlet EUROPARÄTTEN* (the Chapter European Law), pp. 59–89, in *Finna rätt Juristens källmaterial och arbetsmetoder (elfte upplagan)*, Finding law The lawyer's source material and work methods (eleventh edition), by Ulf Bernitz – Lars Heuman – Madeleine Leijonhufvud – Peter Seipel – Wiweka Warnling-Nerep – Hans-Heinrich Vogel, Norstedts Juridik 2010 and pp. 47 and 58 in Leo Mulders, the Chapter Translation at the Court of Justice of the European Communities in *The Coherence of EU Law*, by Sacha Prechal and Bert van Roermund, Bert (editors, Oxford University Press, Oxford 2008 (reprinted 2010).

when it is a matter of upholding the principle of a neutral VAT according to the EU law. It is a great lack that Lindgren Zucchini 2020 does not contain any reading on the Swedish language, and that the thesis is completely dominated by the English language – French or any other foreign language for that matter is neither used therein. Leo Mulders is warning for the risk of only using one language at "close reading" of EU-verdicts, which I consider is also proven by my example.

The importance of making in the Swedish VAT research interpretations of unclear concepts in verdicts or orders from the CJEU also with regard of Swedish, French and, if possible, other official languages in the EU than English is also shown by Lindgren Zucchini 2020 beginning with an interpretation of two EU.cases,¹⁴ which I in Forssén 2021b (pp. 33 and 34) state leads to the misconception that it would be acceptable to disregard composite transactions supplied by more than one person. A jurisprudential study of the hard to determine subject composite transactions for VAT purposes should instead have been made unbiased by an examination partly of what should be considered composite transactions, partly of what is similar to such transactions and partly of what sometimes is called composite transactions, but should not be comprised by the concept. Regardless of the language question should however the question of the right of deduction not have been delimited in Lindgren Zucchini 2020. That means namely, as I mention in Forssén 2021b (p. 30), that the study in Lindgren Zucchini 2020 has been made as if it did not even concerned VAT, but gross tax – like excise duty.¹⁵

The position of the Swedish language within the EU – the preparatory work to the Act concerning Sweden's accession to the EU in 1995 and the Language Act of Sweden in 2009

Forssén 2021c is ended with what is stated regarding the position of the Swedish language within the EU according to the preparatory work to *lagen (1994:1500) med anledning av Sveriges anslutning till Europeiska unionen* (the Act concerning Sweden's accession to the European Union in 1995) and according to *språklagen (2009:600)*, the Language Act.

In the preparatory work to the Act concerning Sweden's accession to the European Union (also called the Accession Act or the EU-Act) it is stated in section 19.4 ("Svenska språkets ställning i EU" – the position of the Swedish language within the EU) that *the Swedish language will in the EU have a stronger position than in any other organization outside the North. It becomes one the Union's official languages, which does not only mean that all legislation and official documents must exist in a Swedish version, but also that official communication in writing and orally may be done in Swedish.* With respect of Swedish as one of the smaller languages being naturally weaker in practice than the languages spoken by a greater number of people, the legislator considered it *anxious that Swedish is actively used in relation to the EU's institutions so that the right to use the own language will be kept alive.*¹⁶ In Forssén 2011 I also mention that it in section 4 of the Language Act, which came into force on 1 July, 2009, is stated that Swedish is the main language in Sweden. Thereby I also noted that it by section 13 second

¹⁴ The CJEU's verdict in the case C-208/15 (Stock '94), ECLI:EU:C:2016:936, and the CJEU's order in the case C-117/11 (Purple Parking and Airparks Services), ECLI:EU:C:2012:29.

¹⁵ See also Forssén 2020 p. 744, Forssén 2021a pp. 23 and 26-28 and Forssén 2021c p. 440. See also Forssén 2011 pp. 273, 281 and 282 and Forssén 2013 p. 61, where I also mention that the right of deduction is decisive for what is meant with VAT according to the EU law, that is according to article 1(2) of the VAT Directive.

¹⁶ See prop. 1994/95:19 (Sweden's membership of the European Union) Part 1, pp. 233 and 234.

paragraph of the Language Act follows that Swedish shall be defended as an official language within the EU.¹⁷

Thus, it is not in compliance with the work on the EU-project to reduce the Swedish language in the VAT research in Sweden, by continuing to hold English before Swedish like what I consider is the case with reference to my reviews of the language issue in that research. By section 5 of the Language Act Swedish is as main language the common language in society, to which all living in Sweden shall have access and that shall be possible to use within all sectors in society. According to section 6 of the Language Act the State and local authorities have a special responsibility for Swedish to be used and developed. This means in my opinion that the State and local authorities shall not assign means to research where Swedish is set after English, why all such tendencies within the VAT research in Sweden should be counteracted by the universities (Sw., universitet and högskolor).

By the way, I consider, as mentioned, that Finnish also should be lifted as an EU-language in the VAT research in Sweden. This is further supported by it is stated in section 8 of the Language Act that *the State and local authorities have a special responsibility to defend and promote the national minority languages*, where Finnish is one of them according to section 7 of the Language Act.

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¹⁷ See Forssén 2011 p. 69.