

Indirect taxes and the research in Sweden – where should it be going?

Part 4

[Translation of the article *Indirekta skatter och forskningen i Sverige – vart borde den vara på väg? Del 4*, by Björn Forssén, published in original in *Tidningen Balans fördjupning* (The Periodical Balans Annex with advanced articles – below Balans fördjupning) 2023, pp. 1–8. Translation into English by the author of this article, Björn Forssén.]

In a series of three articles in Balans fördjupningsbilaga (The Periodical Balans Annex with advanced articles), Björn Forssén has presented his view of the research in Sweden regarding indirect taxes. In this fourth and final article he is mentioning in the first place the research on excise duties and leaves at the same time an overview of the research in Sweden on VAT, excise duties and customs. Now he is looking forward and does not ask where the research is going, but where it should be going.

During the years of 2020 – 2022 *Tidskrift utgiven av Juridiska Föreningen i Finland* [The journal published by the Law Society of Finland (abbreviated JFT)], has published a series of three articles of mine, where I account for my view on the research in Sweden 1994 – 2020 about indirect taxes. In *Balans fördjupning* (The Periodical Balans Annex with advanced articles) I have written three shorter articles based on the articles in the JFT, and I am ending the series with this fourth article.

In the first two articles in the JFT on the research in Sweden about indirect taxes I made an overview of the method questions and of the position of the Swedish language in the research regarding value-added tax (VAT). In the third article I also bring up the research on excise duties in Sweden. A main thread is that I regarding the research on VAT and excise duties consider that the tax subject question has not been sufficiently treated in most of the Swedish theses in those two fields.

In the first and the third article in the JFT I also mention customs, and point out that the question which should be treated more concerns the tax object and to establish a uniform concept goods for the indirect taxes (which in the first place consist of VAT, excise duties and customs). Regarding research on customs law should the focus be set on the tax object, unlike with VAT and excise duty where the main aim is to distinguish the tax subjects from the consumers, whereby the tax subjects in principle are natural or legal persons with activities constituting what is normally denoted enterprises.

In *Balans fördjupning* (The Periodical Balans Annex with advanced articles) I have made shorter reviews of in the first place the questions I am bringing up in my articles in the JFT regarding the research in Sweden 1994 – 2020 within the field of indirect taxes. I do so also with this article, and mention in the first place the research on excise duties and leave also at the same time an overview of the research in Sweden on VAT, excise duties and customs. In the title of this article I do not ask where the research is going, but where it should be going.

1 The VAT research

Regarding the importance of the choice of method for a research result that will be useful for the legislators and appliers of law within the EU¹ I summarize the following concerning the two methodological main tracks that I identify for the VAT research in Sweden.²

Main track 1

- Regarding the alternative with a choice of method meaning an application of a comparative method with only an external perspective on the EU law in the field of VAT, i.e. with only third countries as material for comparison, I conclude that it gives a negative tendency for the implementation question, i.e. the question on the implementation of the rules in the EU's VAT Directive (2006/112/EC) into *mervärdesskattelagen (1994:200)*, ML (the Swedish VAT act), where an expected research result is concerned.
- Regarding the alternative with application of a comparative with an instead internal perspective on the EU law in the field of VAT, I conclude that it gives a positive tendency for the implementation question, where an expected research result is concerned.
- Regarding the alternative with application of a law dogmatic method completed with a comparative method, I conclude that it gives a positive tendency for the implementation question, where an expected research result is concerned. That alternative comprises five theses, inter alia my licentiate's dissertation and my doctor's thesis from 2011 and 2013.

Main track 2

- Regarding the alternative with application of only a law dogmatic method that is or is not purely law dogmatic, I conclude that it gives a negative tendency for the implementation question, where an expected research result is concerned.

Regarding the twelve theses within the VAT law during the years of 1994 – 2020 I denote applied method in two of the five I am referring to Main track 2 as purely law dogmatic, i.e. the authors start from the law dogmatic method being the only suitable method for the VAT research.³ My overall conclusion concerning the choice of method is that the research on the VAT law should become alienated from that approach, since a purely law dogmatic risks entailing that that subject no longer will be treated as a jurisprudential subject.

Thus, I am warning for the researcher within the field of VAT who applies a purely law dogmatic method falling into what I call the trap of mathematics in the research. If tools –

¹ EU, the European Union or the Union.

² See my article *Momsforskningen i Sverige – metodfrågor* (The VAT research in Sweden – method questions), JFT 6/2020 pp. 716-757, section 5.2. (Cit. Forssén 2020a). See also my article *Momsforskningen i Sverige – vart är den på väg? Del 1* (The VAT research in Sweden – where is it going? Part 1), in *Balans fördjupningsbilaga* (The Periodical Balans Annex with advanced articles) 2/2021 pp. 22-28, 25-28. (Cit. Forssén 2021a). Forssén 2020a is available on www.forssen.com and Forssén 2021a is available on www.forssen.com and www.tidningenbalans.se.

³ The two theses are: 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); and Giacomo Lindgren Zucchini, *Composite Supplies in the Common System of VAT*. Örebro Studies in Law 14/2020 (cit. Lindgren Zucchini 2020).

models – are used to support for instance the law dogmatic method, the tool may not be made the method in itself for the jurisprudential study. Such an approach is only a matter of deduction, and no induction developing the knowledge on the subject. It would merely be a matter of calculating with law rules, if mathematics and logic would be made the method in itself, and not only used in the study as a supporting tool at to a law dogmatic method. However, I do not dismiss the use of only a law dogmatic method, but state that it should be developed by the addition of legal semiotics.

Concerning the circumstance that five of the twelve theses in the two main tracks are written in English, inter alia Henkow 2008 and Lindgren Zucchini 2020, I state that a development where English is held before the Swedish language in the VAT research in Sweden should be 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*). I state this as especially urgent if a purely law dogmatic would be proven recurrent within the research in VAT law in Sweden, since a lack in the choice of method never can be compensated by the theses being written in English. Thereby, I also note that it is not in compliance with the work on the EU-project to reduce the Swedish language or the position of other official EU-languages in the VAT research in Sweden, by those being pushed aside by the English language (which I call the language question).⁴

2 The research on excise duties⁵

2.1 Harmonised and non-harmonised excise duties in Sweden and the determination of the tax subject⁶

In Forssén 2022b, I account for inter alia that according to article 113 of the Treaty on the Functioning of the European Union (the Functional Treaty) there is a demand of harmonisation of the Member States' legislations for the indirect taxes, i.e. not only for VAT and customs, but also for excise duties. However, the harmonisation demand does not comprise all excise duties in Sweden, why I in that article account for the following for the mandatory (harmonised) excise duties according to the EU law, which are applying in Sweden (and shall be applying in the other Member States), and for the non-harmonised excise duties, which also are charged in Sweden:

Harmonised excise duties

In article 1(1) of the Excise Duty Directive (EU) 2020/262 it is stated that general arrangements for excise duty are stipulated for the following goods (*excise goods*):

- (a) energy products and electricity covered by Directive 2003/96/EC;
- (b) alcohol and alcoholic beverages covered by Directives 92/83/EEC and 92/84/EEC; and
- (c) manufactured tobacco covered by Directive 2011/64/EU.

⁴ See my article *Momsforskningen i Sverige – svenska språkets ställning* (The VAT research in Sweden – the position of the Swedish language), JFT 6/2021 pp. 412-447, sections 1, 2.6 and 3. (Cit. Forssén 2021b). See also my article *Momsforskningen i Sverige – vart är den på väg? Del 3*, in *Balans fördjupningsbilaga 2/2022* pp. 1-8, 3-8. (Cit. Forssén 2022a). Forssén 2021b is available on www.forssen.com and Forssén 2022a is available on www.forssen.com and www.tidningenbalans.se.

⁵ See my article *Punktskatteforskningen i Sverige – skattesubjektsfrågan* (The research on excise duties in Sweden – the tax subject question), JFT 3/2022 pp. 242-276 (cit. Forssén 2022b). Forssén 2022b is available on www.forssen.com.

⁶ See Forssén 2022b, sections 2 and 3.2.1.

Non-harmonised excise duties

According to the Swedish tax authority's website are non-harmonised excise duties applying according to the following acts:

- *lagen (1994:1776) om skatt på energi*, the LSE (the Energy Tax Act), except the excise duty on the fuels comprised by the stay procedure (according to Ch. 1 sec. 3 a of the LSE – *my remark*),
- *lagen (1984:410) om skatt på bekämpningsmedel* (the Act on Tax on Biocides),
- Sections 35–40 a of *lagen (1994:1563) om tobaksskatt* (i.e. the excise duty on moist snuff, chewing-tobacco and other tobacco),⁷
- sec. 2 first paragraph no. 5 of *lagen (1990:661) om avkastningsskatt på pensionsmedel* (i.e. the Act on Tax on Return of Pension Means),
- *lagen (1990:1427) om särskild premieskatt för grupplivförsäkring, m.m.* (the Act on Special Premium Tax for Group Life Insurance, etc.),
- *lagen (1995:1667) om skatt på naturgrus* (the Act on Tax on Nature Gravel),
- *lagen (1999:673) om skatt på avfall* (the Act on Tax on Waste Products),
- *lagen (2007:460) om skatt på trafikförsäkringspremie m.m.* (the Act on Tax on Third Party Insurance Premium etc.),
- *lagen (2016:1067) om skatt på kemikalier i viss elektronik* (the Act on Tax on Chemicals in Certain Electronics),
- *lagen (2017:1200) om skatt på flygresor* (the Act on Tax on Air Trips),
- *lagen (2018:696) om skatt på vissa nikotinhaltiga produkter (the Act on Tax on Certain Products with Nicotine Content)*,
- *lagen (2018:1139) om skatt på spel, (the Act on Tax on Lotteries)*
- *lagen (2019:1274) om skatt på avfall som förbränns (the Act on Tax on Burn up Waste), and*
- *lagen (2020:32) om skatt på plastbärkassar (the Act on Tax on Plastic Carrier Bags).*⁸

Regarding *the harmonised excise duties*, I state that according to article 1 of Directive 2003/96/EC shall energy products and electricity be taxed in the EU's Member States in accordance with that directive,⁹ and that I mention excise duty in the form of energy tax, carbon dioxide tax and sulphur tax in Sweden with regard of certain fuels according to Ch. 1 sec. 3 a of the LSE. I do not make a complete review of who is tax liable according to Ch. 4 sec. 1 of the LSE, but notes that according to Ch. 4 sec. 1 no. 1 is a person tax liable for energy tax, carbon dioxide tax and sulphur tax if the person in the capacity of authorised warehousekeeper is handling certain fuels, namely fuels according to Ch. 1 sec. 3 a for which duty suspension arrangement applies according to the LSE. The problem I bring up concerning the compliance with the EU law the field of excise duties is that it for the determination of the tax subject exists in Ch. 1 sec. 4 no. 1 of the LSE a reference to *the nonharmonised income tax law* and the concept *näringsverksamhet* (business activity) in the whole of Ch. 13 of *inkomstskattelagen (1999:1229)*, IL (the Swedish Income Tax Act), regarding which activities are to be deemed as *yrkesmässiga* (professional). Although the concept *näringsidkare* (trader) is not used in the Excise Duty Directive, unlike what was the

⁷ The rules in question have been replaced in *lagen (2022:155) om tobaksskatt* by Ch. 2 sections 9 and 10.

⁸ See <<https://www4.skatteverket.se/rattsligvagledning/edition/2022.1/382794.html?q>> (visited 2023-02-20).

⁹ The complete title of directive 2003/96/EC is: Council directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity.

case in the two previous directives in the field, the tax subject is determined independently in article 7(1), why the connection in Ch. 1 sec. 4 no. 1 of the LSE to the concept *näringsverksamhet* in the whole of Ch. 13 of the IL is not EU conform. The connection comprises namely not only the determination of *näringsverksamhet* in a real sense according to Ch. 13 sec. 1 first paragraph second sentence, which stipulates that *with business activity is meant that an activity for obtaining income is carried out professionally and independently*, but also inter alia sec. 2 of Ch. 13 of the IL. This means that a legal person, in opposition to a natural person, is deemed having a business activity regardless whether the prerequisites for a real business activity are fulfilled. I do not mention the other two harmonised excise duties, which in Sweden are comprised by *lagen (1994:1564) om alkoholskatt* (the Swedish Alcohol Tax Act) and *lagen (1994:1563) om tobaksskatt* (the Swedish Tobacco Tax Act) respectively, since the connection to *the non-harmonised income tax law* does not exist therein.¹⁰

Regarding *the non-harmonised excise duties*, it is only in *lagen (1984:410) om skatt på bekämpningsmedel*, the Act on Tax on Biocides, that the mentioned connection to *the non-harmonised income tax law* exists regarding what is meant by the concept *yrkesmässig verksamhet* (professional activity), namely in sec. 4 third paragraph whose wording corresponds completely with Ch. 1 sec. 4 of the LSE. I mention something about the Act on Tax on Biocides in connection with the LSE, whereas other non-harmonised excise duties are not mentioned at all. However, I mention something about another non-harmonised excise duty in Sweden, namely the recently abolished advertising tax, which was abolished by *lagen (1972:266) om skatt på annonser och reklam* (RSL), i.e. the Swedish Advertising Tax Act, being revoked on 1 January, 2022 according to SFS 2021:1166. For the determination of *yrkesmässig verksamhet* there was also in first paragraph first sentence in the instructions to sec. 9 of the RSL a connection to the concept *näringsverksamhet* in the whole of Ch. 13 of the IL.¹¹ However, the problem in question regarding the determination of the tax subject concerning the advertising tax was resolved by chance, simply by the RSL being abolished.¹²

2.2 Regarding the choice of method in the research on excise duties¹³

Regarding the choice of method in the research on excise duties, I state inter alia that it is more open than regarding the VAT to use third countries as material for comparison at the use of a comparative method for jurisprudential studies regarding the implementation of the Excise Duty Directive (EU) 2020/262 into the national legislations for harmonised excise duties. It depends on that there is no specific definition of what is meant with excise duties according to the EU law in the Excise Duty Directive (EU) 2020/262. I consider that what is important is to, in the same way as concerning the implementation questions regarding VAT, consider both the tax subject question and the tax object question at a study of the implementation question in the field of excise duties.

¹⁰ By the way, the same applies according to *lagen (2022:156) om alkoholskatt* (the new Swedish alcohol tax act) and *lagen (2022:155) om tobaksskatt* (the new Swedish tobacco tax act), which on 13 February, 2023 replaced the two acts from 1994. This was made according to the Excise Duty Directive (EU) 2020/262, which came into force then according to article 56 therein. In accordance with the directive were then also some alterations made in the LSE, by SFS 2022:166, and *lagen (2022:157) om Europeiska unionens punktskatteområde* (the Swedish Act on the European Union's excise duty area) was introduced. I refer to the rules from the time before 13 February, 2023 – see Forssén 2022b, section 3.2.1.

¹¹ See Forssén 2022b, section 3.2.4.

¹² See Forssén 2022b, section 3.3.

¹³ See Forssén 2022b, section 5.1.

Regarding the research so far in the field of excise duties in Sweden, which consists of *Punktskatter – rättslig reglering i svenskt och europeiskt perspektiv* (Excise duties – legal regulation in a Swedish and European perspective), by professor Stefan Olsson,¹⁴ I note that the method therein is not what I call a purely law dogmatic method, which I consider typically means that the choice of method can be expected to give a useful research result for the implementation question also in the field of excise duties. My criticism regarding Olsson 2001 concerns instead the circumstance that questions about the tax subject are given a rather limit treatment therein, and above all that the phenomenon, with a connection for the determination of professional activity in Ch. 1 sec. 4 no. 1 of the LSE and in sec. 4 third paragraph of the Act on Tax on Biocides to the concept business activity in the whole of Ch. 13 of the IL, is not treated at all. However, Olsson 2001 serve as guidance for the future research regarding the excise duties insofar as the thesis confirms that neither such research in the field of indirect taxes shall be made by the application of a purely law dogmatic method.

In Forssén 2022b, section 3.2.5, I state inter alia that Olsson 2001 is written in Swedish, and that it is in line with what I state in Forssén 2021a about the importance for the research in jurisprudential subjects that are influenced by the EU law to promote Swedish at such studies. With respect of methodology I moreover state that Olsson 2001 is also in line with what I state in Forssén 2020a. A traditional law dogmatic method is used in Olsson 2001, but with the statement that *various methods can of course complete each other*, why I consider that Olsson 2001 thereby cannot be considered to have been conducive to the development within the VAT research in Sweden that I am warning for by Forssén 2020a, Forssén 2021a and Forssén 2021b, namely the risk that the jurisprudential studies will be made by application of what I call a purely law dogmatic method, like what I have stated is the case with Henkow 2008 and Lindgren Zucchini 2020. My criticism regarding Olsson 2001 concerns instead the lack of analysis on the theme EU conformity of the determination of the tax subject in the national Swedish legislation in the field of excise duties, which I come back to in conclusion.

2.3 Comparison with Finnish law in the field of excise duties¹⁵

I make a comparison with Finnish law in the field of excise duties. Concerning the mentioned connections to *the non-harmonised income tax law*, I note that it is the energy taxation in Finland that is of interest for a comparison with the excise duties in Sweden, since there is not any tax on either biocides or advertising in Finland. Thus, it is of interest that it concerning the energy taxation is stated in the Finnish tax authority's detailed instructions that inter alia authorised warehousekeepers and registered consignees are tax liable, whereby a reference is made to sections 12 and 13 of *punktskattelagen (182/2010)*, FPL (the Finnish Excise Duty Act),¹⁶ but without any connection to the income tax law for the determination of the tax subject like regarding the energy tax in Ch. 1 sec. 4 no. 1 of the LSE. Thus, the tax subject is determined independently in the FPL, which is conform with the EU law in the field of excise duties.

2.4 A non-EU conform determination of the tax subject in the

¹⁴ Stefan Olsson, *Punktskatter – rättslig reglering i svenskt och europeiskt perspektiv*, Iustus förlag 2001. (Olsson 2001).

¹⁵ See Forssén 2022b, section 3.2.3.

¹⁶ See the Finnish tax authority's detailed instructions regarding energy taxation 19 February, 2021, dnr VH/904/00.01.00/2021, section 1.4, <https://www.vero.fi/sv/Detaljerade_skatteanvisningar/anvisningar/56206/energibesattning2/> (visited 2023-02-20).

*field of excise duties may cause non-EU conform consequences for the taxation amount for VAT*¹⁷

A non-EU conform determination of the tax subject in the field of excise duties may cause non-EU conform consequences for the taxation amount for VAT, regardless whether it is a matter of harmonised excise duties or non-harmonised excise duties. Such a connection to *the non-harmonised income tax law* for the determination of the tax subject in the field of excise duties, which is still made regarding the connection in Ch. 1 sec. 4 no. 1 of the LSE and in sec. 4 third paragraph of the Act on Tax on Biocides to the concept business activity in the whole of Ch. 13 of the IL, namely causes a competition distortion regarding the VAT in conflict with the secondary law and recital 4 of the preamble to the VAT Directive and article 1(2) of the VAT Directive as well as with the primary law and article 113 of the Functional Treaty.

The mentioned consequence for the VAT emerges by the selection of tax subjects becoming far too comprehensive for the two excise duties regarding the legal persons., whereby I state the following to confirm this. That depends on that it in a chain of producers and distributors comes in a legal person that would not belong to the chain if it was not for the connection to the whole of Ch. 13 of the IL existing for the energy tax or the tax on biocides increasing the costs for real traders occurring in a later link of the ennobling chain, since they cannot deduct that – due to that in the present respect non-EU conform LSE or *lagen (1984:410) om skatt på bekämpningsmedel* (the Act on Tax on Biocides) – undesired excise duty (gross tax). Since the enterprises in later links of the ennobling chain cannot deduct excise duty that normally would not occur on the acquisitions, the costs increase for the determination of the taxation amount for VAT on their taxable supplies of goods or services.

Under the mentioned circumstances will in the end the consumer, as tax carrier of the VAT, be burdened by a higher price including VAT on the purchase of goods or services compared to if the expansion of the selection of tax subjects would not occur concerning the legal persons regarding the energy tax and the tax on biocides, which is not EU conform.

3 The research on customs law¹⁸

Concerning the third of the mentioned indirect taxes, i.e. customs, there is, like with the field of excise duties, only one thesis in customs law (Sw., *tullrätt*), namely professor Christina Moëll's.¹⁹ Customs does not present any problem in itself regarding the determination of the tax subject. According to the secondary law is in article 5(19) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (the Union Customs Code) a person who is liable to pay a customs debt, the debtor (Sw., *gäldenären*), defined as "any person liable for a customs debt". Thus, the use in the rule of the expression *any person* (Sw., *varje person*) means that the debtor can be an ordinary private person (consumer) as well as an entrepreneur.

Since both entrepreneurs and consumers can be tax subjects regarding customs, the focus at the research within the customs law can be set on the tax object. In opposition to what is

¹⁷ See Forssén 2022b, section 3.3.

¹⁸ See Forssén 2020a, section 5.3.2 and Forssén 2022b, sections 5.2 and 5.3.

¹⁹ See Christina Moëll, *Harmoniserade tulltaxor Införlivande, tolkning och tillämpning av internationella regler för varuklassificering* (Harmonised customs tariffs Incorporation, interpretation and application of international rules on classification of goods). Juristförlaget in Lund 1996. (Cit. Moëll 1996).

stated in Moëll 1996, efforts should in my opinion be made within the field of indirect taxes aiming at simplifications, for example by a common concept on goods being prepared within the EU. Such research would not only lead to simplifications within the EU regarding VAT, excise duties and customs, but also preparing for customs questions at a future introduction of the free trade agreement between the USA and the EU, i.e. regarding the TTIP-agreement,²⁰ if the work with TTIP will be resumed.

For continuing research within customs law, I may note that a change has occurred regarding the primary law concerning the indirect taxes since Moëll 1996 was written. When Moëll 1996 was written article 113 of the Functional Treaty was corresponded by article 99 of the Rome Treaty. Article 99 of the Rome Treaty was first replaced by article 93 of the EC Treaty, which, by the Lisbon Treaty, was replaced on 1 December, 2009 by article 113 of the Functional Treaty. Thereby, a principle of neutrality has come to be clearly expressed by the primary law for the indirect taxes, unlike what was the case in article 99 of the Rome Treaty.

4 Concluding viewpoints

Concerning the research in Sweden on indirect taxes (VAT, excise duties and customs) I may conclude with the following viewpoints regarding where I consider that it first should be going.

Regarding the VAT and the twelve theses so far my review of those shows that the research in Sweden should above all become alienated from what I denote a purely law dogmatic method, i.e. that the choice of method should be based on the law dogmatics as especially suitable for the subject like what is stated in Henkow 2008 or as something that can be chosen unconditionally like in Lindgren Zucchini 2020. Such an approach means in the end that the VAT research will not be treated as a jurisprudential subject, but more like research within natural science – as if the VAT Directive contains something similar to a physical object that shall be discovered and analysed. The law dogmatic method should instead be developed, for instance, as mentioned above, by the addition of legal semiotics, regardless whether the method is combined with a comparative method or with empirical examinations. I have proven that the choice of method in Lindgren Zucchini 2020 led to delimitations which made a problemizing of the subject, composite transactions for VAT purposes, impossible. The analysis should instead have been made 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. According to section 1.3 in Lindgren Zucchini 2020 are the implementation question as well as questions on right of deduction for input tax expressly delimited. By delimiting the right of deduction the author is leaving out one of the criteria that is contained in the VAT principle according to article 1(2) of the VAT Directive. Regardless of the method question, the implementation question and the language question should at least never the right of deduction have been delimited in Lindgren Zucchini 2020, since it means that the study has been carried out as if it did not even concern VAT according to the EU law, but gross tax – like excise duty.²¹

²⁰ TTIP or T-TIP is the abbreviation of The Transatlantic Trade and Investment Partnership.

²¹ See my article *Momsforskningen i Sverige – vart är den på väg? Del 2* (The VAT research in Sweden – where is it going? Part 2, in *Balans fördjupningsbilaga* (The Periodical Balans Annex with advanced articles) 2/2021 pp. 29-36, 30 and 31. (Cit. Forssén 2021c). Forssén 2021c is available on www.tidningenbalans.se and on www.forssen.com. See also: Forssén 2020a, pp. 720, 740, 744, 745 and 750; Forssén 2021a, pp. 26–28; and Forssén 2022a, pp. 2, 7 and 8; and the preface of my book *Vara och tjänst vid sammansatta transaktioner – tolkning och tillämpning enligt mervärdesskattelagen och EU:s mervärdesskattedirektiv* (Goods and services at composite supplies – interpretation and application according to the VAT Act and the EU's VAT Directive),

Regarding the research so far on excise duties in Sweden, i.e. Olsson 2001, my criticism concerns, as mentioned above, the lack of analysis on the theme EU conformity of the determination of the tax subject in the national Swedish legislation in the field of excise duties, whereby I from Forssén 2022b (section 3.2.5) especially may mention that neither the legislator nor the research in Sweden treats the non-EU conform determination of the tax subject concerning the energy tax. In Olsson 2001 was not regarded the same that I brought up as the main issue in my licentiate's dissertation,²² i.e. that the determination of the tax subject in Ch. 4 sec. 1 no. 1 of the ML was made by an incorporation therein of *the non-harmonised income tax law*, also existed in the field of excise duties. Professor Stefan Olsson participated at the final seminar regarding Forssén 2011. He said he did not understand my comparison with Olsson 2001 regarding the precarious with connections from the indirect taxes to *the non-harmonised income tax law*, where the concept *yrkesmässig* (professional) and thereby the determination of the tax subject is concerned. I stated in Forssén 2011 that Olsson 2001 does not focus on the tax subject like I do in Forssén 2011. To stimulate further research in Sweden in the field of excise duties, I noted the following as a considerable lack in Olsson 2001:²³

- On page 144 in Olsson 2001 it is stated that within income and value-added taxation it is *often enough to delimit the tax subject with far definitions like e.g. professionalism*. However, he refers in a footnote to that statement to *Ch. 13 sec. 1 of the IL, Ch 1 sec. 1 no. 1 of the ML*. Thus, I noted that it in Olsson 2001 is not regarded that the connection from Ch. 4 sec. 1 no. 1 of the ML from the year of 2001 applied to the concept business activity (Sw., *näringsverksamhet*) in the whole of Ch. 13 of the IL, i.e., as mentioned above, also inter alia to sec. 2 therein.

I stated in Forssén 2011 that an explanation to professor Stefan Olsson not bringing up in Olsson 2001, concerning the mentioning therein of the determination of the concept professional (Sw., *yrkesmässig*) in the main rule in the ML, that the reference for that determination to Ch. 13 sec. 1 (first paragraph second sentence) of the IL was altered on 1 January, 2001 to apply to the concept business activity in the whole of Ch. 13 of the IL, could be that Olsson 2001 was issued during June 2001, that is after that alteration of the rule. However, in the preface of Olsson 2001 it is stated that new material has been regarded until 31 December, 2000.²⁴ Thus, it is a considerable lack in Olsson 2001 that the connection in Ch. 1 sec. 4 no. 1 of the LSE and the instructions to sec. 9 of the RSL respectively to the concept business activity in the whole of Ch. 13 of the IL, for the determination of the tax subject regarding energy tax and advertising tax respectively, is not mentioned, since that phenomenon emerged already on 1 January, 2000, by SFS 1999:1289 and SFS 1999:1241 respectively and, concerning tax on biocides, by SFS 1999:1252. By the way, it may be mentioned that there is a proposal according to the Government's bill 2022/23:46 on the ML being replaced on 1 July, 2023 by a new VAT act. I have commented that proposal in the JFT,²⁵ and mention that article also in Forssén 2022b.²⁶

self-published 2020, available on www.forssen.com and in printed version at Kungliga biblioteket in Stockholm (the National Library of Sweden) and at the Lund University Library.

²² *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. (Cit. Forssén 2011). Forssén 2011 is available in the database DiVA (www.diva-portal.org) and on www.forssen.com.

²³ See Forssén 2011, p. 76.

²⁴ See Olsson 2001, p. 6.

²⁵ See Björn Forssén, *Synpunkter på vissa regler i förslaget till en ny mervärdesskattelag i Sverige – SOU 2020:31* (Viewpoints on certain rules in the proposal to a new VAT Act in Sweden – SOU 2020:31). (Cit. Forssén 2020b). Forssén 2020b is available on www.forssen.com.

Regarding customs law I may especially iterate, in opposition to what has been stated in the research in Sweden so far, i.e. Moëll 1996, that efforts should above all be made meaning that simplifications will be achieved within the whole of the field of indirect taxes, e.g. by a common concept on goods being prepared within the EU. That would not only lead to simplifications within the EU regarding VAT, excise duties and customs, but also be preparing for customs questions at a future introduction of the free trade agreement between the USA and the EU (TTIP). if the work with it will be resumed.

BJÖRN FORSSÉN *Doctor of Laws and lawyer in his own law firm in Stockholm.*

²⁶ See Forssén 2022b, sections 4 and 5.2.