The VAT research in Sweden and the EU law – method questions and the position of the Swedish language

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PREFACE

The VAT research in Sweden and the EU law – method questions and the position of the Swedish language is a book on the research in Sweden regarding the subject VAT law corresponding with two articles of mine in Swedish in 2020 and 2021 in *Tidskrift utgiven av Juridiska Föreningen i Finland* – Eng., The journal published by the Law Society of Finland. They form the two parts of this book on the method questions in the research and on the position of the Swedish language in the context. The basic question is whether the research result can be expected to be useful for the EU Member States' legislators, for the courts and tax authorities within the EU and for other appliers of law concerning the question on the implementation of the rules in the EU's VAT Directive (2006/112/EC) into the VAT legislations of the Member States. By the way, there is also a version in Swedish of this book: *Momsforskningen i Sverige och EU-rätten – metodfrågor och svenska språkets ställning*.

A jurisprudential study ***in*** the subject of VAT law shall be carried out with respect of the VAT principle in article 1(2) of the VAT Directive. Otherwise, the thesis constitutes a study ***about*** VAT, which belongs more within economics. The basic criteria forming the VAT principle is decisive for the study concerning VAT according to the EU law. If a comparative method is applied and comparisons shall be made at all with tax systems of other countries than the EU Member States, that is with systems in third countries, a third country is not useful for the stydy, if it consider itself having a VAT system, but is not upholding the criterion of an in principle general right of deduction for the enterprises for input tax on acquisitions to the activities. Then it is not a matter of VAT according to the EU law. The right of deduction is cemtral in that respect, and is also expressed by the other two criteria in article 1(2) of what is meant by VAT according to the EU law, that is the reciprocity principle, and the principle of passing on the tax burden. Thus, the researcher should not uncritically accept information from e.g. the OECD of what third countries that have VAT, but examine if what is denoted as VAT systems or Goods and Services Tax-systems constitute VAT according to the EU law.

The importance of the right of deduction for a jurisprudential study ***in*** the subject VAT law means also that such a study should be made with regard of questions on both the tax subject and the tax object. If a thesis is carried out only with respect of the tax object, a problemizing of issues ***in*** the subject cannot be done, regardless of which method is chosen for the study. Article 1(2) of the directive means that the basic idea of what constitutes VAT according to the EU law is that the VAT is levied and deducted in an ennobling chain up to the consumer, who pays VAT included in the price of the goods or service on its total value-added through the whole of the production and distribution chain. Also questions on the tax subject form part of that context, not only questions on the tax object. If the right of deduction is delimited, the examination does not concern VAT according to the EU law, but the study is then instead conducted as if it concerned a gross tax, i.e. in principle excise duty.

Concerning the language issue the researchers within the field of VAT law in Sweden often write in English instead of Swedish. I set this in relation to the basic question whether the research result can be expected to be useful for legislators and appliers of law.

This book is intended for students and researchers within the VAT law, and I aim for it to function as a guidance to avoid pitfalls in studies or research of the subject. It should also be of interest for the participants in proceedings where the subject is concerned.

Stockholm in August 2022
Björn Forssén

LIST OF CONTENTS

ABBREVIATIONS

Approx., approximately
C, curia (court – about the CJEU)
Cit., citation
CJEU, the Court of Justice of the EU
EC, European Community
ECLI, European Case Law Identifier – used in electronic Reports of Cases wherein from 2012 publishing is exclusively made of the CJEU's etc. verdicts
EEA, European Economic Area
EEC, European Economic Community
EFTA, European Free Trade Association
e.g., exempli gratia, for example
Eng., English
et al., et alii, and others
etc., etcetera
EU, the European Union or the Union
FML, the Finnish VAT Act [Sw., *mervärdesskattelagen (1501/1993)*]
Functional Treaty, the Treaty on the Functioning of the European Union
GST, Goods and Services Tax
i.e., id est, that is
JFT, *Tidskrift utgiven av Juridiska Föreningen i Finland* (Eng., The journal published by the Law Society of Finland)
Kungl. Maj:ts, *Kunglig majestäts* (formerly the Swedish Government)
ML, the Swedish VAT Act [Sw., *mervärdesskattelagen (1994:200)*]
Moms, abbreviation of *mervärdesskatt* (VAT)
no., number
OECD, Organisation for Economic Co-operation and Development (in French *Organisation de coopération et de développement économiques*, OCDE
p., page; pp., pages
Prop., Regeringens proposition (Eng., Government bill)
SEK, Swedish kronor
SFL, the Swedish Taxation Procedure Act [Sw., *skatteförfarandelagen (2011:1244)*]
SFS, *svensk författningssamling*, Swedish Code of Statutes
SOU, *statens offentliga utredningar* (the Swedish Government's official reports
Sw., Swedish
TEU, Treaty of European Union
The Implementing Regulation, Council implementing regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax
The VAT Directive, Council directive 2006/112/EC of 28 November 2006 on the common system of value added tax
VAT, value added tax
www, worldwide web

Part I

[This part corresponds with my article in *Tidskrift utgiven av Juridiska Föreningen i Finland* (Eng., The journal published by the Law Society of Finland), abbreviated JFT, *Momsforskningen i Sverige – metodfrågor* (Eng., The VAT research in Sweden – method questions), JFT 6/2020 pp. 716–757.]

The VAT research in Sweden – method questions

1 Introduction

Value-added tax (VAT) is a tax for which two sets of legislation shall be interpreted and applied within the various EU Member States. In for instance Sweden and Finland *mervärdesskattelagen (1994:200*, here abbreviated ML), i.e. the Swedish VAT Act, and *mervärdesskattelagen (1501/1993*, here abbreviated FML), i.e. the Finnish VAT Act, apply. The content of the ML and the FML is determined by rules in the legislations from the European Union (EU) in the field, that is by the EU law in the field of VAT. When Sweden and Finland accessed to the EU on 1 January, 1995 the two countries namely transferred competence in for instance the field of indirect taxes, which in the first place consists of VAT, excise duties and customs, to the EU's institutions.[1] The so-called principle of legality for such transfer of competence follows by articles 4(1) and 5(2) TEU, and, where Sweden is concerned also by virtue of the Swedish constitution, namely by Ch. 10 sec. 6 first paragraph first sentence of *regeringsformen (1974:152*, here abbreviated RF).[2]

In this article I treat how the research is done in Sweden regarding the problemizing of the rule competition emerging if one or more rules in the EU's VAT Directive (2006/112/EC) can be given another interpretation and application than what follows by the corresponding rule or rules in the national VAT legislation, the ML. In this respect I treat the use of methods for analysing in the VAT research the implementation into the ML the directive rules, where I reason about the aptitude of a law dogmatic method or comparative method for such a jurisprudential study. The following is meant by law dogmatics and comparative law:

- Law dogmatics is the part of jurisprudence occupied with the legal norm system and the interpretation of the norms (Sw., "Rättsdogmatik är "den del av rättsvetenskapen som sysslar med det rättsliga normsystemet och normernas tolkning").[3]

- Comparative law – comparing law – means the comparing of the law of different countries.[4]

I illuminate the method question with theses where the approach for the study in the field of VAT has been carried out only by a law dogmatic method, with such a method in combination with a comparative method and only with a comparative method respectively.

I put the Swedish theses on the subject of VAT law in relation to inter alia article 113 of the Treaty on the Functioning of the European Union (hereinafter the Functional Treaty), and reason about pros and cons with them for the maintaining of the two principles in the treaty

[1] The EU's institutions shall according to article 13(1) of the Treaty of European Union (TEU) be the following: the European Parliament, the European Council, the Council, the European Commission, the Court of Justice of the European Union, the European Central Bank and the Court of Auditors.

[2] At Sweden's EU-accession the rule was to be found in Ch. 10 sec. 5 of the RF.

[3] See Sture Bergström – Torgny Håstad – Per Henrik Lindblom – Staffan Rylander, *Juridikens termer* (Eng., Terms of law), eighth edition, Almqvist & Wiksell Förlag/Liber AB 1997, p. 145 (Bergström et al. 1997).

[4] See Bergström et al. 1997, p. 90.

article. This meaning that it, to the extent that it is necessary to secure the internal market within the EU being established and functioning, is a demand for harmonisation on the national legislation of the indirect taxes in the EU Member States and that a competition distortion shall be avoided. Article 113 of the Functional Treaty has the following wording:

> ”The Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.”

That it is binding for Sweden to implement the rules of the VAT Directive into the ML follows by article 288 third paragraph of the Functional Treaty, which has the following wording:

> ”A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.”

At the review of pros and cons with the law dogmatic method and the comparative method in the research in the subject VAT law in Sweden I disregard from Sweden in the accession treaty with the EU getting by negotiation an exemption from implementing certain rules of the EU’s First VAT Directive (67/227/EEC) and the EU’s Sixth VAT Directive (77/388/EEC), which have been replaced by the VAT Directive,[5] and I also disregard from the so-called rest competence that is expressed in the subordinate clause on *form and methods* for the implementation of the VAT Directive. Any exact meaning by the expression *form and methods* in article 288 third paragraph of the Functional Treaty has not been established.[6] The purpose with and consequences of this rest competence being left to the Member States and their authorities regarding implementation of directives are only to give them opportunities of choice within the frames of the national law and law of procedure to take measures in that respect.[7]

Thus, in this article I mention in the first place the principal clause of article 288 third paragraph of the Functional Treaty, that is that it is in principle binding for Sweden to

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[5] See *lagen (1994:1500) med anledning av Sveriges anslutning till Europeiska unionen* (Eng., the Act concerning Sweden’s accession to the European Union in 1995), the so-called Accession Act or the EU-Act; prop. 1994/95:19 (*Sveriges medlemskap i Europeiska unionen* – Eng., Sweden’s membership of the European Union) Part 1, pp. 142 and 143 (prop., abbreviation of *regeringens proposition* – Eng., government bill). See also article 380 and items 1, 2, 9 and 10 of Part B of Annex X of the VAT Directive. See also Björn Forssén, *Skattskyldighet för mervärdesskatt – en analys av 4 kap. 1 § mervärdesskattelagen* (Eng., Tax liability for VAT – an analysis of Ch. 4 sec. 1 of the ML), Jure Förlag AB 2011 (licentiate’s dissertation), p. 53 (Forssén 2011). Forssén 2011 is available in full text in the database DiVA (www.diva-portal.org) and on www.forssen.com.

[6] See Sacha Prechal, Directives in EC Law (Second, Completely Revised Edition), Oxford University Press, Oxford 2005 [a book in the series Oxford EC Law Library], p. 73 (Prechal 2005). See also Forssén 2011, p. 63 and Björn Forssén, *Skatt- och betalningsskyldighet för moms i enkla bolag och partrederier* [Eng., Tax and payment liability to VAT in (approximately) joint ventures and shipping partnerships], Örebro Studies in Law 4/2013 (doctor’s thesis), p. 43 (Forssén 2013). Forssén 2013 is available in full text in the database DiVA (www.diva-portal.org) and on www.forssen.com. The fifth edition of my doctor’s thesis (self-published 2019) and my translation of it into English (2019), Tax and payment liability to VAT in joint ventures and shipping partnerships, Fifth edition, are available in full text on www.forssen.com and in printed versions at Kungliga biblioteket i Stockholm (the National Library of Sweden) and at the Lund University Library.

[7] See Prechal 2005, p. 74 and also p. 68. See also Forssén 2011, p. 63 and Forssén 2013, p. 43 in Björn Forssén.

implement the rules of the VAT Directive into the ML, together with the harmonisation demand on the ML and the principle of a neutral VAT according to article 113 of the Functional Treaty, when I reason about the research in VAT in Sweden and pros and cons with using the law dogatic method and the comparative method as approach for problemizing the implementation of the rules of the VAT Directive into the ML. By that review I am aiming to illuminate the importance of the choice of method, so that the research result can be expected to be useful for the legislators in the various EU Member States, for the courts and tax authorities within the EU and for other appliers of law concerning the implementation question.

2 The importance of the principles of a general right of deduction and of free movement and establishment for the method question

2.1 A general right of deduction is decisive for what is meant by VAT according to the EU law

The VAT is a tax on consumption. The fundamental purpose with the tax is to separate the entrepreneurs, the taxable person, from the consumers, who often are ordinary private persons or employees by an enterprise. By item 2 of the portal article, article 1, of the VAT Directive follows that the VAT according to the EU law comprises production and distribution of goods and services, whereby the tax on the general consumption of such achievements shall be exactly proportional to the price of them. The primary law demand of harmonisation regarding the Member States' national legislations about indirect taxes according to article 113 of the Functional Treaty shall regarding the VAT be carried out by implementation of the secondary law VAT Directive according to article 288 third paragraph of the Functional Treaty. It follows by the directive's complete title that a common VAT system shall exist within the EU.[8] Concerning the relationship between primary and second law may for the further presentation be mentioned, that the secondary law within the EU is created by the EU's institutions and that the secondary law is therefore sometimes called derived law, which means that the primary law has primacy before the secondary law.[9]

The enterprises have obligations and rights according to the VAT system and by the mentioned article 1(2) of the VAT Directive also follows that enterprises liable to pay VAT to the State on the production and distribution of goods or services have a right of deduction for its expenditure regarding VAT that has been charged in previous links of the ennobling chain regarding present goods or services, and that this applies up to the the retail trade. The consumer finally purchasing the goods or services in question does not have any obligations or rights concerning the VAT system, but is affected as the so-called tax carrier by the VAT

[8] The complete title of the VAT Directive is: Council directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

[9] See Kristina Ståhl, *Aktiebeskattning och fria kapitalrörelser En studie av beskattningen av den löpande avkastningen av aktieinvesteringar på bolags- och ägarnivå mot bakgrund av EG:s fria kapitalmarknad* (Eng., Taxation of stock and free capital movements A Study of the taxation of the current proceeds on investments in stock on the company and owner level with respect of the EC's free capital market), Iustus förlag 1996, p. 60 (Ståhl 1996); Ulf Bernitz, *Kapitlet EUROPARÄTTEN*, Eng., the Chapter European Law, (pp. 59–89), p. 65 in *Finna rätt Juristens källmaterial och arbetsmetoder* (*elfte upplagan*), Eng., 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 (Bernitz 2010); and Mikaela Sonnerby, *Neutral uttagsbeskattning på mervärdesskatteområdet* (Eng., Neutral withdrawal taxation in the field of VAT), Norstedts Juridik 2010, p. 38 (Sonnerby 2010). See also Forssén 2011, p. 43 and Forssén 2013, p. 42.

on the total value-added on the production and distribution of the goods or services, by him or her paying the price including VAT on the goods or services.

According to recital 5 of the preamble to the VAT Directive a VAT system becomes the most simple and neutral when the VAT is taken out as generally as possible and comprising all links of production and distribution and supply of services. The ideal with the VAT principle according to the EU law is that the consumer, who in the end shall carry the VAT on the goods produced or service rendered by the enterprises involved in such an ennobling chain, will not pay tax on the tax, that is so-called cumulative effects should be avoided for the VAT being neutral with respect of competition as well as consumption.[10]

Value-added is a concept not defined in the EU's legislation in the field of VAT. Therefore it is, regardless of the method applied for analyses of questions on the subject VAT, necessary to do the surveys with respect of the VAT principle according to article 1(2) of the VAT Directive. That is what decides what is meant with VAT according to the EU law. By the second paragraph of article 1(2) follows that the VAT principle consists of the following principles:

- the principle of a general right of deduction,
- the reciprocity principle, and
- the principle of passing on the tax burden.

These principles shall, as parts of the VAT principle, jointly entail that the tax is passed on through the whole production and distribution chain up to the consumer, so that he or she as tax carrier will be burdened by the VAT on the total value-added of the goods or services in the ennobling chain.

By recital 8 of the preamble to the First VAT Directive (67/227/EEC), which has been replaced by the VAT Directive, it follows that the idea with all EC Member States having a common VAT system was to replace the gross taxes that lead to so-called cumulative effects, that is tax-on-tax, since they are lacking the general right of deduction that rules in principle for the VAT.[11] Although a Member State can have certain so-called deduction prohibitions in their VAT legislations by virtue of article 176 second paragraph of the VAT Directive, it is the general right of deduction that gives the VAT according to the EU law its character of a a multiple-stage tax. If the principle of a general right of deduction of input tax on acquisitions made by en enterprise, a taxable person, is not upheld, undesired cumulative effects emerge due to the output tax on its sale of goods or services being calculated on a taxation amount that contains a latent VAT cost. If the consumer can choose between a deliverer that takes part in such an ennobling chain and one who takes part in a chain where the ideal meaning that such effects will not emerge is upheld, the consumer will, everything else equal, choose the later deliverer. Then the principle in article 113 of the Functional Treaty meaning that competition distortion shall be avoided will be set aside. That principle follows by recital 4 of the preamble to the VAT Directive. Thus, it is with respect of primary law an dsecondary law

[10] See Forssén 2011, sections 2.2.1, 2.2.2 and 2.2.3 and Forssén 2013, sections 2.4.1.2, 2.4.1.3 and 2.4.1.4.

[11] See Kristina Ståhl – Roger Persson Österman – Maria Hilling – Jesper Öberg, *EU-skatterätt*, *Tredje upplagan* (Eng., EU tax law, Third edition), Iustus förlag 2011, pp. 200 and 201 (Ståhl et al. 2011), and Henrik Stensgaard, *Fradragsret for merværdiafgift* (Eng., Right of deduction of VAT), Jurist- og Økonomforfundets Forlag 2004, p. 46. See also Forssén 2011, p. 273.

established that the principle of a neutral VAT is necesary to realize the aim to create a functioning internal market within the EU.

I descibe the VAT principle according to the EU law by the following example, where I assume that it is a question of sales within Sweden of goods, and that the ennobling chain up to the consumer, the buyer B, consists of the following taxable persons, entreprises, namely: the producer, P; the wholesaler, W; and the retailer, D.

The tax rate for the goods is the general of 25 per cent according to Ch. 7 sec. 1 first paragraph of the ML. All enterprises in the ennobling chain up to K. are tax liable for the of the goods.

Assume that P is selling the goods for SEK 100 excluding VAT to W., who sells the goods for SEK 140 to R. Since all the enterprises involved have a full right of deduction of input tax in their activities, B is, as tax carrier, burdened by VAT in the price – consideration – that R finally charges for the goods to consumers, in this case to B for the goods to consumer. If R's price for the goods is SEK 200 excluding VAT, the price including VAT is SEK 250 (200 x 25 % = 50; 200 + 50 = 250). Thus, B is as tax carrier burdened by a VAT expenditure of SEK 50, i.e. of the VAT included in the price SEK 250. I describe this link by link as follows:

Link 1 (P – W)
P invoices W:
100 + output tax 20 = 125 (100 x 25 % = 25; 100 + 25 = 25).
W deducts charged VAT, SEK 25.

Link 2 (W – R)
W invoices R:
140 + output tax 35 = 175 (140 x 25 % = 35; 140 + 35 = 175).
R deducts charged VAT, 35.

Link 3 (R – B)
R invoices (or gives receipt to) B:
200 + output tax 50 = 250 (200 x 25% = 50; 200 + 50 = 250).

This means that P, W and R account VAT to the State as follows:

P,
Output tax: SEK 20
[I disregard deduction by P, and illustrate only the passing on of the VAT link by link in the ennobling chain regarding the goods in question.]
P pays to the State, SEK 20.

W,
Output tax, SEK 35
Input tax, SEK 20
W pays to the State, SEK 15 (35 – 20).

R,
Output tax, SEK 50
Input tax, SEK 35
R pays to the State, SEK 15 (50 – 35).

Totally, P, W and R are paying SEK 50 in VAT to the State (20 + 15 + 15 = 50).

The example illustrates that P, W and R together are paying net to the State the same VAT amount, SEK 50, that B is paying in the price for the goods to D.

By all involved enterprises in the ennobling chain of the goods, which the consumer B purchases from D, are tax liable, and fully entitled to deduct input tax on acquisitions and imports in their activities, the consumer is in the end not burdened by a tax on the tax, i.e. a cumulative effect. Thereby, the ideal idea is upheld with the VAT according to the EU law, which is expressed by the VAT principle in article 1(2) of the VAT Directive.

Assume that W for some reason would not have a right of deduction of input tax on its acquisition of the goods from P. Then emerges a latent VAT cost of SEK 20 in the ennobling chain, and the following effect arises:

- For W not burdening its result W. increases the taxation amount when selling the goods to R. Thereby W charges an output tax of SEK 40 instead of SEK 35 in its invoice to R.

- R deducts an input tax of SEK 40, but the cost has increased by SEK 20 also for R compared to when W had a right of deduction for its purchase from P. Thus, R charges an output tax of SEK 55 in its invoice to the consumer, B.

- Thus, a cumulative effect emerges for B who pays a tax on the tax of Sek 5, because W in the link before R in the ennobling chain was burdened with a VAT cost of SEK 20 due to W not having a right of deduction of SEK 20 in the invoice from P. The consumer, B, thereby pays a SEK 5 higher price for the goods compared to if the principle of a general right of deduction is upheld in the ennobling chain regarding the goods.

2.2 The principles of free movement and establishment are decisive for the EU's internal market

A neutral VAT is necessary to realize the aim to create a functioning internal market within the EU. On the internal market shall goods and services produced in one EU country or goods imported thereto from a third country, that is from a country outside the EU, move freely between the Member States. According to article 28(1) of the Functional Treaty the EU is in that way a customs union, and also goods brought into an EU Member State and reported to the Customs are gone into transition of free supply and can be delivered to other Member States without being subject to customs again, why neither Customs VAT is taken out thereby. The EU's internal market is based on the so-called four freedoms for movement between EU Member States of goods, services, persons and capital and on the principle of freedom of establishment for EU citizens within the Member States.[12]

If a person makes a taxable transaction of a product or a service within for example the EU country Sweden, the question arises whether he or she is a taxable person according to article 9(1) first paragraph of the VAT Directive. The directive rule is the main rule for who is

[12] The four freedoms are to be found in the following articles of the Functional Treaty: article 28, regarding goods; article 56, regarding services; article 45, regarding persons; and article 63, regarding capital. The principle on the EU citizens' right of free establishment in the Union is to be found in article 49 of the Functional Treaty. What is meant by company according to the civil or trade legislation shall be equalized with natural persons who are citizens in the Member States, which follows by article 54 of the Functional Treaty. See also Forssén 2011, p. 45.

deemed to have the character of taxable person, and means that that is the case regarding ”any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity”. This means in practice that a person who is an entrepreneur is tax liable for the supply in Sweden, and thus liable to account for and pay output tax to the Swedish state on the transaction (if not rules on reverse charge of the customer arise).[13] This applies regardless of where in the world the person has established the activity giving him the character of taxable person.[14] Value-added taxation can comprise all taxable transactions of goods or services made within the geographical area belonging to the EU according to article 52 of the TEU and article 355 of the Functional Treaty.[15] The territories of the EU Member States constitute in principle the EU's taxation area regarding VAT (value-added taxation area), by reference in articles 5(1) and 5(2) of the VAT Directive to the recently mentioned articles of the TEU and the Functional Treaty.[16]

Although the supply within for instance the EU country Sweden is only temporary, solitary becomes thus also a foreign entrepreneur (taxable person) tax liable and shall account for and pay output tax to the Sedish state.[17] The EU's VAT system can in that way be considered imperialistic in relation to the third countries, but on the other hand shall, in pursuance of the main rule on the scope of the right of deduction in article 168 a) of the VAT Directive, also an entrepreneur from a third country be entitled to deduct input tax on the goods and services that he in that case acquires in Sweden to make his transactions of taxable goods or services there or to make his deliveries or supplies from Sweden to another EU country or to a third country. Besides, an entrepreneur from a third country gets a refund of the input tax he is paying when visiting an EU country without he himself making transactions of goods or services there, according to the Thirteenth Directive on repayment of VAT to entrepreneurs established outside the EU.[18] An entrepreneur from for example Japan or the USA visits perhaps an industry fair in Sweden and stays at a hotel, entertains at restaurants and goes by taxi during the visit, but does not make any transactions within Sweden. The foreign entrepreneur is not liable to register for VAT in Sweden under these premises and cannot

[13] See ch. 1 sec. 2 first paragraph no. 1 of the ML with reference to sec. 1 first paragraph no. 1 and Ch. 1 sec. 8 with reference to sec. 1. See also Forssén 2011, p. 96.

[14] See Ben J.M. Terra and Julie Kajus, A Guide to the European VAT Directive, Volume 1, Introduction to the European VAT 2010, IBFD 2010, p. 331 (Terra and Kajus 2010). There it is stated that a silk dealer in Djakarta (Indonesia) is a taxable person as well as a store in Amsterdam. However, they note that the silk dealer must supply his goods within the territory of Netherlands, to act so that he ”acts within the Dutch VAT”. See also Forssén 2011, p. 96.

[15] See articles 2(1) a and c and articles 5(1) and 5(2) of the VAT Directive. See also Ståhl et al. 2011, p. 207 and Forssén 2011, p. 96.

[16] However, note that the articles 6 and 7 of the VAT Directive mean that certain deviations frommthe principle that the EU Member States territories also forms part of the EU's VAT area. Therein it is stated that for example Åland does not belong to the EU VAT area, despite that Åland – like the rest of Finland – forms part of the EU's customs area, and that for instance Monaco shall not be treated with respect of the VAT Directive as a third country by the Member States regarding transactions to and from that area, but as if the transactions originated from or were meant for France. See also Forssén 2011, p. 96.

[17] See also Forssén 2011, p. 97.

[18] Complete title of the Thirteenth Directive: Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in Community territory.

deduct the VAT expenditures in a VAT rerurn in Sweden, but shall by application to the Swedish tax authority (*Skatteverket*) be restituted these expenditures, so that the loss side of his profit and loss statement will not be burdened with Swedish VAT as a cost.

2.3 The meaning of a general right of deduction and of the freedoms on the EU's internal market for the method question

The principle of a general right of deduction of input tax comprise all entrepreneurs carrying out trade in the EU's internal market or that come visiting from third countries and having VAT expenditures there. By the competition neutrality thus being upheld on the internal market for the transaction of goods and services should the principle of a general right of deduction together with above all the principles on free movement for goods and services be decisive for the choice of method at studies of VAT according to the EU law. Thereby can the research result of jurisprudential studies of questions on the subject of VAT be expected to be useful for the legislators within the various EU Member States, for courts and tax authorities within the EU and for other appliers of law.

Thus, I am reviewing the questions on the choice of a law dogmatic method, of a law dogmatic method completed with a comparative method or of a solely comparative method for jurisprudential studies in the subejct VAT from the following two viewpoints:

- the importance of a general right of deduction for what is meant by VAT according to the EU law, and
- the importance of the principles of free movement for goods and services on the EU's internal market.

Before that, I go through some law political aims for the EU's common VAT system, which should be considered at the choice of method for the analysis of the questions that the study is supposed to illuminate.

3 The importance of law political aims with the common VAT system for the methods

3.1 Examples of law political aims

In Forssén 2013 I identified and put forward, for the analysis of the question on the enterprise form *enkelt bolag (och partrederi)* – Eng., joint venture (and shipping partnership) – in Ch. 6 sec. 2 of the ML (and Ch. 5 sec. 2 of *skatteförfarandelagen (2011:1244*, here abbreviated SFL) – Eng., the Swedish Taxation Procedure Act – in relation to the VAT Directive and above all the main rule therein on who is a taxable person, article 9(1) first paragraph, the following law political aims for the VAT system based on the EU's legislation in the field: a cohesive VAT system, neutrality, EU conformity, legal certainty including legality and efficiency of collection.[19]

3.2 A cohesive VAT system

That a cohesive VAT system, a uniform VAT is a law political aim with the VAT according to the EU law follows already by the VAT Directive's complete title, that is that it is a directive *on a common system of value added tax*.

[19] See Forssén 2013, Chapter 2.

3.3 Neutrality

That neutrality is a law political aim with the VAT according to the EU law follows by the principle of a neutral VAT following of primary law according to article 113 of the Functional Treaty and of secondary law according to the recitals 4, 5 and 7 of the preamble to the VAT Directive and article 1(2) of the VAT Directive.[20]

3.4 EU conformity and legal certainty including legality

That EU conformity is a law political aim follows already by that it is binding by primary law according to article 288 third paragraph of the Functional Treaty for the Member States to implement the VAT Directive into their national VAT legislations.

Moreover, it follows by the grounds for the judgment in the EU-case 6-64 (Costa)[21] that ”the precedence of Community law” before national law is confirmed by article 189 of the Rome Treaty – nowadays article 288 of the Functional Treaty. The principle of the EU laws precedence before national law has been constantly established after the ”Costa”-case, and applies by both primary and secondary law,[22] why it is considered fundamental for the EU law’s impact in the Member States.[23] Based on this principle the Court of Justice of the EU has developed the principles on direct effect of the directive rules and that the national authorities and courts shall give those an EU conform (directive conform) interpretation.[24] Based on the EU-case 26/62 (van Gend en Loos)[25] and the ”Costa”-case from 1963 and 1964 the Court of Justice of the EU has developed that concept that the directives can have a so-called direct effect.[26] If a directive rule has direct effect, the individual can invoke it in pursuance of the EU law’s primacy before national law. The terms for a directive rule having direct effect is that it is clear, precise and unconditional and that the time for implementation has run out.[27]

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[20] See above regarding recitals 4 and 5 of the preamble to the VAT Directive and article 1(2) of the VAT Directive. In recital 7 of the preamble to the VAT Directive it is stated that the tax rates and exemptions from taxation are not fully harmonised, but that the principle of a neutral VAT still applies so that similar goods and services bear the same tax burden within the territory of each Member State.

[21] See the EU-case 6-64 (Costa), ECLI:EU:C:1964:66.

[22] See Prechal 2005, p. 94, where she notes this concerning ”the supremacy of Community law over national law”. See also Forssén 2011, p. 55.

[23] See Prechal 2005, p. 94; Ståhl 1996, p. 66; Joakim Nergelius, The Constitutional Dilemma of the European Union, Europa Law Publishing, Groningen 2009, p. 58 (Nergelius 2009); and Sonnerby 2010, p. 60. See also Forssén 2013, p. 41.

[24] See Sonnerby 2010, p. 61. See also Forssén 2011, p. 55.

[25] The EU-case 26/62 (van Gend en Loos), ECLI:EU:C:1963:1.

[26] See Prechal 2005, pp. 92, 93 and 218 and also p. 16, where ske concludes this from the EU-cases 26/62 (van Gend en Loos) and 6-64 (Costa). See also Terra and Kajus 2010, p. 129. See also Forssén 2011, p. 56.

[27] See Ståhl 1996, p. 68; Terra and Kajus 2010, p. 129; Ben J.M. Terra and Julie Kajus, A Guide to the European VAT Directive, Volume 1, Introduction to the European VAT 2012, IBFD 2012, p. 151 (Terra and Kajus 2012); Bernitz 2010, p. 74; and Sonnerby 2010, p. 63. See also prop. 1994/95:19 Part 1, p. 486, where it is (in translation) stated with reference to van Gend en Loos (26/62) that it is required for direct effect that the rule is *unconditional, precise and complete*; Christina Moëll, *Harmoniserade tulltaxor Införlivande, tolkning och tillämpning av internationella regler för varuklassificering* (Eng.. Harmonised customs tariffs Incorporation,

Thus, the rules in for example the ML and the FML shall be compatible (conform) with the directive rules. Thus, in Forssén 2013 I identify from article 288 third paragraph of the Functional Treaty and the case law of the Court of Justice of the EU also *EU conformity* as a law political aim with the common VAT system.[28] However, an EU conform (directive conform) interpretation of for example the ML or the FML can be limited insofar that if a literal interpretation of the rule in the national legislation means that it according to its wording does not support a measure of taxation against the individual an EU conform interpretation cannot be driven through against him or her.

Thus, an EU conform interpretation cannot constitue an obligation for the Member States to interpret the national law contrary to its wording (*contra legem*).[29] That is also the conception of the Court of Justice of the EU, which follows by item 110 of the EU-verdict C-212/04 (Adeneler et al.).[30] Thus, I identify also as a law political aim *legal certainty including legality*, whereby I furthermore refer in Forssén 2013 to the principal of legality according to articles 4(1) and 5(2) of the TEU and to the principle of legality for taxation meaures according to Ch. 8 sec. 2 first paragraph no. 2 of the RF.[31] Thus, the national law of procedure and the constitutional law with all the above-mentioned principle of legality for taxation measures can the EU conform interpretation of a rule in the VAT Directive.[32]

3.5 Efficiency of collection

Another law political aim with the VAT system according to the EU law is the aim of an efficiency of collection of the tax in the common VAT system. In Forssén 2013, I state that the fiscal purpose, that is that taxes shall finance public activities, is sometimes mentioned as a so-called ultimate purpose for both the VAT and the income tax.[33] I mention in this respect

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interpretation and application of international rules on classification of goods), Juristförlaget in Lund 1996, p. 197 (Moëll 1996), where it is (in translation) with reference to the case "van Gend an Loos" stated that the Court of Justice of the EU has concluded that *a legal rule must be clear, precise and unconditional and intended to be directed to individuals to be able to have direct effect so that individuals can rely upon it and derive rights thereof*; and Nergelius 2009, p. 11; Jürgen Habermas, *Om Europas författning – en essä* (Eng., On the constitution of Europe – an essay), Translation (from German into Swedish) Jim Jakobsson, Ersatz Stockholm 2011, p. 58; and Eleonor Alhager (nowadays Kristoffersson), *Mervärdesskatt vid omstruktureringar* (Eng., Value-added tax at reconstructions), Iustus förlag 2001, p. 94 (Alhager 2001). See also Forssén 2011, p. 55 and Forssén 2013, pp. 43 and 44.

[28] See Forssén 2013, sections 2.1, 2.2 and 2.5.

[29] See pp. 71 and 75 in Kristina Ståhl, *Fusionsdirektivet Svensk beskattning i EG-rättslig belysning* (Eng., the Merger Directive Swedish taxation in the light of EC law), Iustus Förlag AB, Uppsala 2005 (Ståhl 2005) and Sonnerby 2010, p. 66. See also Forssén 2013, p. 38.

[30] The EU-case C-212/04 (Adeneler et al.), ECLI:EU:C:2006:443. See also Sonnerby 2010, p. 66. See also Forssén 2013, p. 38.

[31] See Forssén 2013, sections 2.1, 2.2 and 2.7.

[32] See Forssén 2013, p. 38.

[33] See Peter Melz, *Mervärdeskatten Rättsliga grunder och problem* (Eng., The VAT Legal foundations and problems), Juristförlaget 1990, p. 64 (Melz 1990) and also e.g. SOU 1989:35, *Reformerad mervärdeskatt m.m.* (Eng., Reformed VAT etc.), Part 1, pp. 140 and 142 (SOU, *statens offentliga utredningar* – Eng., the Government's official reports). See also Forssén 2013, p. 76.

also inter alia that the State's interest of an effective VAT collection means that the tax liable functions in principle as tax collector for the State.[34]

I furthermore mentioned in Forssén 2013 that the EU's attitude law politically in collection respect has gone from as many as possible making taxable transactions ought to be comprised by the VAT system to the EU Commission sending out a message of exercising restraint in that respect and of prioritizing registration control and otherwise questions on collection of VAT.[35] I mentioned also that *Skatteverket* already in connection with the introduction of the SFL on 1 January, 2012 noted that the VAT system is exposed to such grave fraud that it has been pointed out from EU level the importance of the Member States exercising effective control of those *given entrance into* the system.[36] That efficiency of collection is central for the VAT in the EU law's meaning follows also by recital 45 of the preamble to the VAT Directive stating that taxable persons' liabilities as far as possible should be harmonised, to ensure that tax collection is made in a uniform way in all Member States.[37] That the VAT shall be harmonised within the EU has by the way not only importance for the state finances in the Member States, but also for the EU as legal person. The taxation base for VAT forms also base for the Member States' financing of the EU's institutions.[38]

The Court of Justice of the EU also mention the State's interest of collection in connection with the principle on neutrality. That follows of the EU-case C-216/97 (Gregg), which I comment in Forssén 2011 and Forssén 2013. I conclude that this is the case, by comparing item 20 in the verdict of the case in Swedish, in the language of the case, which is English, and in French, which traditionally is the Court of Justice of the EU's common language for its deliberations. In Swedish it is stated in the first sentence of the item that the principle on neutrality presents inter alia an obstacle for various players providing goods and services being treated differently ”i mervärdesskattehänseende” (Eng., for VAT purposes). In English ”as far as the levying of VAT is concerned” is used,[39] which is more specific than the quotation in Swedish, that is in the language version in English of the verdict the charge of the VAT is alluded to, whereas the Swedish translation states generally *for VAT purposes*. Clearness of what the Court of Justice of the EU is aiming at can be obtained first when reading item 20 of the verdict in French, where the quotation reads ”perception de la TVA” (Eng., collection of the VAT). That is closer to the language version in Swedish than to the

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[34] See prop. 1989/90:111 (*Reformerad mervärdeskatt m.m.* – Eng., Reformed VAT etc.), p. 294 and also Graham Virgo, Restitution of Overpaid VAT, British Tax Review 1998 pp. 582–591, where it on p. 591 is stated that ”*the taxpayer*” can be seen as an ”*agent for the Commissioners*” (*Inland Revenue Commissioners*). See also Forssén 2013, pp. 59 and 76.

[35] See section 5.4.1, *Översyn av uppbörden av mervärdesskatt* (Eng., Reviewing the way VAT is collected), in the EU Commission's green paper *KOM(2010) 695 slutlig* (Eng., COM(2010) 695 final) and the EU Commission's follow-up to the green paper, COM(2011) 851 final, p. 6. See also Forssén 2013, p. 76.

[36] See prop. 2010/11:165 (*Skatteförfarandet* – Eng., the Taxation Procedure) Part 1, p. 320. See Forssén 2013, p. 76.

[37] See also Forssén 2013, p. 76.

[38] See the Council's decision 2000/597/EC, which is mentioned in recital 8 of the preamble to the VAT Directive [previously recital 2 of the preamble to the EC's Sixth VAT Directive (77/388/EEC)] and prop. 1994/95:19 Part 1, p. 139 and prop. 1994/95:57 (*Mervärdesskatten och EG* – Eng., The VAT and the EC), p. 93. See also Alhager 2001, p. 42 and Sonnerby 2010, p. 56 and Forssén 2013, pp. 14 and 76.

[39] VAT, value-added tax, abbreviation in English corresponding to *moms*, the abbreviation of *mervärdesskatt*.

one in English, since the specific question on levying of VAT is not brought up in French, but the more general on ”perception de la TVA”, which in English would read *collection of the VAT*. Thus, I consider that item 20 of the EU-verdict C-216/97 (Gregg) shows that efficiency of collection as a law political aim with the common VAT system also can be identified from the case law of the Court of Justice of the EU.[40]

At the treatment in this part of the book of the method question in the Swedish theses in the field of VAT the above-mentioned examples of law political aims are taken into consideration concerning my viewpoints on what is a suitable method. Finally, I bring up the importance of the law political aim of an effective collection especially regarding the formal rules in the field.

4 Review of the question on suitable choices of method for the VAT research in Sweden

4.1 Circumstances to which the question choice of method should be related

In sections 2 and 3 I have for the review of whether the theses show pros or cons with the choice of method for the research result being expected to become useful for the legislators within the various EU Member States, for courts and tax authorities and for other appliers of law, which I stipulate in section 1 as the purpose with this article, put forward certain circumstances for the trial of whether the method chosen works in the respect mentioned to analyse the implementation of the rules in the VAT Directive into the ML. I am going through the theses regarding whether the approach in them for the study in the field of VAT has been carried out only with a law dogmatic method, with such a method completed with a comparative method or with only a comparative method. The question is, with respect of what I state in sections 2 and 3, how the method chosen function in relation to

- the importance of a general right of deduction for what is meant by VAT according to the EU law, and
- the importance of the principles of free movement for goods and services on the EU’s internal market.

I make the review in two main tracks, where one track consists of the application of only a comparative method or of a law dogmatic method completed with a comparative method as support, whereas the other track consists of only a law dogmatic method being applied for the jurisprudential study in the subject VAT law. Before I make the review, I describe partly in the next section what the implementation of EU’s legislation in the field of VAT into the ML concerns, that is the tax subject and the tax object, partly in the section following thereafter that I at the work with Forssén 2011 and Forssén 2013 used a law dogmatic method, and completed in Forssén 2013 with a comparative method.

4.2 The implementation question concerns the tax subject and the tax object

The material rules on obligations and rights for VAT purposes correspond structurally when comparing the ML with the VAT Directive. I use to illustrate the relationship between the obligations and the rights with the following figure.[41]

[40] See Forssén 2011, pp. 92 and 93 and Forssén 2013, p. 72.

[41] See Björn Forssén, *Momsrullan IV*: *En handbok för praktiker och forskare* [Eng., The VAT roll IV: A handbook for practicians and researchers (self-published 2019)], section 11 100 000 (Forssén 2019a). Forssén

<table>
<tr><td colspan="4">Ia Persons</td></tr>
<tr><td colspan="3">Taxable persons [the ML and the VAT Directive]</td><td>Others are: consumers/tax carriers</td></tr>
<tr><td colspan="3">Ib Supply of goods or services (the ML)/
Deliveries of goods or supplies of services
(the VAT Directive)</td><td rowspan="4"></td></tr>
<tr><td>Taxable</td><td>From taxation
qualified exempted</td><td>From taxation
unqualified exempted</td></tr>
<tr><td>II Deduction right
for input tax</td><td>II Reimbursement right
for input tax</td><td rowspan="2">No deduction or reimbursement right for input tax
(on acquisitions made by non-taxable persons
or by a taxable person that supplies from
taxation unqualified exempted goods or services).</td></tr>
<tr><td colspan="2">Certain acquisitions comprised by prohibition of deduction: no deduction or reimbursement right for input tax</td></tr>
</table>

The main rule in the ML for who is liable to pay VAT (tax liable) is to be found, as mentioned, in Ch. 1 sec. 2 first paragraph no. 1, with reference to sec. 1 first paragraph no. 1, whereof follows that ”den som” (Eng., any person) who is taxable person and in that capacity makes a taxable transaction of goods or services within the country (i.e. Sweden) is tax liable. Thus, the prerequisites for who is liable to pay VAT according to the main rule in Ch. 1 sec. 2 first paragraph no. 1 of the ML and according to the main rules in the articles 2(1) a and c of the VAT Directive correspond with each other. The only difference is that the ML for that liability is using the concept *skattskyldig* (Eng., tax liable), whereas the VAT Directive is using the concept *betalningsskyldig* (Eng., liability for payment) for a person liable to pay VAT to the State.[42]

Thus, the figure above reflects that *any person* who is a taxable person is tax liable or liable for payment according to the ML and the VAT Directive respectively

- if the person in the capacity of taxable person,[43]
- within the country, for consideration makes a taxable transaction of goods or services and delivers goods or supply services respectively.[44]

What the legislator in Sweden, *Skatteverket*, the courts and other appliers of law need as support from the researchers is to deal with situations where a rule competition exists between a rule in the VAT Directive and a rule in the ML. According to the figure of above such situations concern the determination of the tax subject (taxable person) and of the tax object, that is delivery of goods or services in relation to taxable transaction of goods or services.

2019a is available in full text on www.forssen.com and in a printed version at Kungliga biblioteket i Stockholm (the National Library of Sweden) and at the Lund University Library. See also Forssén 2011, section 1.1.1 and Forssén 2013, section 3.2.

[42] See articles 194, 197.2, 199, 199a, 199b.1, 201, 204.1 and 205 of the VAT Directive.

[43] See Ch. 4 sec. 1 first paragraph first sentence of the ML and article 9(1) first paragraph of the VAT Directive respectively.

[44] See Ch. 2 sec. 1 first paragraph no. 1 and third paragraph no. 1 and the articles 2(1) a and c of the VAT Directive respectively.

The Swedish doctor's theses and one licentiate's dissertation on the subject VAT law is so far the following:

- Björn Westberg, *Nordisk mervärdesskatterätt – behandlingen av utländska företag, varor eller tjänster inom ramen för nationella lagar* (Eng., Nordic VAT law – the treatment of foreign entrepreneurs, goods or services within the frame of national laws), Juristförlaget JF AB 1994. (Westberg 1994).

- Jesper Öberg, *Mervärdesbeskattning vid obestånd Andra upplagan* (Eng., Value-added taxation at insolvency Second edition), Norstedts Juridik AB 2001. (Öberg 2001).[45]

- Eleonor Alhager (nowadays Kristoffersson), *Mervärdesskatt vid omstruktureringar* (Eng., Value-added tax at reconstructions), Iustus förlag 2001. (Alhager 2001).

- Oskar Henkow, 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. (Henkow 2008).[46]

- Pernilla Rendahl, Cross-Border Consumption Taxation of Digital Supplies, IBFD 2009. (Rendahl 2009).[47]

- Mikaela Sonnerby, *Neutral uttagsbeskattning på mervärdesskatteområdet* (Eng., Neutral withdrawal taxation in the field of VAT), Norstedts Juridik AB 2010. (Sonnerby 2010).

- Björn Forssén, *Skattskyldighet för mervärdesskatt – en analys av 4 kap. 1 § mervärdesskattelagen* (Eng., Tax liability for VAT – an analysis of Ch. 4 sec. 1 of the ML), Jure Förlag AB 2011 (licentiate's dissertation). (Forssén 2011).

- Björn Forssén, *Skatt- och betalningsskyldighet för moms i enkla bolag och partrederier* [Eng., Tax and payment liability to VAT in (approximately) joint ventures and shipping partnerships], Örebro Studies in Law 4/2013. (Forssén 2013).

- 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 2016. (Papis-Almansa 2016).

- Mikael Ek, *Leveranser och unionsinterna förvärv i mervärdesskatterätten* (Eng., Deliveries and intra-Union acquisitions in the VAT law), Iustus Förlag AB 2019. (Ek 2019).

[45] The thesis is from 2000. In this article I refer to the published book: Öberg 2001.

[46] The thesis s from 2007. In this article I refer to the published book: Henkow 2008.

[47] The thesis is from 2008. In this article I refer to the published book: Rendahl 2009.

- Giacomo Lindgren Zucchini, Composite Supplies in the Common System of VAT, Örebro Studies in Law 14/2020. (Lindgren Zucchini 2020).[48]

In this article I treat, as mentioned, based on the two main tracks regarding the method chosen in each thesis, how the research result with respect of the implementation question an be expected to be useful for the legislators in the various EU Member States, for courts and tax authorities within the EU and for other appliers of law. I begin, as mentioned, the further review by commenting my own theses, which concern in the first hand the tax subject. At the review I mark in notes in each section if something that I write refers to the tax subject (Ia) or the tax object (Ib). In actual cases I mark in the same way also if the right of deduction is not treated in a thesis (II), which in itself leads to a decreasing probability of a research result becoming expected to be useful regarding the question of an EU conform implementation of the rules in the VAT Directive into the ML.

In the latter respect, I remind, in pursuance of what is stated above in that respect, of the principle of a general right of deduction being a decisive circumstance to determine what is VAT according to the EU law, and that the right of deduction thereby has a decisive importance for whether a VAT system in a third country is appropriate as material for comparison when applying a comparative method for the analysis of questions on the VAT law in the theses that I bring up at the review of whether the choice of method can be expected to give a useful research result for the implementation question. By the figure above, I illustrate that an economic activity wherein a taxable person produces taxable transactions of goods and services cause a right of deduction for input tax on acquisitions or imports in the activity, whereas a right of reimbursement of input tax exists if from taxation qualified exempted goods or services are produced in the activity. In the further presentation I mean by right of deduction both situations (II). It is only when the taxable person produces from taxation unqualified exempted goods or services that he or she is lacking right of deduction or reimbursement for input tax or imports in the activity or if a certain acquisition of goods or services is comprised by prohibition of deduction for input tax.

I continue, as mentioned, the review of suitable choice of method for the implementation question with my own theses, before I, as also mentioned, divide the review into two main tracks: application of only a comparative method or of a law dogmatic method completed with a comparative method as support and application of only a law dogmatic method respectively. Before that I treat, after having gone through the method at the work with Forssén 2011 and Forssén 2013, especially the first two theses on the subject VAT law in Sweden: Westberg 1994 and Öberg 2001.

4.3 Forssén 2011 and Forssén 2013 – law dogmatics completed with a comparative method

In Forssén 2011 and Forssén 2013 I treated in the first place the question on the determination of the tax subject in the ML,[49] and whether it was compatible (conform) with the main rule on who is taxable person according to article 9(1) first paragraph of the VAT Directive. In the work with those theses, I applied a law dogmatic method. In Forssén 2013, I completed with a comparative method as a support to the interpretation and systematization of current law that was the law dogmatic method. In an article by associate professor Katia Cejie it is stated that I

[48] Lindgren Zucchini 2020 is available in full text in the database DiVA (www.diva-portal.org).

[49] See Ia in the figure in section 4.2.

in Forssén 2013 is using foreign law, but without claiming that I use a comparative method.[50] That is wrogg: I express that I complete the law dogmatic method with a certain comparative analysis of the FML and Finnish material.[51] What is not mentioned in Cejie 2020 is that Forssén 2013 was the second and final step in my mentioned previous research work within the VAT law, which began in a first step with Forssén 2011, where I reason about the relevance in that step of completing with a comparartive method. Forssén 2011 is not mentioned in Cejie 2020. There is only Forssén 2013 mentioned. Thus, Forssén 2011 was the first step in the mentioned research project in the field of VAT. There I made an international outlook to judge which third countries that could be of interest to, in addition to comparisons of the ML with VAT legislations in other EU countries, include in a comparative analysis to support the law dogmatic analysis of the ML in relation to the EU's legislation.[52]

In Forssén 2011 the research result meant regarding the main question that I suggested that the concept *yrkesmässig verksamhet* (Eng., professional activity) concerning the determination of the tax subject in the main rule Ch. 4 sec. 1 no. 1 of the ML should be adapted to the concept *beskattningsbar person* (Eng., taxable person) according to the main rule in article 9(1) first paragraph of the VAT Directive. This was also done by SFS 2013:368 on 1 July, 2013 (SFS: abbreviation of svensk författningssamling – Eng., Swedish Code of Statutes), so that the determination of the tax subject according to the ML no longer connects to the non-harmonised income tax law.[53]

In the second step of my research work, thus consisting of my work with Forssén 2013, the main question concerned the enterprise form *enkelt bolag (och partrederi)* – Eng., (approximately) joint venture (and shipping partnership). There I suggest that Sweden should bring up on EU level that the principle of a neutral VAT demands a clarification that also such legal figures, that is non-legal entities, are comprised by the determination of who is taxable person according to the main rule of article 9(1) first paragraph of the VAT Directive.

In Forssén 2013 I did as support to the law dogmatic method a comparative analysis by a comparison of the ML with the FML, where *sammanslutningar och partrederier* (Eng., joint ventures and shipping partnerships) that neither are legal entities are treated as tax subjects, unlike the ML and the SFL, where *enkla bolag (och partrederier)* – Eng., joint ventures and shipping partnerships – are not treated as tax subjects. According to Ch. 6 sec. 2 second sentence of the ML (and Ch. 5 sec. 2 of the SFL) it is instead voluntary to apply by *Skatteverket* for a partner to be appointed representative to account for and pay the VAT in the activity of *enkla bolaget* (or *partrederiet*). Otherwise the tax liability lies upon each partner of *enkla bolaget* (or *partrederiet*) according to Ch. 6 sec. 2 first sentence of the ML.

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[50] See Katia Cejie, Comparative Method(s) and Tax Law Research, *Svensk Skattetidning* 3/2020, pp. 145–159, 155. (Cejie 2020).

[51] See Forssén 2013, p. 35.

[52] See Forssén 2011, pp. 71, 72, 279–297 (*Bilaga 2 – Internationell utblick* – Eng., Appendix 2 – International outlook) and, re. My foreign country inquiry for the main question, 349.

[53] See article 115 of the Functional Treaty, whereof follows that for instance income tax is not comprised by a harmonisation demand, but the Member States' national legislations in the field shall be approximated to each other by directives from the EU.

Since non-legal entities are treated differently in Sweden and Finland concerning the determination of who is a tax subject for VAT purposes, I suggested in Forssén 2013 that Sweden should bring up the question on EU level in consultation with Finland,[54] and I have iterated the problem and my suggestion in an article in the JFT during 2019 and in a commentary to a proposition of legislation in JFT 2020.[55]

4.4 Westberg 1994 and Öberg 2001 respectively – comparative and law dogmatic method respectively

Westberg 1994 is the first Swedish thesis on VAT law. There was the current law illuminated in the field of VAT in all Nordic countries, whereby also EC law rules were considered. The method applied for the study was the comparative, and it was emphasized that with that method the essential with the study will be the placement of the rules in their legal context.[56] This is meaningful not least for the researcher's suggestions *de lege ferenda*,[57] that is concerning suggestions by the researcher to the legislator about changing a certain rule or rules in the ML,[58] like what I did in Forssén 2011 and Forssén 2013.

However, Westberg 1994 is from April 1994, that is from short before the current ML came into force on 1 July, 1994, which replaced *lagen (1968:430) om mervärdeskatt* (here abbreviated GML), and thus from the time before Sweden's EU-accession on 1 January, 1995, and thus are in Westberg 1994 not the questions on rule competition in relation to the EU law treated thar I brought up in Forssén 2011 and Forssén 2013 concerning the EU conformity with the determination of the tax subject acording to the ML. The current ML was mentioned in Westberg 1994 regarding that the GML would be replaced by the ML, which also was done on 1 July, 1994. In Westberg 1994 it was also stated that the VAT at the time had been treated exceptionally sparsely in the jurisprudential literature, whereby it was mentioned that Melz 1990 – although it was not thesis – was the first jurisprudential work concerning the Swedish VAT law.[59] That Melz 1990 and Westberg 1994 are jurisprudential works that should be part of the material for a jurisprudential study of the subject VAT, despite they are from the time before Sweden's EU accession in 1995, follows in my opinion

[54] See Forssén 2013, pp. 225 and 226.

[55] See Björn Forssén, *Om rättsliga figurer som inte utgör rättssubjekt – den finska och svenska mervärdesskattelagen i förhållande till EU-rätten* (Eng., On legal figures not constituting legal entities – the Finnish and Swedish VAT acts in relation to the EÙ law), JFT 1/2019, pp. 61–70, 69 and 70, (Forssén 2019b) and Björn Forssén, *Synpunkter på vissa regler i förslaget till en ny mervärdesskattelag i Sverige – SOU 2020:31* (Eng., Viewpoints on certain rules in the proposal to a new VAT Act in Sweden – SOU 2020:31), JFT 3/2020, pp. 388–399, 392 and 393 (Forssén 2020a). Both articles are available in full text on www.forssen.com.

[56] See Westberg 1994, pp. 75 and 76.

[57] See Westberg 1994, p. 75.

[58] De lege ferenda "On the law that should be given". A statement de lege ferenda expresses a wish about how future law rules should be in a certain aspect. See Stefan Melin, *Juridikens begrepp, 4:e upplagan* (Eng., Conceptions of the law, fourth edition), by Stefan Melin, Iustus förlag 2010, p. 94 (Melin 2010); and Bergström et al. 1997, p. 35. See also Forssén 2013, p. 31.

[59] See Westberg 1994, p. 27.

of that already the GML, which was the first Swedish VAT legislation (and that came into force on 1 January, 1969), was introduced under influence of the EC law in the field.[60]

Björn Westberg went also on in 1997 with *Mervärdesskatt – en kommentar* (Eng., VAT – a commentary), where an EU law perspective was joined with a Swedish one concerning the VAT law.[61] Another important work for the research in VAT law in Sweden from Björn Westberg is *Mervärdesskattedirektivet – en kommentar* (Eng., the VAT Directive – a commentary) from 2009 with inter alia a comprehensive review of the Court of Justice of the EU's case law on the field of VAT.[62]

I had use of studying Westberg 1994, Westberg 1997 and Westberg 2009, when I worked with the questions on the tax subject in the field of VAT in Forssén 2011 and Forssén 2013. I applied, as mentioned, a law dogmatic method completed with a comparative method in Forssén 2013 and in Forssén 2011, that is in the first step of research projects in the field of VAT, I did, as also is mentioned, an international outlook to judge which third countries that could be of interest to, in addition to comparisons of the ML with VAT legislations in other EU countries, include in a comparative analysis to support the law dogmatic analysis of the ML in relation to the EU's legislation.[63]

There is a Swedish thesis besides my own that concerns the tax subject question,[64] and that is *Mervärdesbeskattning vid obestånd* (Eng., Value-added taxation at insolvency) by Jesper Öberg, where an in principal interesting question was stated regarding how a delimitation shall be made between a bankrupt's and a bankrupt's estate's tax liability for different transactions.[65] The method for the analysis in Öberg 2001 is described as "sedvanligt rättsdogmatisk" (Eng., customary law dogmatic),[66] and I mention Öberg 2001 in Forssén 2011 and Forssén 2013, but Öberg 2001 has not been of any important influence for my research projects, since the EU law is treated sparsely in Öberg 2001 with the motivation that *the EC's legislation only gives the frames and must be filled out with national rules* (Eng., "EG:s regelverk endast ger ramarna och måste fyllas ut med nationella regler".[67]

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[60] See prop. 1968:100 (*Kungl. Maj:ts proposition till riksdagen med förslag till förordning om mervärdeskatt, m.m.* – Eng., the Government's bill to the Parliament with proposal for a regulation on VAT, etc.) pp. 1, 25, 31 and 51. See also Forssén 2011, p. 274 and Forssén 2013, p. 61.

[61] See Björn Westberg, *Mervärdesskatt – en kommentar* (Eng., VAT – a commentary), Nerenius & Santérus förlag 1997, p. 17 (Westberg 1997)

[62] See Björn Westberg, *Mervärdesskattedirektivet – en kommentar* (Eng., the VAT Directive – a commentary), Thomson Reuters 2009, pp. 841–878 (Westberg 2009).

[63] See Forssén 2011, pp. 279–297, *Bilaga 2 – Internationell utblick* (Eng., Appendix 2 – International outlook).

[64] See Ia in the figure in section 4.2.

[65] See Öberg 2001, p. 15.

[66] See Öberg 2001, p. 17.

[67] See Öberg 2001, p. 19. There it is for that standpoint referred to Westberg 1997, p. 26. However should not what is stated in Westberg 1997 (p. 26) have been taken as support for limiting the use of EU law in Öberg 2001. Already Westberg 1994, which also is mentioned in Öberg 2001, should have inspired to more EU law in Öberg 2001 and among the Swedish theses existed already at the time Ståhl 1996 with vast aspects on the EU law. Although the thesis Ståhl 1996 concerns income tax, I had for my research projects great use of inter alia that

Westberg 1994 should be regarded as a basis for other Swedish research efforts in the field of VAT to be expected to give useful research results on the theme EU conformity for the legislator concerning the question on implementation of the rules in the VAT Directive into the ML or regarding the use of expressions in the ML that is not used or defined in the VAT Directive. However is Öberg 2001 of less importance in these respects, since the analysis therein is limited concerning the EU law.

4.5 Main track 1 – application of a comparative method or a law dogmatic method completed with a comparative method

4.5.1 Rendahl 2009 – application of only a comparative method

In Rendahl 2009 are border crossing digital supplies from enterprises to consumers treated by application of a comparative method.[68] The motive is that it shall give an external perspective on the EU law in the field of VAT. The EU's legislation is compared with so-called Goods and Services Tax (GST) in Australia and Canada.[69]

Thus, since Rendahl 2009 is not aiming at what applies internally considering the implementation, it is in my opinion something that decreases the probability that the research result will be possible to use by the legislator to judge the necessity to adapt the rules in the ML in relation to the rules in the VAT Directive. However, in my opinion it is not wrong in itself to compare the EU's legislation with corresponding systems in third countries. However, such comparisons should be made in a way so that they are not the only material for comparison. Instead should the comparison have been made with respect of the national VAT legislation in one or more EU Member States, like Sweden, and with respect of such legislation in one or more third countries respectively. Thus, to apply a comparative method without including any EU Member State in the survey tends to make the research result less useful for the legsilators in the various EU Member States, for courts and tax authorities within the EU and for other appliers of law. Thus, the legislation work and the application of law may show whether my conception is right.

What I in the present context want to emphasize as something very important from Rendahl 2009 is that it is stated therein that risks exist with comparisons with third countries due to fundamentally constitutional differences, whereby it is emphasized that it is only within the EU that freedom of movement exists.[70] However, I stated in Forssén 2011 that if a comparative method is usedand includes one or more third countries as material for comparison it should be carefully investigated whether the third country in question has VAT according to what is meant by VAT according to the EU law. I am especially warning for information from the OECD on which countries outside the EU that should be weighed in this

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work for the studies of the VAT questions on the tax subject. However is Ståhl 1996 not mentioned in Öberg 2001.

[68] See Ib in the figure in section 4.2.

[69] See Rendahl 2009, p. 13.

[70] See Rendahl 2009, pp. 50 and 51, where it is stated that "free movement provisions only exist in EC VAT". See also p. 282 in Forssén 2011, where I inter alia mention this.

respect,[71] so that it will not be taken for granted that information saying that a third country has rules on VAT (value-added tax) or GST means that is a matter of VAT according to what is meant by VAT according to the EU law. In Forssén 2011 I warned of the OECD's information meaning that almost 150 of the world's about 200 countries, that is three quarters of the world's countries, have VAT gave a non-weighed material for comparison concerning what is comparative with what is meant by VAT according to the EU law, where a general right of deduction is one of the principles of the VAT principle according to article 1(2) second paragraph of the VAT Directive that is decisive in that respect.[72] If a third country is lacking a general right of deduction in the system described as a VAT system (II), it is not a question of VAT in the EU law's meaning, but of a gross tax. Thus should such a third country typically not be an appropriate material for comparison in theses on the subject VAT, if they are supposed to concern the EU's legislation in the field with or without regard of the implementation question.

4.5.2 Alhager 2001, Sonnerby 2010 and Papis-Almansa 2016 – application of a law dogmatic method completed with a comparative method

In Sonnerby 2010 it is stated that the method for the analysis of the question on a neutral withdrawal taxation in the field of VAT is made by application of a law dogmatic method based on EU law.[73] There it is also mentioned that an EU law method is used.[74] There is no such thing. The EU does not have any special method for carrying out jurisprudential studies of VAT, and that may be considered a case of abuse of terminology, since what is meant is which interpretation methods that the Court of Justice of the EU is using in cases in the field of VAT.[75]

What I want to emphasize in the present context as something very important from Sonnerby 2010 is that it is also stated therein that a comparative method is used to get an additional perspective on the ML and the implementation of the VAT Directive therein. It is stated that *a comparative method is conducive to the understanding of the own legal system and to see new* possibilities (Sw., ”en komparativ metod bidrar till att förstå det egna rättssystemet bättre och se nya möjligheter”).[76]

By completing the law dogmatic method with a comparative method the probability typically increases in my opinion the interpretation and systematization of current law in the form of the ML giving a research result with respect of the implementation question that can be expected to be useful for the Swedish legislator, for courts and tax authorities and for other appliers of law.

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[71] OECD: Organization for Economic Co-operation and Development.

[72] See Forssén 2011, p. 279–287.

[73] See Sonnerby 2010, p. 23. See Ib in the figure in section 4.2.

[74] See Sonnerby 2010, p. 24.

[75] See Sonnerby 2010, p. 25.

[76] See Sonnerby 2010, p. 30.

I mention in this section in the first place Sonnerby 2010, since the focus in that thesis is set on the principle of a neutral VAT, which, as mentioned, is basic from primary as well as secondary law as law political aim for the common VAT system within the EU together wit the law policial aim on a cohesive system, which, as also is mentioned, follows by the complete title of the VAT Directive: Council directive 2006/112/EC of 28 November 2006 on the common system of value added tax. However, I may, in addition to my theses, mention that Alhager 2001 and Papis-Almansa 2016 respectively, which concern the tax object on reconstructions and insurance services respectively,[77]also are examples of application of a law dogmatic method completed with a comparative method at jurisprudential studies within the VAT law.[78]

Concerning the choice of countries to compare with I may mention the following differences between Alhager 2001 and Papis-Almansa 2016 concerning the expected usefullness of the research result.

In Alhager 2001 a comparison is made between Sedish law and German law regarding the implemenation question.[79] Such an internal perspective on that question increases in my opinion the probability for the research result to become useful for the Swedish legislator, for courts and tax authorities and for other appliers of law concerning the implementation question, since the thesis is aiming at trying precisely how the implementation of the VAT Directive's rules on reconstruction has been made in the national VAT legislations in question.

In Papis-Almansa 2016 the comparison is made only of the EU law VAT system in relation to the GST systems of New Zealand and Australia. In the nearest previous section I state, regarding Rendahl 2009, where an external perspective on the EU law in the field of VAT also is applied by the comparison of the EU's VAT system with the GST systems of Australia and Canada, that such a perspective in opposition to an internal one is typically not giving a research result that will be likely to be useful concerning the implementation question. What still means that Papis-Almansa 2016 should be held before Rendahl 2009 in that respect is in my opinion that New Zealand is an interesting material for comparison among the third countries in relation to the EU's VAT system, since, which I state in Forssén 2011, there is a simple, principle true VAT without any differentiation of the tax rates in New Zealand.[80] In

[77] See Ib in the figure in section 4.2. Regarding Alhager 2001 may be mentioned that exemption from taxation for transfer of going concerns according to Ch. 3 sec. 25 of the ML, which is mentioned therein on p. 356, was replaced on 1 January, 2016, by SFS 2015:888, by Ch. 2 sec. 1 b, which stipulates exemption from supply of activity. The alteration is supposed to give a better correspondence with articles 19 and 29 of the VAT Directive. Regarding Papis-Almansa 2016 may be mentioned that exemption from taxation for insurance services is stipulated in article 135(1) a of the VAT Directive, which is mentioned therin inter alia on pp. 19, 28 and 29. Ch. 3 sec. 10 of the ML stipulates the same, and corresponds nearest by that directive rule, but is not mentioned in the thesis, since it has an external perspective on the EU law in the field of VAT.

[78] See Alhager 2001, pp. 25 and 26 and Papis-Almansa 2016, sections 1.6.1 and 1.6.2 respectively, which have the headlines *Legal dogmatics* and *Comparative legal study*, that is law dogmatics and comparative judicial studies.

[79] See Alhager 2001, pp. 26 and 27.

[80] See Forssén 2011, p. 282.

that respect, I referred o an article by professor Leif Mutén,[81] where he states precisely this about New Zealand.

Besides, I may, as support of New Zealand as a suitable third country to be included in the material for comparison regarding the EU's VAT system, mention that it is stated in Alhager 2001, that a comparative method should complete the law dogmatic one inter alia because the tax rates is the essential field that remains to be harmonised,[82] which, as mentioned, is what inter alia follows by recital 7 of the preamble to the VAT Directive.

4.6 Main track 2 – application of only a law dogmatic method

4.6.1 Henkow 2008 and Lindgren Zucchini 2020 – application of a purely law dogmatic method

In Henkow 2008 a purely law dogmatic method is applied for the analysis of financial activities in relation to the EU's common VAT system,[83] where it may be mentioned that unqualified exemptions from taxation occur according to articles 135(1) b–g of the VAT Directive.[84] In Henkow 2008 was *rättsdogmatisk metod* (which I express as a *law dogmatic method*) translated into "a traditional method of jurisprudence", and there it was stated, as a notorius fact,[85] that VAT systems have been adopted all over the world that are similar to each other, which means that a purely technical comparison would be especially suitable for VAT.[86] Therefore, I denote the method in Henkow 2008 as a purely law dogmatic method. By that expression I mean to avoid the word fundamentalism to signify the type of law dogmatic method.

In Lindgren Zucchini 2020 is also only a law dogmatic method used for the analysis of composite transactions for VAT purposes, which therein is translated into *legal dogmatics*.[87] No such motive as in Henkow 2008 is not presented for the choice of the law dogmatic method, but neither in Lindgren Zucchini 2020 is a comparative method used as support for the law dogmatic one. Since the choice of the law dogmatic method is made unreservedly in Lindgren Zucchini 2020, it may also there be denoted as purely law dogmatic.

In Lindgren Zucchini 2020 it should in my opinion have been noted that already Rendahl 2009 may be considered to have dismissed the motive in Henkow 2008 to choose a purely law

[81] See Leif Mutén, *Export av skattesystem. Skattepolitiska transformations processer i tredje världen* (Eng., Export of tax systems. Tax political transformation processes in the Third World). *Skattenytt* 2006 pp. 487–497, 494. (Mutén 2006). See also my references to Mutén 2006 in Forssén 2011, pp. 271 and 282.

[82] See Alhager 2001, p. 26.

[83] See Henkow 2008, p. 13.

[84] See Ib in the figure in section 4.2.

[85] See Melin 2010, p. 278: Notorious circumstances *Circumstances that are a matter of common knowledge*. For such circumstances there is no need to produce evidence in the case (Sw., "Notoriska omständigheter *Omständigheter som är allmänt kända*. För sådana omständigheter behöver ingen bevisning företes i målet").

[86] See Henkow 2008, p. 13.

[87] See Lindgren Zucchini 2020, section 2.2 with the headline *Legal dogmatics*.

dogmatic method. What is stated thereby in Henkow 2008 is actually not correct, that is that the VAT systems adopted all over the world would be so similar to each other that a purely technical comparison would be especially suitable for VAT. I remind of what I am mentionng above from Rendahl 2009, namely that it concerning third countries exist fundamentally constitutional differences, namely insofar that it is only within the EU that freedom of movement exists. The freedom of movement regarding inter alia goods and services is, as I mention above, fundamental for a neutral VAT to function on the EU's internal market and secure that the internal market is established and functioning, why the differences constitutionally, that is with respect of competition distortion being avoided on the internal market according to article 113 of the Functional Treaty, may in my opinion not be neglected for methodological purposes. Rendahl 209 should have been a strong incentive to complete the law dogmatic method with a comparative method in Lindgren Zucchini 2020. If a comparative method would have completed the law dogmatic one in Lindgren Zucchini 2020, should, in pursuance of what I state above from Alhager 2001, the material for comparison have been internal as well as external considering the implementation question regarding the EU's VAT system, whereby a comparison with a third country should have regarded New Zealand. This with respect of that it, as mentioned, is stated in Alhager 2001 that a comparative method should complete the law dogmatic inter alia because the tax rates is the essential field that remains to harmonise,[88] whereby, as also is mentioned, should be regarded that this is pecisely what inter alia follows by recital 7 of the preamble to the VAT Directive. These aspects should have been deemed central for the choice of method in a thesis like Lindgren Zucchini 2020, where the subject is composite transactions for VAT purposes, whereby achievements of various tax character or tax rates are examples on situations that should be problemized for the analysis of that subject.[89]

Moreover, it is stated in Lindgren Zucchini 2020 that the focus for the analysis of composite transactions for VAT purposes is set on output tax, whereby the right of deduction for input tax is left to future research on the subject.[90] This despite that it is at the same time expressed an awareness of the connection between the right of deduction of input tax on the acquisitions that a taxable person makes and the taxable transactions that the person is making, and for which the person shall account for and pay output tax, that is for which the person in question is tax liable.[91] That considering the right of deduction in the thesis should also have been deemed as central regardless of the choice of method, since the principle of a general right of deduction is, as inferred of above, one of the parts of the VAT principle according to article 1(2), and the right of deduction thus is central for at all being able to make deeper reasoning on VAT according to the EU law. This should have been considered as especially important, since the thesis furthermore concerns an expression, *composite supplies* (Sw., *sammansatta transaktioner*), which neither is defined in nor used in the VAT Directive, and nor is defined

[88] See Alhager 2001, p. 26.

[89] By the way, recital 7 of the preamble to the VAT Directive is not mentioned in Lindgren Zucchini 2020.

[90] See II in the figure in section 4.2.

[91] See Lindgren Zucchini 2020, section 8.5 with the headline *Future Research Opportunities*, and also section 1.3 with the headline *Delimitations*.

in the so-called Implementing Regulation (EU) No 282/2011, where implementing measures for certain rules in the VAT Directive are established,[92] nor in a primary law rule.

By not completing the law dogmatic method with a comparative method in Henkow 2008 and Lindgren Zucchini 2020 respectively decreases in my opinion typically the probability for a research result in the two theses can be expected to be useful for the legislators within the various EU Member States for courts and tax authorities within the EU and for other appliers of law. Thus, also in those cases may the legislation work and the application of law in the field of VAT show whether my conception is correct. However, I may, with respect of the right of deduction's decisive importance for what is meant by VAT according to the EU law, emphasize as especially problematic for precisely the mentioned theme on usefulness, that Lindgren Zucchini 2020 for the study of composite supplies for VAT purposes is not regarding the right of deduction, whereby therein, as mentioned, is stated that the right of deduction instead is left to future research on that subject.

4.6.2 Ek 2019 – application of a law dogmatic method which is not purely law dogmatic

In Ek 2019, which concerns deliveries and intra-Union acquisitions within the VAT law,[93] a law dogmatic method is also used.[94] However, it is not stated as the only suitable method, like in Henkow 2008 and Lindgren Zucchini 2020, where, as mentioned, the motive for applying a purely law dogmatic method according to above all Henkow 2008 should be questioned, since that is based on that it would be a notorious fact that VAT systems have been adopted all over the world that are similar to each other, and that a purely technical comparison therefore would be especially suitable for VAT, which, as mentioned, is contradicted already by Rendahl 2009.

In Ek 2019 can an awareness of that the law dogmatic method is not the only suitable for jurisprudential studies in VAT law be read out, by the law dogmatic method therein being described as *traditional* (Sw., ”traditionell”) only *in the sense that a law dogmatic method or basis is not unusual in VAT law theses* (Sw., ”i den bemärkelsen att en rättsdogmatisk metod eller utgångspunkt inte är ovanlig i mervärdesskatterättsliga avhandlingar”).[95] I note that thereby exemplification is made with the following Swedish theses in VAT law: Westberg 1994, Alhager 2001, Henkow 2008 and Papis-Almansa 2016.[96] I may therefore point out that the method in Westberg 1994 was comparative and that in Alhager 2001 and Papis-Almansa 2016 a law dogmatic method completed with a comparative method were applied, whereas the method was only law dogmatic in Henkow 2008 – which I denote as purely law dogmatic. However, Ek 2019 separates itself, as mentioned, from Henkow 2008 and from the later arising Lindgren Zucchini 2020, by it in Ek 2019 not being stated that the law dogmatic method would be especially suitable for studies in VAT law.

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[92] The Implementing Regulation's complete title is: Council implementing regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax.

[93] See Ib in the figure in section 4.2.

[94] See Ek 2019, p. 33.

[95] See Ek 2019, p. 33.

[96] See Ek 2019, p. 33.

Besides, Ek 2019 separates itself from above all Lindgren Zucchini 2020 also insofar that the method questions are not connected only to the interpretation of the EU law, but also to the use of and choice of judicial material subject to the study in VAT law.[97] In the latter respect are also regarded in Ek 2019 – if only to a smaller extent – Swedish sources like preparatory work to the ML and the tax authority's (Sw., *Skatteverkets*) writs and standpoints that concern the VAT, in opposition to Lindgren Zucchini 2020, where neither Swedish nor foreign public printing is regarded. In Henkow 2008 is in itself also material consisting of Swedish and foreign public printing regarded, but also there to a smaller extent.[98] In Ek 2019 is also regarded certain material from IFRS (International Financial Reporting Standards), which is a set of rules regarding for example annual reports.[99] That shows an awareness of the importance of the civil law accounting law and concepts like Generally Accepted Accounting Principles to make the collection of inter alia VAT functioning. Such material is lacking in Henkow 2008 and Lindgren Zucchini 2020.[100]

Concerning the material question I also consider that Ek 2019, Henkow 2008 and Lindgren Zucchini 2020 are far too limited on references to national verdicts from the Member States. It is not only EU-verdicts, but also national precedential verdicts that are serving as guidance for national authorities and the lower instances of the court system. National precedential verdicts in for instance the EU country Sweden can be deemed being *acte clair*, that is the interpretation of a question is in that case so obvious that there is no room for doubt about it and there is no need to make it *acte éclairé* by the Supreme Administrative Court of Sweden (Sw., *Högsta förvaltningsdomstolen*) obtaining a preliminary ruling from the Court of Justice of the EU in accordance with article 267 third paragraph of the Functional Treaty.[101] Such a verdict by the Supreme Administrative Court is also serving as guidance for example for *Skatteverket* and for the lower administrative courts (Sw., *förvaltningsrätterna* and *kammarrätterna*). In Ek 2019 it is referred to five verdicts by the Supreme Administrative Court of Sweden.[102] In Henkow 2008 it is referred to two verdicts by the VAT Tribunal in the then Member State the United Kingdom and to two verdicts by the Supreme Administrative Court of Sweden.[103] In Lindgren Zucchini 2020 it is not referred to any verdict from the Supreme Administrative Court of Sweden, but to two verdicts from the United Kingdom, where by the way one of them meant obtaining of a preliminary ruling from the Court of

[97] See Ek 2019, p. 35.

[98] See Ek 2019, pp. 302 and 322, Lindgren Zucchini 2020, pp. 259–278 and Henkow 2008, pp. 380 and 381.

[99] See Ek 2019, p. 321.

[100] See Henkow 2008, pp. 361–394 and Lindgren Zucchini 2020, pp. 259–278.

[101] See Eleonor Alhager and Lena Hiort af Ornäs, *Rättsfallssamling i EG-moms* (upplaga 2:1), Eng. Case collection in EC VAT (edition 2:1), Norstedts Juridik 2009, pp. 17 and 18 (Alhager och Hiort af Ornäs); and also Terra and Kajus 2010, pp. 216, 218 and 223; A.J. van Doesum, *Contractuele samenwerkingsverbanden in de btw* (Eng., approx., Joint ventures in the VAT), Universiteit Tilburg, the Netherlands 2009, p. 20 (van Doesum 2009); Prechal 2005, pp. 32 and 33; and Dennis Ramsdahl Jensen, *Merværdiafgiftspligten – en analyse af den afgiftspligtige transaktion* (Eng., VAT liability – an analysis of the taxable transaction), Juridisk Institut Handelshøjskolen, Århus, juli 2003, p. 16 (Ramsdahl Jensen 2003). See also Forssén 2011, p. 65.

[102] See Ek 2019, p. 321.

[103] See Henkow 2008, p. 380. Note that the United Kingdom decided on 31 January, 2020 to leave the EU.

Justice of the EU.[104] The awareness of that also national precedential verdicts from the Member States are meaningful for the interpretation and application of the EU law in the field of VAT is weak in my opinion in all of the three theses recently mentioned, but Ek 2019 although distinguish itself from Henkow 2008 and Lindgren Zucchini 2020 partly by not stating that the law dogmatic method is the only suitable method for the analysis of the VAT law, partly by referring to a broader material for interpetation and systematization of current law according to the EU law in the field of VAT.

Thus, I do not denote, unlike concerning Henkow 2008 and Lindgren Zucchini 2020, the law dogmatic method used in Ek 2019 as purely law dogmatic.

5 Conclusions and final viewpoints

5.1 Introduction

In section 5.2 I concluded what the review in Chapter 4 concerning the question on suitable choices of method for the VAT research in Sweden can be deemed showing in that respect. I give my conclusions by place in order choice of method according to the two main tracks that I have used as basis for the review of Swedish theses on VAT law, that is I place in order the following choices of method:

- 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) respectively.

The placing in order is made with respect of the probability of the choice of method, with the modifications of the main tracks that the review shows exists, being expected to give a research result that is useful for the legislators in the various EU Member States, for courts and tax authorities within the EU and for other appliers of law, when it is a matter of judging how well the implementation of the rules in the VAT Directive have been done or can be expected to become in the VAT legislations of the EU Member States, for example in the ML or in the FML. I am reminding of that I am not claiming hat my conclutions are the ideal solutions to get a functioning contact between the research in the field and above all the legislation work, but what I present is my own opinion of what are positive or negative tendencies regarding the mentioned theme usefulness. Therefore, I mark ”Negative tendency” and ”Positive tendency” respectively for *the implemantation question* (Sw., ”implementeringsfrågan”) regarding *the expected research result* (Sw., ”förväntat forskningsresultat”) regarding each choice of method according to the main tracks.

In sections 5.3.1 and 5.3.2 I give final viewpoints partly on how the VAT research in Sweden is considering the question on collection of VAT, partly on how the research in Sweden regarding other indirect taxes and fees, excise duties and customs, relate to the VAT research in Sweden so far.

[104] See Lindgren Zucchini 2020, p. 278.

5.2 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

Main track 1, the alternative application of a comparative method with only an external perspective on the EU law in the field of VAT: Negative tendency for the implementation question regarding expected research result.

Commentary:

The review in section 4.5.1 shows that if only a comparative method is used should the material for comparison not be only external, that is only concern third countries whose VAT systems or GST systems are compared with the EU's VAT system. Besides should on the whole the use of third countries as material for comparison be made with caution, since it in such cases exist constitutional differences in relation to the EU and its internal market with free movement inter alia for goods and services and a third country may express that it has VAT or GST, but at a closer look it turns out that it is not a matter of VAT in the meaning of the EU law, for example due to the third country in question not applying an in principle general right of deduction, which is one of the parts of the VAT principle according to article 1(2) second paragraph of the VAT Directive. In the latter case a comparative method is pointless where the implementation question is concerned, since it concerns the implementaion of VAT according to the EU law, that is according to the VAT Directive, into the national VAT legislations of the EU Member States. Then you cannot add pears to a material for comparison that shall consist of apples, that is mix third countries that do not have a legislation on VAT or GST where the VAT or GST is similar to VAT according to the EU law with third countries that have such a legislation on VAT or GST. Such a material for comparison is not of interest although the subject would not concern the implementation question, but only a comparison of the EU's legislation in the field of VAT with VAT systems or GST systems in third countries, since those in such a case do not concern what is meant by VAT according to the EU law. In Forssén 2011 I question in that respect that Rendahl 2009 includes Canada in the material for comparison, since Canada, unlike Australia, is way apart from the EU law as a third country lacking a uniform VAT.[105]

Main track 1, the alternative application of a comparative method with an internal perspective on the EU law in the field of VAT: Positive tendency for the implementation question regarding expected research result.

Commentary:

It is nothing wrong in itself to compare the EU's legislation in the field of VAT with corresponding systems in third countries. However, the review in section 4.5.1 shows that such an external perspective on the EU law in the field of VAT should not be used in the research on the VAT law without that it in the comparative method also is included at least some EU Member State's VAT legislation. Such an internal perspective on the EU law in the field of VAT is precisely what the implemenation question is about, that is the implementation of VAT according to the EU law into the national VAT legislations of the Member States.

[105] See Forssén 2011, pp. 281 and 282.

Main track 1, the alternative application of a law dogmatic method completed with a comparative method: Positive tendency for the implementation question regarding expected research result.

Commentary:

The review in section 4.5.2 shows that if a law dogmatic method, meaning interpretation and systematization of current law in the field of VAT, is completed with a comparative method it is conducive to a better understanding of the EU's VAT system and the national VAT legislations into which the VAT Directive's rules shall be implemented, that is the perspective on the implementation question benefits by such a methodological combination, where the usefulness is concerned for that question regarding expected research result. The comparison with oter VAT legislations than the ML should although be made with the VAT legislations of other EU Member States, for example with the FML, and not only with VAT systems or GST systems in third countries. If one or more third countries at all shall be included in the material for comparison, should, as mentioned above, such a country's VAT system or GST system be weighed regarding how relevant it is in relation to the principles on free movement inter alia for goods and services on the EU's internal market and in relation to what is meant by VAT according to the EU law.

Main track 2, application of only a law dogmatic method that is or is not purely law dogmatic: Negative tendency for the implementation question regarding expected research result.

Commentary:

The review in sections 4.6.1 and 4.6.2 shows that application of only a law dogmatic method concerning the EU's VAT system gives a far too limited perspective and understanding for the scope of the necessity of problemizing the VAT question that the jurisprudential study shall concern.

If what I describe as a purely law dogmatic method, with an analysis which on the whole is only based on a casuistic review of EU-verdicts and references to various authors, becomes a track for further application and influence of the VAT research, the risk is obvious that this entails a development of the research that in the end means that the VAT law no longer will be treated as a jurisprudential subject. Instead will such a development lead to the reserach in the field of VAT becoming more like research within natural science – as if the VAT Directive contains something similar to a physical object that shall be discovered and analysed. Then it is no longer a matter of jurisprudential studies being carried out within the VAT law in Sweden.

I have recently brought up the mentioned risk of applying a purely law dogmatic method, where the method is not completed with neither a comparative method nor empiric surveys in form of inquiries that can seize what is not to be found in the literature in the field of VAT etc., in an article about what I name the trap of mathematics in the VAT research.[106] Therefore, I may for the context also mention the following regarding how the law dogmatic

[106] See Björn Forssén, *Matematikfällan i forskningen – avseende mervärdesskatterätten* (Eng., The Trap of Mathematics in the Research – regarding the VAT law), *Tidningen Balans fördjupningsbilaga* (Eng., The Periodical Balans Annex with advanced articles) 2/2020, pp. 17–27 (Forssén 2020b). The e-version is available in full text on www.tidningenbalans.se and on www.forssen.com.

method in itself should be developed, regardless whether it is combined with a comparative method or empiric surveys.

From Forssén 2013 I have carried on with a side question therein, inter alia in the JFT.[107] The problem concerns both the tax subject and the tax object, and regarded – and still regards – that a lack of neutrality exists between the enterprise form *enkelt bolag* (approx. joint venture) and other enterprise forms, when authors and artists create a joint work and co-operate in an *enkelt bolag*, if every partner does not fulfill the civil law criterion independent work for his or her effort as author or artist, but an independent work emerges according to sec. 1, 4 or 5 of *upphovsrättslagen (1960:729)*, Eng., the Swedish Copyright Act, first in form of a finished work. For example it is a matter of a stage play, a film or a musical work performed at a concert. Since the rule on reduced tx rate in the ML only refers to these rules in the Swedish Copyright Act and not to the rule in sec. 6 on joint works, the artists must form an *aktiebolag* (Eng., a limited company), so that all rights are contained in such a company, which, in opposition to an *enkelt bolag*, is a legal entity. Otherwise applies in the described situation the general tax rate for each partner.[108] I have commented this problem not only in Forssén 2013 and thereafter in Forssén 2018a and Forssén 2018b, but also already in my VAT books from 1998 and 2001.[109] In the JFT I pointed out that the example does not only show the necessity of clarifying whether non-legal entities, like *enkla bolag och partrederier* (Eng., approx. joint ventures and shipping partnerships) in Sweden and *sammanslutningar och partrederier* (Eng., approx. joint ventures and shipping partnerships) in Finland respectively, are comprised by the main rule in article 9(1) first paragraph of the VAT Directive on who is a taxable person,[110] but also *the importance of completing a law dogmatic study of composite supplies in the field of VAT with an analysis based on legal semiotics* (Sw., ”på vikten av att komplettera en rättsdogmatisk studie av sammansatta transaktioner på momsområdet med en analys baserad på juridisk semiotik”).[111]

In Forssén 2018a I use a doll’s house as an idea figure to find connotations, which make it easier to do judgments of the various elements at the creation of a joint work, like a stage play, a film or a musical work performed at a concert, when it is a question of which tax rates apply for the various participants in such a project, if it is carried out in the enterprise form

[107] See Björn Forssén, *Juridisk semiotik och tecken på skattebrott i den artistiska miljön* (Eng. Legal semiotics and signs of tax fraud in the artistic environment), JFT 5/2018, pp. 307–328 (Forssén 2018a). See also Björn Forssén, *Kulturproduktion i enkla bolag och tillämpliga momssatser samt momssituationen för bolag som producerar artistframträdanden* [Eng., Cultural production in *enkla bolag* (joint ventures) and applicable VAT rates and the VAT situation for companies producing artistic performances], *Svensk Skattetidning* 2018, pp. 646–658 (Forssén 2018b). Both articles are available in full text on www.forssen.com.

[108] See Forssén 2013, sections 2.8, 6.5, 6.6, 7.1.3.2 and 7.1.3.6.

[109] See Björn Forssén, *Momshandboken Enligt 1998 års regler* (Eng., The VAT Handbook According to the rules of 1998), Norstedts Juridik 1998, pp. 188 and 189; and Björn Forssén, *Momshandboken Enligt 2001 års regler* (Eng., The VAT Handbook According to the rules of 2001), Norstedts Juridik 2001, pp. 224 and 225. The latter book is avaliable in full text on www.forssen.com (the book is there different from its printed version only by the layout).

[110] See Forssén 2013, sections 7.1.3.2 and 7.1.3.6, Forssén 2019b, pp. 69 and 70 and Forssén 2020a, pp. 392 and 393.

[111] See Forssén 2018a, p. 320.

enkelt bolag, that is by a non-legal entity.[112] The connotations that are created by the idea figure of giving the various authors and artists a room of their own (or step) in the doll's house, which is an illustration of the process of creating the joint work, shall give a model – a tool – that gives support for the analysis carried out with a law dogmatic method concerning the composite supply that the creative process constitutes in relation to the theatres showing the play, for the cinemas showing the film or the arrangers of concerts where the musical work is performed.[113]

If a tool – model – is used to support for instance the law dogmatic method for the analysis of questions within the VAT law, may however in my opinion the tool – the model – not be made to the method in itself for the study. Such an approach for a jurisprudential study is only a matter of deduction, and thus no induction developing the knowledge on the subject. That would merely be a matter of calculating with law rules, if mathematics and logic are made to the method in itslef, and not only used in the study as a supporting tool at the application of a law dogmatic method. Then the researcher ens up in what I, as mentioned, am calling the trap of mathematics in the VAT research.[114]

5.3 Final viewpoints

5.3.1 The question on how the VAT research in Sweden regards the question on the collection of VAT

I have emphasized above the importance of an effective collection of VAT as an important law political aim for the common VAT system within the EU, whereby I have referred to Forssén 2011 and Forssén 2013 concerning that support for that standpoint is to be found both by the EU Commission and the Court of Justice of the EU. The collection of VAT is, as mentioned, not only important for the public treasury in the respective Member State, but also for the financing of the EU's institutions.

For the law political aim with an effective collection to be favoured by impulses from the VAT research it cannot continue to be focused in the first place on the material questions in the field, but it must also aim at the formal VAT questions, which inter alia concern whether the SFL is conform in relation to the rules on VAT registration in articles 213–216 of the VAT Directive. In Forssén 2011 side question E concerned questions on VAT registration.[115] However, I cannot find that that question has been mentioned in any other theses on VAT in Sweden. In that way cannot the legislator get any conception of the range of how many that due to inefficient control of those *given entrance into* the system are causing the State tax evasion or tax losses, which, as mentioned,[116] has been pointed out on EU level as a problem for the VAT collection.

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[112] See Forssén 2018a, section 3.1 with the headline *Ett enkelt bolag samt ett litterärt eller konstnärligt verk* (Eng., A joint venture and a literary or artistic work), pp. 317–320.

[113] See Forssén 2018a, p. 320.

[114] See Forssén 2020b.

[115] At the time ruled *skattebetalningslagen (1997:483)* (Eng., the Swedish Tax Payment Act), which was one of the taxation procedure acts that were replaced on 1 January, 2012 by the SFL.

[116] See section 3.5.

Thus, I suggest that the VAT research in Sweden also will aim at formal questions such as the question on the collection of VAT, and not only on the material questions of taxation. In that context I also suggest that the law of procedure will be brought up in inter alia the research in the field of VAT. That is important as long as the principle of the EU law's primacy before national law is not codified, which I bring up in an article on norm hierarchy that regards national law in the broader perspective that also includes the European Convention.[117]

5.3.2 The question on how the research in Sweden regarding other indirect taxes and fees, excise duties and customs, relate to the VAT research in Sweden so far

Concerning the research regarding excise duties there is only one Swedish thesis, Olsson 2001.[118] It does not regard that the same problem as I brought up as the main question in Forssén 2011, that is that the determination of the tax subject in Ch. 4 sec. 1 no. 1 of the ML was made by an incorporation into the rule of non-harmonised income tax rules, existed concerning the Swedish legislation in the field of excise duties. I mentioned this in Forssén 2011, so that the legislator would be able to look also on the excise duties in the same respect.[119]

The problem with the mentioned connection for the excise duties affects the VAT, by the excise duties being included in the taxation amount for VAT.[120] If the excise duties are treated in a wrong way, it affects thus the determination of the taxation amount for VAT.[121] By the VAT reform on 1 July, 2013 (SFS 2013:368) ended, as mentioned, the connection to the income tax legislation for the determination of the concept taxable person in Ch. 4 sec. 1 first paragraph first sentence of the ML, so that its wording literally corresponds with the main rule in article 9(1) first paragraph of the VAT Directive, but that reform has never got any equivalent in the field of excise duties. This means the following:

- For energy tax applies according to Ch. 1 sec. 4 *lagen (1994:1776) om skatt på energi* (Eng., the Swedish Energy Tax Act) still that the tax subject is determined by a definition of *yrkesmässig verksamhet* (Eng., professional activity) consisting of a main rule referring to the concept *näringsverksamhet* (Eng., business activity) according to Ch. 13 of *inkomstskattelagen (1999:1229*, here accreviated IL), i.e. the Swedish

[117] See Björn Forssén, *Europatrappan – en normhierarkisk bild vid regelkonkurrens mellan svenska nationella och europarättsliga regler med skatterättsexempel* (Eng., The European stepladder (staircase) – a norm hierarchic figure at rule competition between Swedish national and European law rules with tax law examples), *Tidningen Balans fördjupningsbilaga* (Eng., The Periodical Balans Annex with advanced articles) 4/2017, pp. 15–19. The e-version is available in full text on www.tidningenbalans.se and on www.forssen.com. The European Convention complete title is: European Convention for the Protection of Human Rights and Fundamental Freedoms Rome 4 November 1950.

[118] See Stefan Olsson, *Punktskatter – rättslig reglering i svenskt och europeiskt perspektiv* (Eng., Excise duties – legal regulation in a Swedish and European perspective), Iustus förlag, Uppsala 2001. (Olsson 2001).

[119] See Forssén 2011, pp. 54 and 76.

[120] See Ch. 7 sec. 2 first paragraph second sentence of the ML and article 78 first paragraph a) of the VAT Directive.

[121] See Forssén 2019a, section 12 201 024.

Income Tax Act, together with a supplementary rule meaning that an activity is professional also if it is carried out in businesslike forms.

- For the advertising tax the main rule is also that the tax subject is determined by what is deemed to constitute *yrkesmässig verksamhet* (Eng., professional activity) with reference to the concept *näringsverksamhet* (Eng., business activity) according to Ch. 13 of the IL.[122]

- On the other hand applies concerning e.g. tax on alcohol that with *yrkesmässighet* (Eng., professionality) is meant – without any connection to the IL – that an *upplagshavares* (Eng., a warehousekeeper's) activity forms part of exercising industry.[123]

That I in Forssén 2011 treated above all the connection to the IL for the determination of the tax subject according to the ML may possibly have stimulated the legislator to the reform by SFS 2013:368, but so far has nobody taken an interest in the same problem existing in the filed of excise duties regarding certain taxes there. In Forssén 2011 I pointed out that it has been a Swedish tradition in the field of indirect taxes to connect that taxation to the direct one.[124] I expected that the research or the legislator would bring up the question on conformity with the mentioned connection to the IL with the EU law in the field of excise duties, but this has not happened.

I pointed out already when I wrote Forssén 2011 that no analysis had been done in the jurisprudential literature of whether the Swedish national legislation on excise duties is conform with *näringsidkare* (Eng., a trader) in article 7(2) of the then so-called *cirkulationsdirektivet*, Eng., movement directive, (92/12/EEC) and the concept *självständig verksamhet* (Eng., independent activity), when the concept *yrkesmässig* (Eng., professional) is concerned.[125] Thus, in Forssén 2011 I raised once again that question based on the so-called *punktskattedirektivet*, Eng., the excise duty directive, (2008/118/EG), which on 1 April, 2010 replaced the movement directive.[126]

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[122] See first paragraph of the instructions to sec. 9 of *lag (1972:266) om skatt på annonser och reklam* (Eng., the Swedish Act on Advertising Tax).

[123] The definition of what is *yrkesmässig* (Eng., professional) is not evident by the rules on *skattskyldiga* (Eng., the tax liable) and *upplagshavare* (Eng., warehousekeepers), sections 8 and 9 *lag (1994:1564) om alkoholskatt* (Eng., the Swedish Act on Alcohol Tax), but of the preparatory work, prop. 1994/95:56 (*Nya lagar om tobaksskatt och alkoholskatt, m.m.* – New acts on tobacco tax and alcohol tax, etc.), p. 85.

[124] See Forssén 2011, section 1.2.4, where a reference is made in the present respect to prop. 1994/95:54 (*Ny lag om skatt på energi, m.m.* – Eng., New Act on tax on energy), pp. 81 and 82, whereof follows that the motive to, with the ML serving as a model, connect the concept professional in the Energy Tax Act to the IL's concept business activity was to retain the mentioned tradition. See also Forssén 2019a, section 12 201 024.

[125] See Björn Forssén, *EG-rättslig analys av hänvisningen till inkomstskattens näringsverksamhetsbegrepp för bestämning av begreppet yrkesmässig verksamhet i mervärdesskattelagen* (Eng., EC law analysis of the reference to the income tax law's concept business activity for the determination of the concept professional activity in the ML), VJS 2007, pp. 29 and 30 (Forssén 2007), where Olsson 2001 is also mentioned in the present respect. Forssén 2007 is available in full text on www.forssen.com.

[126] See Forssén 2011, sections 1.2.2.6 and 1.2.4. See also Forssén 2019a, section 12 201 024.

I suggest once more that the research or the legislator brings up the question on the determination of the tax subject in the Swedish legislation on excise duties, since an incorrect treatment of the excise duty question affects the determination of the taxation amount for VAT in accordance with the above-mentioned. Besides, I may mention the following in that respect. Since connections still exist, for the determination of the tax subject regarding certain excise duties, to the concept *näringsverksamhet* (Eng., business activity) according to Ch. 13 of the IL, it is, in my opinion, rather obvious that it gives a selection of tax subjects in the field of excise duties that is to extensive in relation to the excise duty directive. Thereof follows by recitals 16 and 22 of the preamble that the tax liable still shall be *näringsidkare* (eng, traders). Thereby can for instance an *aktiebolag* (Eng., a limited company) that is merely carrying out a hobby activity constitute a tax subject according to the Swedish legislation on energy tax and on advertising tax, by the concept *yrkesmässig* (Eng., professional) there being determined by the connection to the concept *näringsverksamhet* (Eng., business activity) in the whole of Ch. 13 of the IL.

Concerning the research within *tullrätt* (Eng., customs law) there is also only one Swedish thesis, Moëll 1996, which treats customs tariffs. I note that the then equivalent to article 113 of the Functional Treaty, that is article 99 of the Rome Treaty, is not mentioned therein. 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 has a principle of neutrality come to be clearly expressed by the primary law for the indirect taxes, that is for VAT, excise duties and customs. That means that the principle of neutrality not only follows by the secondary law in the field of VAT, but also by primary law,[127] but it thus also means that the principle of neutrality, compared to what was the case in article 99 of the Rome Treaty, is expressed en clair for customs too by primary law.

I Moëll 1996 it is stated that *varubegreppet* (Eng., the concept goods) by the ML – which replaced the GML on 1 July, 1994 – has got *the same construction as within the EU* (Sw., ”samma konstruktion som inom EU”).[128] Customs are charged on imports of goods from third countries. The concepts goods and services respectively are not defined in the EU’s legislation on VAT, neither in the then Sixth VAT Directive nor in the present VAT Directive. However should the research notice that there is a primary law definition of the concept *tjänst* (Eng., service) in article 57 of the Functional Treaty, which thus applies also in other fields than taxation, if the EU’s institutions have been transferred competence in the field in question.[129] According to Moëll 1996 limited efforts have been made to create a uniform concept goods within a few fields of law, and it is signified as otherwise uncertain of the concept goods.[130] I Moëll 1996 it was stated that *it would hardly be possible or even meaningful to establish a uniform concept goods for all fields of law. You should instead continue to determine the meaning of the concept field by field based on the present legislation* (Sw., ”det torde […] knappast vara möjligt eller ens meningsfullt att fastställa ett för alla rättsområden enhetligt varubegrepp. Man bör i stället fortsätta med att bestämma begreppets innebörd områdesvis utifrån den aktuella rättsakten”).[131] That attitude by researchers will typically not favour the

[127] See Forssén 2011, p. 46.

[128] See Moëll 1996, p. 38. See also Forssén 2019a, section 12 201 010.

[129] See also Forssén 2019a, section 12 201 010.

[130] See Moëll 1996, p. 40. Se also Forssén 2019a, section 12 201 010.

[131] See Moëll 1996, p. 41. See also Forssén 2019a, section 12 201 010.

EU project. Besides, the work regarding a future introduction of the free trade agreement between the USA and the EU, i.e. the TTIP-agreement,[132] will probably be resumed.

Since a comprehensive work can be expected regarding the TTIP-agreement, it should, in my opinion, be joined with efforts meaning that it at least within the field of indirect taxes will be simplifications, for example by a uniform concept goods being prepared in that field within the EU.[133] Thereby it can be an interesting question for the research to illuminate what meaning it may have in that context that it nowadays is clearly expressed by primary law taht a principle of neutrality applies to all indirect taxes.

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

[133] See also Forssén 2019a, section 12 201 010.

Part II

[This part is corresponding with my article in the JFT, *Momsforskningen i Sverige – svenska språkets ställning* (Eng., The VAT research in Sweden – the position of the Swedish language), JFT 6/2021 pp. 412–447.]

The VAT research in Sweden – the position of the Swedish language

1 Introduction

Previously, I have written in the JFT about the value-added tax (VAT) research in Sweden and then concerning method questions.[134] In this article, I follow up my viewpoints on different choices of method in the theses in Sweden on the subjekt VAT law by presenting the conception I thereby also formed regarding the over-emphasizing of English, which exists partly concerning that the theses tend to be written in English rather than in Swedish, partly concerning that other official languages within the European Union (EU) also are repressed by English in the research. In this article, I call these aspects the language issue concerning the VAT research in Sweden.

VAT is a tax where the content of the national legislations in the EU Member States is governed by the EU law in the field. Since 1995, that is the case for example in the Member States Finland and Sweden, that together with Austria then accessed to the EU. Those three together with another EFTA country,[135] Norway, applied for EU membership, but the Norwegian people voted in 1994 to the EU-accession. They had done so also in 1972, while Denmark, the United Kingdom (Great Britain and Northern Ireland) and Ireland accessed the EEC in 1973.[136]

French, Italian, Netherlands (Dutch) and German became EU languages – EEC-languages – when the EEC was formed in 1958. The number of official languages has been expanded each time new Member States have accessed to the EU. Nowadays the EU has 24 official language. Every resident or citizen of the EU has the right to choose the EU language in which he or she wants to communicate with the institutions of the EU, that must answer in the same language.[137] Also Danish, English, Finnish and Swedish forms part of the 24 official EU languages. Danish and English became official languages within the EEC in 1973, when Denmark, the United Kingdom and Ireland accessed to the EEC. Finnish and Swedish became official EU languages in 1995, when Finland and Sweden made their accessions to the EU. By the United Kingdom's exit from the EU on 31 January, 2020, with a transitional period that ended by the turn of the year 2020/2021, the EU Member States have decreased from 28 to today's 27 (EU27). However, English is also thereafter an official language of the EU, since English is an official language in the Member States Ireland and Malta.

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[134] See my article *Momsforskningen i Sverige – metodfrågor* (Eng., The VAT research in Sweden – method questions), JFT 6/2020, pp. 716–757. (Forssén 2020c). Forssén 2020c, thus corresponded by Part I in this book, is available in full text on www.forssen.com.

[135] EFTA: European Free Trade Association.

[136] European Economical Communities (EEC) formed by the Rome Treaty in 1958 and replaced by the Maastricht Treaty by the European Community (EC) in 1993, when the EU also was formed. By the Lisbon Treaty, which came into force on 1 December, 2009, the EC was replaced by the EU (or "the union").

[137] Compare from the EU's website: EU-languages, https://europa.eu/european-union/about-eu/eu-languages_sv; and the European Ombudsman's language policy, https://www.ombudsman.europa.eu (visited 2021-09-06). See also article 41(4) of The Charter of Fundamental Rights of the European Union, article 55(1) of the Treaty of European Union (TEU) and articles 20(2 d) and 24 fourth paragraph of the Treaty on the Functioning of the European Union (the Functional Treaty).

The EU's legislations comprise in certain cases the whole of the EEA (European Economic Area), that is not only the EU Member States, but also the other countries forming the EEA, namely three of the EFTA countries: Norway, Iceland and Liechtenstein. It is even so that, concerning Regulation (EC) No 883/2004 on the coordination of social security systems, it is a legislation from the EU ruling not only within the EEA, but it also comprises Switzerland since 1 June 2002,[138] which is the fourth EFTA country and that is neither an EU Member State nor participating in the EEA. Thus, the EU law affects not only Member States, but it can affect the whole of the EEA and also even all of the EFTA countries. Therefore should in my opinion the EU as a legal system be looked upon in a broader European law perspective, that includes the EU Member States and the four EFTA countries, so that it is not limited to concern only the Member States. In this respect, it is for law source purposes also of interest that the EFTA has its own court (the EFTA Court) – like the EU and the Council of Europe respectively (which have the Court of Justice of the European Union and the European Court of Human Rights respectively).

Sweden, Finland and Denmark together with Norway and Iceland should in the broader European law perspective be interested in 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. The Nordic Council should in that perspective take an interest also in strengthening Finnish as an official languge within the EU. During the work with my doctor's thesis, *Skatt- och betalningsskyldighet för moms i enkla bolag och partrederier* [Eng., Tax and payment liability to VAT in (approximately) joint ventures and shipping partnerships], I was helped by Kenneth Hellsten at the University of Helsinki with finding material in Finnish and with translation into Swedish of the Finnish in inter alia Petri Saukko's thesis.[139] I used the Finnish VAT Act, *mervärdesskattelagen 30.12.1993/1501*, FML, comparatively at the analysis of the Swedish VAT Act, *mervärdesskattelagen (1994:200)*, ML.[140] I read the FML in its official language version in Swedish.[141]

2 Theses on VAT in Sweden commented regarding the language issue concerning the VAT research in Sweden

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

In Forssén 2020c, thus corresponded by Part I of this book, I wrote, as mentioned above, about the VAT research in Sweden concerning the method questions, where I went through eleven theses from 1994 to 2020.[142] Ten of those are doctoral theses and one is a licentiate's

[138] On 1 June, 2002 Switzerland accessed to the regulation on social security (EEC) No 1408/71, which is the predecessor to the Regulation (EC) No 883/2004.

[139] Petri Saukko, *Arvonlisäveroryhmät*. Edita publishing Oy 2005 (Saukko 2005). See Forssén 2013, p. 35. *Arvonlisäveroryhmät*, in Swedish *Mervärdesskattegrupper* (Eng., registered VAT groups) – see Forssén 2013, p. 54.

[140] I account for inter alia the comparison in the thesis between the ML and the FML in Forssén 2019b.

[141] See Forssén 2013, p. 35.

[142] See Forssén 2020c, pp. 732 and 733, where I list those eleven theses.

dissertation, where my theses are included: my licentiate's dissertation, Forssén 2011, and my doctor's thesis, Forssén 2013.

For my methodological review of those eleven theses, I made a division of them 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).[143]

In Forssén 2020c, I missed one doctor's thesis in Sweden regarding VAT, namely 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 (Senyk 2018). Thus, the number of theses in 2020 on the subject VAT law in Sweden was twelve.

2.2 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 concluded in Forssén 2020c the following tendencies 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 a internal perspective on the EU law in the field of VAT is applied, i.e. 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. However, 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.[144]

- 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.[145]

That Senyk 2018 was not regarded in Forssén 2020c does not change anything concerning the divison of applied methods into the two main tracks, and I assign that thesis to Main track.

[143] See Forssén 2020c, pp. 739–747.

[144] See Forssén 2020c, pp. 748–750. VAT, value-added tax. GST, abbreviation of: Goods and Services Tax.

[145] See Forssén 2020c, pp. 750–752.

2.3 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

The theses yet written on the subject of VAT law in Sweden have been written in Swedish or in English, and 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 English. In this section 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, i.e. for the probability that a certain choice of method leads to the research result being useful for the legislators and the appliers of law within the EU regarding the implementation question. I mark that with ”Positive tendency” and ”Negative tendency” respectively in the division below of the theses into the two main tracks concerning the choice of method.

For each thesis, I also mention if it has been written in Swedish or English. In sections 2.5.1–2.5.4.2, I state in overview my opinion about the tendencies in the theses for the research result regarding the implementation question at different choices of method according to the two main tracks and thereafter puts the language issue in relation thereto. Then I bring up what I in section 1 call the language issue in the VAT research in Sweden, that is I describe based on the tendencies of the over-emphasizing of English that I consider exists in the research partly concerning that the theses tend to be written in English rather than in Swedish, partly concerning that other official languages within the EU also are repressed by English.

Main track 1

- Westberg 1994.

– Applied method: a *comparative method* is used. ”Positive tendency”.[146] The thesis is written in Swedish and was submitted at the Stockholm University, Faculty of Law.

- Alhager 2001.

– 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.

- Rendahl 2009.

– 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.

[146] Although Westberg 1994 is from April 1994 and thus from the time before Sweden’s EU-accession in 1995, was not only the Nordic perspective on the VAT law regarded therein, but also EC-law rules, which I mention in Forssén 2020c (on p. 736). Therefore, I do not treat Westberg 1994 separately in this article, and instead I assign it to Main track 1 in connection to the judgment of the language issue.

- Sonnerby 2010.

– 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.

- Forssén 2011 och Forssén 2013.[147]

– 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 (abbreviated in Sw., JPS).

- Papis-Almansa 2016.

– Applied method: a *law dogmatic method completed with a comparative method* is used. Since the researcher has Polish and not Swedish as native language,[148] it is in itself appropiate that the thesis is written in English, which is, considering the status of English in the Swedish school system, well received here. However, the EU’s legislation in the field of VAT is given an external perspective, by only being compared with the legislation in two third countries. ”Negative tendency”. The thesis was submitted at Lund University, Department of Business Law, School of Economics and Management.

Main track 2

- Öberg 2001.

– Applied method: a *law dogmatic method* is used. ”Negative tendency”.[149] The thesis is written in Swedish and was submitted at Stockholm University, Department of Law.

- Henkow 2008.

– Applied method: I call it a *purely law dogmatic method*. ”Negative tendency”. The thesis is written in English and was submitted at Lund University, Department of Business Law.

- Senyk 2018.

– 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.

[147] In Forssén 2020c I treat Forssén 2011 and Forssén 2013 partly separately in section 4.3, partly, in connection with some of the other theses mentioned. In this article I refer, with respect of the choice of method, Forssén 2011 and Forssén 2013 to Main track 1 in connection with the judgment of the language issue.

[148] According to a check-up I made via e-mail on 27 August, 2021 with assistant professor Marta Papis-Almansa.

[149] In Forssén 2020c I mention (on p. 738) that Öberg 2001 has not been to any meaningful lead for my research projects, since the EU-law was little treated therein. However, I do not treat Öberg 2001 in itself in this article, and instead I assign it to Main track 2 in connection to the judgment of the language issue.

- Ek 2019.

– 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.

- Lindgren Zucchini 2020.

– Applied method: I call 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 (abbreviated in Sw., JPS).

2.4 The implementation question is about identifying and resolving a rule competition between the national VAT legislation and the VAT Directive

I began Forssén 2020c by stating that I in that article treated how the research in Sweden is done regarding the problemizing of the rule competition that emerges if one or more rules in the VAT Directive can be given another interpretation and application than what follows of the corresponding rule or rules in the national ML. In this respect, I treated the use of methods for analysing in the VAT research the implementation into the ML of the directive rules.[150] I made a methodological division of the review into the two main tracks that I follow also in this article, and now continue to review concerning what I in section 1 call the language issue. Thus, I treat in the following the over-emphasizing of English that I consider exists in the VAT research in Sweden partly concerning that the theses tend to be written in English rather than in Swedish, partly concerning that other official languages within the EU also are repressed by English.

Thus, the question in the following is how the choice of English instead of Swedish for the writing of the theses so far in Sweden on the subject VAT law has been made – aware or unaware of – compensating lacks regarding the choice of method. In this respect, I also come back to why I have marked in section 2.3 different choices of method with ”Positive tendency” and ”Negative tendency” respectively to signify in what direction the probability, in my opinion, points for the research result becoming useful for the legislators and the appliers of law within the EU concerning the implementation question, i.e. for them being able to identify and resolve a rule competition in the present respect.

2.5 Comments of the theses according to the two main tracks regarding applied method and the language issue

2.5.1 Main track 1 – Forssén 2011, Forssén 2013, Westberg 1994, Alhager 2001 and Sonnerby 2010

2.5.1.1 An overview of the review of my conception of the tendencies in the present theses for the research result regarding the implementation question

In Forssén 2020c I mention that I in Forssén 2011 and Forssén 2013 treated in the first place the question on whether the determination of the tax subject in the ML was complying (conform) with the main rule on who is a taxable person according to article 9(1) first

[150] See Forssén 2020c, p. 716.

paragraph of the VAT Directive, and that I used a law dogmatic method completed with a comparative method.[151]

In Forssén 2011, consisting of the first step in my research project in the field of VAT, I made an international outlook, by an inquiry to tax authorities and finance departments abroad, to judge whether a comparative analysis as a support to the law dogmatic analysis was of interest and if so which third countries that could serve as a material for comparison beside comparisons of the ML with VAT legislations in other EU Member States.[152] The comparison by that inquiry showed that the connection in Ch. 4 sec. 1 no. 1 of the ML to the non-harmonised income tax law for the determination of the tax subject for VAT purposes was unique and did not have any similarity in the VAT legislations outside Sweden that concerned VAT comparable to what is meant by VAT according to the EU law.[153]

After that I on 2011-12-15 submitted my licentiate's dissertation, Forssén 2011, the Treasury in Sweden presnted a memo on 23 November, 2012, *Begreppet beskattningsbar person – en teknisk anpassning av mervärdesskattelagen* (Eng., The concept taxable person – a technical adaptation of the VAT Act), with a suggestion that the connection from Ch. 4 sec. 1 no. 1 of the ML to the non-harmonised income tax law should be abolished for the determination of the tax subject.[154] That led to legislation of such a meaning on 1 July, 2013, by SFS 2013:368 (SFS: abbreviation of *svensk författningssamling* – Eng., Swedish Code of Statutes), whereby instead the main rule on who is a taxable person in article 9(1) first paragraph of the VAT Directive was implemented literally into Ch. 4 sec. 1 first paragraph first sentence of the ML. I mention this in Forssén 2019b and at the same time that the directve's denomination of the tax subject has not been entered into the FML.[155] Thus, my suggestion regarding the main question in Forssén 2011 was well received by the legislator.

In Forssén 2020c I mention that in the second step of the project, consisting of my work with Forssén 2013, the main question concerned the enterprise form *enkelt bolag (och partrederi)* – Eng., joint venture (and shipping partnership) – and that I propose that Sweden should bring up on the EU-level that the principle of a neutral VAT demands that it is clarified whether that such legal figures, i.e. non-legal entities, are comprised by the determination of taxable person according to the main rule of article 9(1) first paragraph of the VAT Directive. There, I also mention that I in Forssén 2013, to support the law dogmatic method completed with a comparative analysis, by comparing the ML with the FML, and found that *sammanslutningar och partrederier* (Eng., joint ventures and shipping partnerships) – that neither are legal entities – are deemed as tax subjects according to the FML, which is in contrast to the ML and *skatteförfarandelagen (2011:1244)*, SFL – Eng., the Swedish Taxation Procedure Act – where *enkla bolag och partrederier* (Eng., joint ventures and shipping partnerships) are not deemed as tax subjects.

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[151] See Forssén 2020c, p. 735.

[152] See Forssén 2020c, p. 735 with reference to Forssén 2011 pp. 71, 72, 279–297 (*Bilaga 2 – Internationell utblick*) och, ang. min utlandsenkät för huvudfrågan, 349.

[153] See Forssén 2011, p. 72.

[154] See Forssén 2013, p. 49.

[155] See Forssén 2019b, p. 63.

In Forssén 2013 I have developed the complex of problems with Ch. 6 sec. 2 of the ML, and that *enkla bolag och partrederier* and *sammanslutningar och partrederier* respectively are not legal entities but are treated differently in the ML and the FML respectively, so that *enkla bolag och partrederier* are not deemed as tax subjects according to the ML, while *sammanslutningar och partrederier* are deemed tax liable according to the FML. That comparison is not mentioned in a proposal for a new ML in Sweden, SOU 2020:31 (SOU, *statens offentliga utredningar* – Eng., the Government's official reports), which I have commented in the JFT.[156] In Forssén 2020a I iterated from Forssén 2013 and Forssén 2019b that Sweden and Finland should jointly bring up on the EU-level the question on changing article 9(1) first paragraph of the VAT Directive so that economic activities carried out in the enterprise forms in question can be considered taxable persons, despite they are not legal entities,[157] which I also iterated in Forssén 2020c,[158] and do here as well.

In Forssén 2020a I write that it is a step in the right direction that in SOU 2020:31 is suggested that the concept skattskyldig (Eng., tax liable) will be abolished from a new ML and replaced by the directive's liability for payment of VAT (to the tax authorities), where the directive's concept *beskattningsbar person* (Eng., taxable person) otherwise applies in a new ML like in the present ML.[159] In SOU 2020:31 a new rule is also suggested in a new VAT Act, which means that a partner in an *enkelt bolag* or a *partrederi* shall be deemed a *beskattningsbar person* (Eng., a taxable person). That the abolishment of the concept skattskyldig (Eng., tax liable) is a step in the right direction means that one of the side issues in Forssén 2011, namely question D concerning the emergence of the right of deduction, gets its solution, while on the other hand concerning side issue E in Forssén 2011 the problem with Ch. 7 sec. 2 second paragraph of the SFL opening for several activities being possible to register for the same subject, despite that liability for payment of VAT shall be used in the rule according to the proposal in SOU 2020:31.[160] Concerning the new Ch. 4 sec. 16 suggested in SOU 2020:31, I furthermore state in Forssén 2020a that it does not work systematically to keep the concept *verksamhet* (Eng., activity) in Ch. 5 sec. 2 of the SFL along with the suggestion of introducing the concept *ekonomisk verksamhet* (Eng., economic activity) in the proposed Ch. 4 sec. 16, since *verksamhet* according to Ch. 1 sec. 3 of *lagen (1980:1102) om handelsbolag och enkla bolag* (Eng., the Partnership and Non-registered Partnership Act) is a broader concept than *ekonomisk verksamhet* and for instance also activities like tipping and lottery companies that do not have an *ekonomisk verksamhet* can constitute an *enkelt bolag*.[161]

Although certain questions remain to be dealt with for the legislator and on the EU-level, may mainly what I have brought up in Forssén 2011 and Forssén 2013 regarding the implementation question be considered to have been well received by the legislator, by the reform on 1 July, 2013 and the suggestions in SOU 2020:31.

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[156] See Forssén 2020a, pp. 388–399.

[157] See Forssén 2020a, p. 394, Forssén 2013 pp, 225 and 226 and Forssén 2019b, p. 70.

[158] See Forssén 2020c, p. 736.

[159] See Forssén 2020a, pp. 394 and 395.

[160] See Forssén 2020a, p. 392.

[161] See Forssén 2020a, p. 395 with reference to Forssén 2013, section 5.3.

Concerning Westberg 1994, I mentioned in Forssén 2020c that the Nordic perspective was taken on the VAT law but also that EU law rules were regarded therein. I also mentioned that professor Westberg thereafter went on in 1997 with Mervärdesskatt – en kommentar (Eng., VAT – a commentary), where an EU law perspective was joined with a (national)Swedish one concerning the VAT law.[162] At the work with my theses, I had use of studying inter alia those books by professor Björn Westberg, which I mention in Forssén 2020c.[163] However, it may also be mentioned that it in Westberg 1997, despite the ambition to join the EU law perspective in the field of VAT with with a perspective of the VAT law in Sweden, is stated that the VAT liability only can be laid upon *such associations that as well are legal entities* (Sw., ”sådana associationer som tillika är rättssubjekt”). Moreover, it is stated there that that principle is not expressed in law text or preparatory works *but can be read out by inter alia the rule in question on enkla bolag or partrederier* (Sw., ”men kan utläsas av bl.a. regleringen i fråga om enkla bolag eller partrederier”) and thus that *the natural or legal person doing the transaction* (Sw., ”den fysiska eller juridiska personen som svarar för transaktionen”) is intended *when it is stated*, *that the tax liability applies to 'who is supplying the piece of merchandise or the service' etc*. (Sw., ”när det sägs, att skattskyldigheten åvilar 'den som omsätter varan eller tjänsten' etc.”).[164] Thereby, I iterate also from Forssén 2020c , that it in Westberg 1994 is also stated that the VAT at the time had been treated extraordinarily sparsely in the jurisprudential literature.[165] From a VAT law perspective *enkla bolag och partrederier* had almost not been treated at all. At the work with my theses, I also used inter alia professor Nils Mattsson's thesis of 1974.[166] Therein *enkla bolag och partrederier* are only mentioned in a footnote as comprised by a rule on accounting of VAT, namely in the instructions to sec. 6 of *mervärdesskatteförordningen* SFS 1968:430 (Eng., the VAT regulation), that is in the predecessor to the ML.[167] The help I got from Helsinki University with translations from Finnish in inter alia Saukko 2005, where *sammanslutningar och partrederier* are mentioned, was a great support for my comparison of the ML and the FML (see section 1). I concluded that the EU law should be investigated, so that the conception in Westberg 1997 about the current law concerning *enkla bolag och partrederier* will not be accepted uncritically with respect of the EU law in the field.

In Alhager 2001 a *law dogmatic method completed with a comparative method* was also used. The comparison was made with an internal perspective on the implementation question, by the VAT law in Sweden and Germany being compared.[168] In Forssén 2020c, I state that that perspective increases the probability for the research result becoming useful for the legislator

[162] See Forssén 2020c, p. 737 with a reference to p. 17 in Björn Westberg, *Mervärdesskatt – en kommentar*, Nerenius & Santérus förlag, Stockholm 1997. (Westberg 1997).

[163] See Forssén 2020c, p. 738.

[164] See Westberg 1997, p. 35.

[165] See Forssén 2020c, p. 737 with a reference to Westberg 1994, p. 27.

[166] Nils Mattsson, *Bolagskonstruktioner och beskattningseffekter. En inkomstskatterättslig studie av handelsbolag och enkla bolag* (Eng., Company constructions and taxation effects. An income tax law study of Partnerships and Non-registered Partnerships), P.A. Norstedt & Söners Förlag 1974 (Mattsson 1974). See Forssén 2013, p. 148.

[167] See Mattsson 1974, p. 137, where the footnote in question is to be found.

[168] See Alhager 2001, pp. 26 and 27 whereto I refer on p. 741 in Forssén 2020c.

and the appliers of law concerning the implementation question.[169] In Alhager 2001, it is inter alia mentioned that the rule on exemption from VAT at transfer of going concerns in article 5(8) of the Sixth VAT Directive (77/388/EEC) had been implemented in different ways in *Umsatzsteuergesetz* 1980, UStG (the German VAT Act of 1980), sec. 1 paragraph 1a, and in Ch. 3 sec. 25 of the ML respectively. The rule in the UStG means like the directive rule that a supply does not occur at all, whereas the directive rule had been implemented as an exemption from VAT in Ch. 3 sec. 25 of the ML. It was stated in Alhager 2001 that the deviation from the directive rule in the rule in the ML although seemed to lead to the same result at national transfers of going concerns.[170] Regardless how it is with this, the legislator has later on made a change in the ML, so that the adjustment of the exemption from taxation of VAT in the present situation corresponds law technically with articles 19 and 29 of the VAT Directive, that has replaced the Sixth VAT Directive. That took place on 1 January, 2016, by SFS 2015:888, and meant in the present respect that Ch. 3 sec. 25 was replaced by Ch. 2 sec. 1 b of the ML. Although it took a long time for that reform to be introduced, the legislator may be considered being influenced by Alhager 2001, why the research result has been proved useful for the legislator regarding the implementation question and the thesis thereby being an example for others of expedient research on the subject VAT law in Sweden. I had great use of Alhager 2001 at the work with Forssén 2011 and Forssén 2013.

Alhager 2001, Forssén 2011 and Forssén 2013 show that the application of a *law dogmatic method completed with a comparative method* gives a ”positive tendency” for the implementation question, so that the research result can be expected to be useful for the legislators and the appliers of law within the EU. In Westberg 1994 was only a comparative method used, and despite that that thesis was written before Sweden became an EU Member State in 1995 it may be deemed of great importance for the VAT research in Sweden. Professor Björn Westberg, at the time docent, was – together with professor Sture Bergström (deceased) – supervising professor Eleonor Kristoffersson (previously Alhager) at the work with Alhager 2001. I note as a support for my opinion about the meaning of Westberg 1994 for the method question that it in section 1.4 (”Metod”) in Alhager 2001 is referred to the way of which Westberg 1994 was structured.[171] Thus, a comparative method also gives a ”positive tendency” for the implementation question, provided that the choice of foreign law for the comparison is relevant for it.

In Sonnerby 2010 is also a *law dogmatic method completed with a comparative method* used, and in Forssén 2020c I have pointed out as something very important from Sonnerby 2010 that it is stated therein that a comparative method is used together with law dogmatics for a broader perspective on the ML and the implementation therein of the VAT Directive.[172] It is stated that *a comparative method is conducive to a better understanding of the own law system and to see new opportunities* (Sw., ”en komparativ metod bidrar till att förstå det egna rättssystemet bättre och se nya möjligheter”).[173] The choice of subject in Sonnerby 2010 is broad and often occuring in practice – withdrawal taxation – and the question of a neutral such taxation in the

[169] See Forssén 2020c, pp. 741 and 742.

[170] See Alhager 2001, p. 411.

[171] See Alhager 2001, p. 26.

[172] See Forssén 2020c, p. 740.

[173] See Sonnerby 2010, p. 30 whereto I refer on p. 741 in Forssén 2020c.

field of VAT can be expected to occur not only in connection with the determination of the scope of the VAT, but also concerning problems about the accounting of VAT. Thus, the choice of subject means that the research result can be expected to be useful for the legislators and the appliers of law within the EU regarding various implementation questions. Although Sonnerby 2010 thus shows that the application of a *law dogmatic method completed with a comparative method* gives a ”positive tendency” regarding the implementation question, so that the research result can be expected to be useful for the legislators and the appliers of law within the EU.

By the way, it may be mentioned that professor Westberg was supervising at the work with Alhager 2001 and that professor Kristoffersson was supervising at the work with as well Forssén 2011 and Forssén 2013 as with Sonnerby 2010 2010. In connection with my research project in the subject VAT law being carried out at Lund University, Department of Law, those who attended a seminar on 17 September 2008 were presented with a manuscript, where I in the introduction stated that less than a fourth of the world’s countries have VAT in the meaning of VAT according to the EU law. In that manuscript, I stated the same as I later on did in my international outlook in Appendix 2 of Forssén 2011 (Sw., Bilaga 2 – Internationell utblick, Forssén 2011), namely that the statistics accounted for by the OECD[174] would instead mean that almost three quarters of the world’s about 200 countries have VAT, why a comparative method with an external perspective on the EU law must be weighed, so that comparisons are made with third countries that have VAT or GST corresponding to the basic principles determining what is meant by VAT according to the EU law.[175] Other third countries are not of interest for comparison, why data for comparison comprising other than EU Member States – that is a comparison not being made from an internal perspective on the EU law – should be made with caution. Professor Westberg was special reviewer at the seminar 2008-09-17 and stated on his behalf the OECD’s conception about the number of countries in the world claiming to have VAT. I mention this witout reducing the value of Westberg 1994 for the VAT reseach in Sweden, but may in this context also mention that professor Westberg was supervising professor Pernilla Rendal at her work with Rendahl 2009, where two third countries – Australia and Canada – were used for the application of a comparative method, and that I criticized this in Forssén 2020c with reference to Forssén 2011,[176] whereto I get back in section 2.5.2.1.

2.5.1.2 The language issue in relation to my conception about the tendencies in the present theses for the research result regarding the implementation question

Without any explanation was on 1 January, 2001, by SFS 1999:1283, a reference introduced into Ch. 4 sec. 1 no. 1 of the ML to the concept business activity (Sw., *näringsverksamhet*) in the whole of Ch. 13 *inkomstskattelagen (1999:1229)*, IL (the Swedish Income Tax Act), that is for the determination of who would be deemed having an *yrkesmässig verksamhet* (Eng., professional activity) and thus constituting a tax subject for VAT purposes. Instead of connecting the determination to the rule on who has a business activity in a real sense, that is to Ch. 13 sec. 1 first paragraph of the IL, previously sec. 21 of kommunalskattelagen (1928:370),

[174] OECD: Sw., *Organisationen för ekonomiskt samarbete och utveckling*; Eng., *Organisation for Economic Co-operation and Development* (OECD); Fr., *Organisation de coopération et de développement économiques* (OCDE).

[175] See Forssén 2011, p. 279.

[176] See Forssén 2020c, p. 740, where I in the present respect refer to Forssén 2011, pp. 279–287.

Eng., the Municipal Income Tax Act, the reference came to comprise also for example sec. 2 in Ch. 13 of the IL, whereof follows that a legal person, in opposition to a natural person, is considered having a business activity regardless whether the prerequisites for a business activity in a real sense are fulfilled. Compared to what would have ruled previously in the ML the scope of the tax subjects was expanded in 2001 without any motivation. That was not in compliance with the main rule for the determination of the tax subject in article 4(1) of the Sixth VAT Directive, which is to be found in article 9(1) first paragraph of the VAT Directive (which in 2007 replaced inter alia the Sixth VAT Directive). The main question in Forssén 2011 concerned this rule competition between Ch. 4 sec. 1 no. 1 of the ML and the directive rule that had arisen by the expansion in 2001 of the connection from the ML to the non-harmonised income tax law. In Forssén 2013 I folloed up with the law theoretically interesting question for the determination of the tax subject on how non-legal entities such as *enkla bolag och partrederier* shall be treated in relation to taxable person in article 9(1) first paragraph of the VAT Directive.

I held the opening seminar on my research project 2002-11-26 at Lund University, Department of Law, regarding the question about the connection between Ch. 4 sec. 1 no. 1 of the ML and Ch. 13 of the IL. The reform in that respect on 1 July, 2013 (see section 2.5.1.1) shows that the thesis was useful for the legislator concerning the implementation question. By the expansion of who can be deemed to be a tax subject and the law theoretical question whether non-legal entities should be deemed tax subjects being closely connected, my two theses may be considered fulfilling inter alia the criterion expediency for academical theses in Sweden. About the language issue, I may especially mention the following concerning its importance for the research result of my theses being of continued use for the legislators and the appliers of law within the EU regarding the implementation question.

The help I got from Helsinki University with translations from Finnish in inter alia Saukko 2005, and of what is written there about the non-legal entities *sammanslutningar och partrederier*, was, as mentioned, of great support for my comparison between the ML and the FML, where I, as also mentioned, established that the EU law should be examinde, so that the conception in Westberg 1997 about the current law concerning *enkla bolag och partrederier* in Sweden will not be accepted uncritically in relation to the EU law in the field of VAT (see sections 1 and 2.5.1.1). In this respect it may be mentioned that implementation of rules into the VAT Directive cannot be made only by translation of directive text into national act rules, since concepts in the directives do not have equivalents in all official EU languages and the various language versions of the rules of the EU law are equally valid, which the Court of Justice of the EU warned of in the case 283/81 (CILFIT).[177] However, the Court of Justice of the EU must have a common language for its deliberations, which traditionally are in French.[178] At the work with my theses I also noted that professor Ulf Bernitz and Leo Mulders recommended the language version in French of an EU-verdict for precision in the interpretation.[179] In a follow-up to Forssén 2020c, I state that I used Leo Mulder's

[177] The EU-case 283/81 (CILFIT), ECLI:EU:C:1982:335. See Forssén 2011, p. 68 and Forssén 2013, p. 46.

[178] See Language arrangements for proceedings before the Court of Justice of the EU, https://curia.europa.eu (hämtat 2021-09-06).

[179] See Forssén 2011, p. 69 with reference to the Chapter *EUROPARÄTTEN* (Eng., European Law) pp. 59–89, 78 and 84, by Ulf Bernitz, i Ulf Bernitz – Lars Heuman – Madeleine Leijonhufvud – Peter Seipel – Wiweka Warnling-Nerep – Hans-Heinrich Vogel, *Finna rätt Juridikens källmaterial och arbetsmetoder* (Finding law The lawyer's source material and work methods), eleventh edition, Norstedts Juridik AB 2010 (Bernitz 2010); and to the Chapter Kapitlet Translation at the Court of Justice of the European Communities pp. 45–59, 47 and 58, by

recommendation concerning the use of language for the interpretation in Forssén 2011 (pp. 92-94) of item 20 in the EU-verdict C-216/97 (Gregg).[180] With this approach for the interpretation, when an EU-verdict seems unclear to construe, I judge it in Swedish (if the language of the case is Swedish or the language of the case is another one and the verdict is translated into Swedish), but also in French and in the language of the case, if it is Danish, English, German or Netherlands.[181] Thus, I intended to avoid an unjustified emphasizing of English, and read the verdict in Swedish, English and French. Thereby, I interpreted item 20 of the ”Gregg”-case so that an effective collection can be identified in the the Court of Justice of the EU's case law as a law political aim with the common VAT-system in the EU. The language of the case was in itself English, but it was the French that showed that the Court of Justice of the EU emphasizes the collection of the VAT. This by the specific question on the levying of VAT being brought up in the language version in English by the expression ”the levying of VAT” on the price of the production in question, whereas it in the translation into Swedish is stated that it is treated differently for ”mervärdesskattehänseende” (Eng., VAT purposes) and in French it is all the more clear that the question is about the more general question on the collection of the VAT, by the expression ”perception de la TVA” being used therein. In English it would have been expressed *collection of the VAT*. Thus, the interpretation result had not been achieved only by the reading of the verdict in the language of the case, that is in English.[182]

In the first step of my research project (Forssén 2011) I used a number of dictionaries in English, French, Netherlands, Spanish and German and a grammar book in French and law technical dictionaries in Swedish and English.[183] In connection with the work on Forssén 2013, I acquired *NORSTEDTS FINSKA ORDBOK* (from 2008), Eng., Norstedts Finnish Dictionary, to check and judge as independently as possible the material in Finnish that I was helped by Helsinki University to translate. At the work with my theses, I also benefitted from acquiring *NORSTEDTS NEDERLÄNDSK-SVENSKA ORDBOK*, Eng., Norstedts Netherlands-Swedish Dictionary, and *NORSTEDTS SVENSK-NEDERLÄNDSKA ORDBOK*, Eng., Norstedts Swedish-Netherlands Dictionary (both from från 2008), since I wanted to read above all A.J. van Doesum's thesis, *Contractuele samenwerkingsverbanden in de btw* (Eng., approx., Joint ventures in the VAT), in Netherlands (as far as possible).[184] Thus, there are quotations in Netherlands with my translation into Swedish in both my theses. As a precaution, I also acquired *NORSTEDTS DANSK-SVENSKA ORDBOK* (from 2008), Eng., Norstedts Danish-Swedish Dictionary.

Leo Mulders, in Sacha Prechal andh Bert van Roermund, The Coherence of EU Law (editors, Oxford University Press, Oxford 2008. Reprinted 2010 (Mulders 2010).

[180] See Björn Forssén, *Tidningen Balans fördjupningsbilaga* (Eng., The Periodical Balans Annex with advanced articles) 2/2021, pp. 29–36, 32 and 33, the article *Momsforskningen i Sverige – vart är den på väg? Del 2* (Eng., the VAT research in Sweden – where is it going? Part 2). (Forssén 2021a). Forssén 2021a is available in full text on www.tidningenbalans.se and on www.forssen.com. The EU-case C-216/97 (Gregg), ECLI:EU:C:1999:390.

[181] See Mulders 2010, p. 58, Forssén 2011, p. 69 and Forssén 2021a, p. 33. See also Forssén 2013, p. 47.

[182] See Forssén 2020c, pp. 729 and 730 and Forssén 2011, pp. 69, 92 and 93, Forssén 2021a, pp. 32 and 33 and Forssén 2013, p. 72. TVA, taxe sur la valeur ajoutée, abbreviation in Fr. of value-added tax.

[183] See Forssén 2011, p. 357.

[184] See Adrianus Johannes van Doesum, *Contractuele samenwerkingsverbanden in de btw*. Universiteit van Tilburg (University of Tilburg) 2009, p. 243 (Doctoral thesis of 23 June, 2009).

Considering the status of English in the Swedish school system, it is not a sign in itself of originality to write a thesis on the subject of VAT law in English. Instead an over-emphasizing thereby is in my opinion evidence of a lack of independence. By setting the language issue in relation to the method question's importance for a "positive tendency" of an expected research result regarding the implementation question according to the above-mentioned, I consider that those who write theses on the subject VAT law in Sweden should make an effort and use Swedish as well as other official EU languages but English, instead of over-emphasizing English. Thereby avoiding that the author – aware or unaware of it – imagines that the use of English in itself shall guarantee a positive research result regarding the implementation question. My review of above shows in my opinion that the nuances at the interpretation of the EU law in the field of VAT are lost, if the author does not make the effort of using as many of the EU's official languages that is possible for him or her.[185] Such an effort by the author is instead proof of both independence and originality, and should typically increase the possibilities for the research results on the subject VAT law not becoming rather insignificant. I mention some theses on the subject VAT law in Sweden in that respect. If an inquiry is made, can for example, as was the case for me when carrying out the above-mentioned inquiry in connection with my international outlook in the work with Forssén 2011, English be insufficient already in that respect. The tax authority in Austria, which was included in my inquiry, wanted to have the question in German and then I just had to write them in German. When in the same respect the Greek tax authority was concerned, it was acceptable to write the question of the inquiry, but the answer was written in Greek, and I received help with the translation from Greek to Swedish by the Embassy of Greece in Stockholm.[186]

Thus, it is in my opinion a matter of struggling on in the work with a thesis with the official EU languages, but it must of course not go so far that the research project fails on the language issue. What I want to emphasize with this article is that English should not be over-emphasized at the expense of the methodological and the interpretation of EU-verdicts etcetera. Concerning Swedish in itself, I may also emphasize that expressions like "Swedish" theses should be avoided, when the perspective is an EU-law one. The word "svenska" (Eng., Swedish) should be used in consideration of that Swedish is one the two official languages in Finland, why "svenska" with reference only to Sweden, and thus to a national Swedish perspective on the research influenced by the EU law like with the VAT law, is to narrow and is instead conducive to Swedish being reduced on the EU-level. Anyone planning to write a thesis on the subject VAT law in Sweden should in my opinion already due to the language issue also be cautious about leaving out the first thesis in Sweden on the subject, that is Westberg 1994. I state regarding the language issue that that work with a Nordic perspective on the subject may be considered especially important by the whole of the North being more or less comprised by the EU law from an expanded European perspective on the legal system, according to what I state in section 1.

Westberg 1994, Alhager 2001 and Sonnerby 2010 are, like my theses, written in Swedish. Concerning the usefulness of the research result a "positive tendency" exist in those cases. It shows that the choice of a *law dogmatic method completed with a comparative method* and of a *comparative method* respectively, where the choice of foreign law for the comparison is

[185] See Mulders 2010, p. 58, where he also states for his suggestion concerning the interpretation that the interpreter, besides the own language version and the one in French, only needs to use the authentic language version of av verdict, that is the language of the case, "if possible".

[186] See Forssén 2011, p. 289.

relevant to the subject, gives a ”positive tendency” for the implementation question without any need to write the thesis in another language than Swedish. My review of above shows that there is nothing special with English that would supersede Swedish, regarding the question whether the research result can be expected to be ”positive”. The review shows in my opinion also that English should neither be superseding any other of the EU’s official languages, why a researcher in the subject VAT law in Sweden should write in Swedish, but also be open to use English and other official languages within the EU.

In early April 2011 professor Kristoffersson took over as head supervisor of my research project concerning the determination of the tax subject in the ML on the theme of EU conformity. Then a plan was made, where I had the privilege to attend courses at the universities of Örebro and Linköping. The project was divided into what led to a licentiate’s examination 2011-12-15 and a doctor’s examination 2013-04-26 respectively, where Forssén 2011 and Forssén 2013 respectively were defended. A reason for the division was to avoid that a change of law would come beween and above all that the project meant that a vast work was demanded, where we found it appropriate with the division of the project into the question on rule competition that had emerged in 2001 between Ch. 4 sec. 1 no. 1 of the ML and the main rule on taxable person in article 9(1) first paragraph of the VAT Directive and into the law theoretically interesting question on tax and payment liability to VAT in *enkla bolag och partrederier* in Ch. 6 sec. 2 of the ML and Ch. 5 sec. 2 of the SFL in relation to the directive rule. In that respect it may be mentioned that the Government’s official reports Mervärdesskatt i ett EG-rättsligt perspektiv (Eng., VAT in an EU-law perspective), SOU 2002:74, considered that a complete technical and material overview of the ML could not be fitted within the investigation’s assignment.[187] In Forssén 2021a I mention that the investigation was about the terminology in the ML compared to the Sixth VAT Directive.[188] To resolve problems with uncertainties in the translation into Swedish of the directive text or when the terms deviate from what have been used in other language versions the investigation makes adjustments, where the directive’s term in Swedish, English and French is used.[189] I mention also that it on the pages 51–53 in SOU 2002:74 Part 1 is a table of the fundamental terms in those languages in the directive. Thus, I state in Forssén 2021a that I had use of SOU 2002:74 at the work with my theses, and pointed out especially that the investigation includes the French, to resolve the mentioned terminology problems.[190] The supervision by professor Kristoffersson and professor Jan Kellgren (at the time docent) was together with the doctoral education decisive for the carrying out of the project. In one of the courses during the education held by docent Bo H. Lindberg, I noted that he called science *a cohesive system of linguistic sentences* (Sw., ”ett sammanhållet system av språkliga satser”) or *a recorded knowledge* (Sw., ”ett nedtecknat kunnande”). That was an incentive for me not to take lightly the language issue in itself at the work with my theses, where the investigation SOU 2002:74 became part of the source material and confirms, by the approach therein for resolving terminology problems, my conception that English shall not be set before Swedish in the VAT research in Sweden.[191]

[187] See SOU 2002:74 Del 1 pp. 17 and 186.

[188] See Forssén 2021a, p. 36.

[189] See SOU 2002:74 Part 1, p. 49. See also Forssén 2021a, p. 36.

[190] See Forssén 2021a, p. 36.

[191] By the way, Bo H. Lindberg was an inspiration at Södertörn University, Department of Social Science, where I recurrently lecture since 2015 and during the recent years co-operate in the field of public law with docent

2.5.2 Main track 1 – Rendahl 2009 and Papis-Almansa 2016

2.5.2.1 An overview of the review of my conception of the tendencies in the present theses for the research result regarding the implementation question

In Forssén 2020c, I state that neutrality is a law political aim with the VAT according to the EU law, and that the principle of a neutral VAT follows by primary law of article 113 of the Functional Treaty and by secondary law of the recitals 4, 5 and 7 of the preamble to the VAT Directive and article 1(2) of the VAT Directive, but that the tax rates and the exemptions from VAT are not harmonised, which follows by recital 7 of the preamble to the directive. However, it follows by recital 7 that the principle of a neutral VAT still rules so that similar goods and services are burdened with an equally large taxation within the territory of each Member State.[192]

I Forssén 2020c, I note that border crossing digital supplies from entreprises to consumers are treated in Rendahl 2009 by applying a comparative method, and that the motive is that it shall give an external perspective on the EU law in the field of VAT, by the EU's legislation being compared with GST in Australia and Canada.[193] I state there that since Rendahl 2009 thus does not have an internal perspective on the EU law in the field of VAT the probability decrease for the research result being useful for the legislator to judge the need of adjustment of the rules in the ML in relation to the rules in the VAT Directivet,[194] that is a ”negative tendency” exists for the implementation question. It appears by the subject description that the author has the same conception about third countries as material for comparison at the application of a comparative method as I according to above is warning for in my international outlook in Forssén 2011. The author refers uncritically to the OECD's statistics concerning that it among the OECD's members is only the USA that does not have any form of VAT, but has a sales tax.[195]

Forssén 2011 is written after Rendahl 2009, and it would have been an advantage for the author having access to my thesis. In my opinion the supervisor professor Westberg has influenced the author, who maybe could have been affected by my warning of uncritically using VAT-systems or GST-systems in third countries as material for comparison without first examining if such legislation corresponds to what is understood by VAT accordning to the EU law. There is nothing wrong in itself to compare the EU's legislation in the field of VAT with corresponding systems in third countries, but such comparisons should be made in a way so that they will not be the only material for comparison. To apply a comparative method without any EU Member State being included in the survey gives in my opinion typically a ”negative tendency” for the research result becoming useful for the legislators and the appliers of law within the EU concerning the implementation question.

Patricia Jonason. Then it is foremost about the EU law and VAT law, but I have also been trusted to educate in other subjects within public law than tax law.

[192] See Forssén 2020c, p. 726.

[193] See Forssén 2020c, p. 739 with reference to Rendahl 2009, p. 13.

[194] See Forssén 2020c, p. 739.

[195] See Rendahl 2009, p. 3.

In Papis-Almansa 2016 a law dogmatic method completed with a comparative method is used, and what I am criticizing is that the comparison only gives an external perspective on the EU law in the field of VAT, by the comparison being made in relation to the GST-systems on the third countries New Zealand and Australia. What still means that Papis-Almansa 2016 should be held before Rendahl 2009 is in my opinion that New Zealand is an interesting material for comparison among the third countries in relation to the EU's VAT system. That since there is a simple, principle true VAT without any differentiation of the tax rates in New Zealand.[196] In that respect, I referred – as mentioned in Part I – in Forssén 2011 to an article by professor Leif Mutén,[197] where he states precisely this about New Zealand, which I also mention in Forssén 2020c.[198] It should have been regarded in Rendahl 2009, even if that thesis was written before Forssén 2011, and it should have been mentioned in Papis-Almansa 2016 in connection with the choice of third countries for the comparison.[199] Where the probability for the research result becoming useful for the legislator and the appliers of law concerning the implementation question is concerned, I mark above a "negative tendency". I base this on that EU's legislation in the field of VAT being given an externa perspective in Papis-Almansa 2016 concerning the comparative part of applied method.

2.5.2.2 The language issue in relation to my conception about the tendencies in the present theses for the research result regarding the implementation question

Rendahl 2009 and Papis-Almansa 2016 are written in English, and I may mention the following concerning the language issue regarding those theses:

- In their list of references Rendahl 2009 and Papis-Almansa 2016 contain almost no references to public printing in Sweden.

- In both theses English dominates regarding referred literature. Rendahl 2009 contains a number of works in Swedish, whereas no such work is to be found in Papis-Almansa 2016. In Rendahl 2009 it is referred inter alia to Westberg 1994, which is not the case in Papis-Almansa 2016. The openness to other languages than English is otherwise weak in both theses, with a certain advantage in that respect for Papis-Almansa 2016.

- The approach that I describe above as clarifying at interpretation of unclear EU-verdicts are not used in neither Rendahl 2009 nor Papis-Almansa 2016, and any similar use of more than one official EU language when interpreting unclear EU-verdicts are not used either by the two authors. I Rendahl 2009 it is mentioned concerning the EC-regulation 1777/2005 that the denition for VAT purposes of services supplied in an electronical way does not vary between the regulation's versions in German, French, Swedish or

[196] See Forssén 2020c, p. 742 with reference to Forssén 2011, p. 282.

[197] See Leif Mutén, *Export av skattesystem. Skattepolitiska transformations processer i tredje världen* (Eng., Export of tax systems. Tax political transformation processes in the Third World). *Skattenytt* 2006 pp. 487–497, 494. (Mutén 2006). See – as also mentioned in Part I – also my references to Mutén 2006 in Forssén 2011, pp. 271 and 282.

[198] See Forssén 2020c, p. 742.

[199] I have on my part had use of professor Mutén's viewpoints at the work with Forssén 2011 and Forssén 2013 and also when I in 2005 began writing articles in *Svensk skattetidning* and he proof-read these.

English.[200] This implies an awareness of the importance of making comparisons in various official languages within the EU at the reading of sources in the field of VAT, but this is not used in any developed way in Rendahl 2009, which in my opinion should be done for example at the interpretation of EU-verdicts.

The choice of solely third countries where English is spoken is, as mentioned, not succesful for methodological reasons, and concerning the language issue it seems as if the authors and their supervisors – aware or unaware of it – consider that the use of English is supposed to compensate what is lacking regarding choice of method. Concerning Rendahl 2009 the author may be considered influenced, in the choice of the English speaking third countries Australia and Canada for the comparative analysis, by professor Westberg's uncritical conception of which countries that the OECD consider's having VAT systems. This is confirmed, as mentioned above, by the author uncritically referring to the OECD's statistics concerning that it among the OECD's members is only the USA that does not have any form of VAT. Marta Papis-Almansa does not, as mentioned (see section 2.3), have Swedish as native language, but it should not have limited the references in Papis-Almansa to theses on the subject VAT law in Sweden solely written in English, that is to only include Henkow 2008 and Rendahl 2009. Thus, the author, who wrote about VAT law at a university in Sweden, should not have refrained from also referring to theses in Swedish. Professor Ben J.M. Terra, who was guest professor at the author's department, that is at the Department of Business Law at Lund University, was, together with docent Oskar Henkow at the same department, supervisor of the work with Papis-Almansa 2016. Professor Terra (from University of Amsterdam) became guest professor at the Department of Business Law, School of Economics and Management, Lund University long before the work with Papis-Almansa 2016 began in 2011. Thus, both supervisors could assist regarding difficulties with Swedish at the work with Papis-Almansa 2016.[201]

2.5.3 Main track 2 – Öberg 2001, Senyk 2018 and Ek 2019

2.5.3.1 An overview of the review of my conception of the tendencies in the present theses for the research result regarding the implementation question

The EU law was treated sparsely in Öberg 2001, which I also mentioned in Forssén 2020c.[202] In Öberg 2001 the method used was a *customary law dogmatic method* (Sw., ”sedvanligt rättsdogmatisk”), and the motivation of the sparse treatment of the EU law as law source compared to *the Swedish law sources* (Sw., ”de svenska rättskällorna”) was that the EC's legislation was only deemed to give *the frames and must be filled out with national rules* ”ramarna och måste fyllas ut med nationella regler”.[203] For that standpoint it was referred in

[200] See Rendahl 2009, pp. 190 and 191.

[201] As a matter of form, it may be mentioned that professor Mutén, whom I am mentioning in the nearest previous section, professor Ben J.M. Terra and docent Oskar Henkow are all deceased. I have, as mentioned, had use of professor Mutén's work, and this is of course also the case at the work with Forssén 2011 and Forssén 2013 concerning inter alia A Guide to the European VAT Directives, by Ben J.M. Terra and Julie Kajus (IBFD Amsterdam), and Henkow 2008, regardless of the criticism I present concerning the VAT research in Sweden in this Part II and in Forssén 2020c, that is in Part I of this book.

[202] See Forssén 2020c, p. 738.

[203] See Öberg 2001, p. 19. See also Forssén 2020c, p. 738.

Öberg 2001 to Westberg 1997.[204] However, I state in Forssén 2020c that Westberg 1997 as well as Westberg 1994 instead should have inspired to more EU law in Öberg 2001.[205] I mention in Forssén 2020c that Öberg 2001 is the only thesis in Sweden besides my own that concerns the tax subject question, and that Öberg 2001 thereby concerns a question on how a delimitation shall be made between a bankrupt's and a bankrupt's estate's tax liability for different transactions.[206] That is mentioned in the ML as one of the special cases on tax liability in Ch. 6, which is regulated by sec. 3 therein. There is no corresponding rule in the VAT Directive. Like with the question on tax liability to VAT in *enkla bolag och partrederier*, which also is one of the special cases of tax liability in Ch. 6 of the ML, namely according to sec. 2 therein, should the EU law neither have been treated sparsely in Öberg 2001, but the lack of a corresponding expressly rule in the VAT Directive of the tax subject question in Ch. 6 sec. 3 of the ML should have inspired to consideration of more EU law.

The choice of a law dogmatic method in Öberg 2001 without any completing comparative analysis seems to have been based on a misdirected conception about the EU law's importance for the subject. The author has made a mental note of Westberg 1997 without testing what is stated therein. I could also have done so, if I had not, as I decsribe above, gone further with the comparison with the FML. In Öberg 2001 it is not stated that the law dogmatics is particularly suitable for jurisprudential studies of the subject VAT law, which would constitute what I in Forssén 2020c and in this article call a purely law dogmatic method. Instead a law dogmatic method has been used in Öberg 2001, which of course can be called customary. That does not in itself need to lead to a ”negative tendency” for the choice of method giving a research result that will be useful for the legislators and the appliers of law within the EU regarding the implementation question. A vast material for interpretation and systematization of current law according to the EU law in the field of VAT can give a ”positive tendency”, although the law dogmatics is not completed with a comparative analysis. However, it is in my opinion precisely that the EU law is treated sparsely, and that this is done with an unfounded motivation, that cause a ”negative tendency” to emerge concerning the usefulness of Öberg 2001 regarding the implementation question.

In Ek 2019 the law dogmatic method is used but with an awareness of that it is not to be signified as especially suitable for jurisprudential studies in the subject VAT law, why I do not denote the method in Ek 2019 as a purely law dogmatic method. I Forssén 2020c I have gathered the method in Ek 2019 as a customary law dogmatic method, by the method therein being described as *traditional* (Sw., ”traditionell”) only *in the meaning that a law dogmatic method or basis is not unusual in VAT law theses* (Sw., ”i den bemärkelsen att en rättsdogmatisk metod eller utgångspunkt inte är ovanlig i mervärdesskatterättsliga avhandlingar”).[207] In line of what I mention regarding Öberg 2001, I may also concerning Ek 2019 state that a vast material for interpretation and systematization of current law according to the EU law in the field of VAT can give a ”positive tendency” regarding the usefulness of the research result for the implementation question, although the law dogmatics is not completed with a comparative analysis. I denote the extent as little in Ek 2019 were sources like preparatory works to the ML, the tax authority's (Sw., *Skatteverkets*) writs and standpoints,

[204] See Öberg 2001, p. 19 with reference to Westberg 1997, p. 26. See also Forssén 2020c, p. 738.

[205] See Forssén 2020c, p. 738.

[206] See Forssén 2020c, p. 738.

[207] See Forssén 2020c, p. 745 with reference to Ek 2019, p. 33.

material from IFRS (International Financial Reporting Standards) and verdicts from the Member States are concerne. In Ek 2019 the awareness is in my opinion weak about not only verdicts from the Court of Justice of the EU, but also precedential verdicts from the Member States being of importance for the interpretation and application of the EU law in the field of VAT. In Ek 2019 it is namely only referred to five verdicts from the Supreme Administrative Court of Sweden (Sw., *Högsta förvaltningsdomstolen*).[208] Thus, that limited material in the thesis makes me state that a ”negative tendency” emerge concerning the usefulness of Ek 2019 regarding the implementation question.

In Senyk 2018 it is not stated that a law dogmatic method is especially suitable for jurisprudential studies in the subject VAT law, and a comparative method has only had the function of an inspiration.[209] Thus, I denote the applied law dogmatic method in Senyk 2018 as a customary law dogmatic method, like what is stated about applied method in Öberg 2001 and what I have gathered about applied method in Ek 2019. However, I consider that the approach in Öberg 2001 by treating the EU law sparsely makes Senyk 2018 more similar to Ek 2019 concerning the approach to carry out the study, where I regard the similarity between them with respect of the extent of material for interpretation and systematization of current law in the field of VAT.

In Ek 2019 it is stated that Senyk 2018 concerns the distribution of the right of taxation within the EU, and that the analysis is made on an overview level with the purpose of giving a total impression of that distribution.[210] Although Senyk 2018 brings up questions on the placement of supply where deliveries and intra-Union acquisitions are concerned, which is mentioned in Ek 2019,[211] it is so that it is in Ek 2019 that deliveries and intra-Union acquisitions in the VAT law, in accordance with the title of that work, are given a study *in* (Sw., ”i”) VAT law. I consider that Senyk 2018 is more of a study *about* (Sw., ”om”) the VAT law concerning which Member State that has the right of taxation of deliveries and intra-Union acquisitions. In my opinion Senyk 2018, unlike Ek 2019, does not concern the implementation question, but the VAT is more mentioned in a perspective of economics in Senyk 2018. Thereby, I have nothing against two theses with so similar subjects being submitted so closely in time that is the case. Senyk 2018 is in my opinion a test without value where the subject in question and the question of the expected usefulness of the research result for the legislators and the appliers of law within the EU are concerned, if the implementation question is regarded. In my opinion it is a thesis *in* the subject VAT law, and not a thesis *about* VAT, that should be made, when it is a matter to achieve a research result where a rule competition between the VAT Directive and the national VAT legislation in a Member State like Sweden can be identified and suggestions of a solution presented. Therefore, I consider that the choice of method in Senyk 2018 gives neither a ”positive tendency” nor a ”negative tendency” regarding whether the research result can be expected to become useful for the legislators and the appliers of law within the EU regarding the implementation question, if the VAT question in the thesis is regarded in a

[208] See also Forssén 2020c, pp. 746 and 747.

[209] See Senyk 2018, pp. 27 and 30, whereof follows that a *legal dogmatic method* is applied in the thesis and a *comparative legal study* only has served as an inspiration for the thesis, by what is mentioned there as a *micro-comparison*. Professor Ben J.M. Terra and docent Oskar Henkow were supervisors on Senyk 2018, and professor Cécile Brokelind took over after docent Oskar Henkow.

[210] See Ek 2019, pp. 22 and 23.

[211] See Ek 2019, p. 22.

perspective of economics. However, I mark a ”negative tendency” for Senyk 2018 in the present context due to it not being mentioned therein that the purpose was to make an economics study of VAT regarding deliveries and intra-Union acquisitions, and Senyk 2018, according to what I mention above, being similar to Ek 2019 when it is a matter of the law dogmatic method yet being stated as the approach to make the study in Senyk 2018.

2.5.3.2 The language issue in relation to my conception about the tendencies in the present theses for the research result regarding the implementation question

Öberg 2001 and Ek 2019 are written in Swedish, whereas Senyk 2018 is written in English. I may mention the following concerning the language issue regarding Senyk 2018.

Westberg 1994 is referred to in all three theses recently mentioned.[212] It is the only thesis in Swedish that is referred to in Senyk 2018. If Westberg 1994 would have been omitted in Senyk 2018, would Senyk 2018, as a thesis in Sweden on VAT, have showed a ”negative tendency” also in a perspective of economics on the question of distribution of the right of taxation in the Member States, since Westberg 1994, with its Nordic and EC-perspective, may be considered important for that question also in the perspective of economics. The extent in the list of references of international sourcs like the OECD,[213] in addition to the EU-sources, shows in my opinion that Senyk 2018 could have had an expressed perspective of economics on the distribution question, that is the thesis could thereby have been written as a thesis *about* VAT. In that perspective can in my opinion a thesis *about* VAT in Sweden written in English work rather well, since the importance of thereby using the own language at the interpretation of verdicts from the Court of Justice of the EU will not be as decisive for exactness as regarding a thesis in Sweden *in* the subject VAT.

However, a Swedish speaking researcher in Sweden should be cautious with leaving Swedish for English also when writing a thesis *about* VAT. That is my standpoint, although I write in the first place in English on a subject *about* tax where aspects based on sociology and economics can be invoked, namely fiscal sociology (the sociology of taxation).[214] I started this research project in 2015 at Örebro University (JPS), where I was an external resource of Research Team Tax Law from 2015 through 2017. The project concerned and still concerns, if I would be given opportunity to continue with it, the use of tax revenues, and I have as a preliminary study written the books The Entrepreneur and the Making of Tax Laws – A Swedish Experience of the EU law and Law and Language on The Making of Tax Laws and Words and context – with Legal Semiotics, which both were updated in November 2019 in the fourth editions.[215]

[212] See the lists of literature in those: Öberg 2001, p. 293; Senyk 2018, p. 379; and Ek 2019, p. 315.

[213] See Senyk 2018, pp. 359–362.

[214] See my *paper* of 2009 on the subject, The Entrepreneur and the Making of Tax Laws: An introduction of a new branch of Fiscal Sociology, which is available in full text on www.forssen.com.

[215] Both books are available in full text on www.forssen.com.

2.5.4 Main track 2 – Henkow 2008 and Lindgren Zucchini 2020

2.5.4.1 An overview of the review of my conception of the tendencies in the present theses for the research result regarding the implementation question

Concerning the application of a law dogmatic method for jurisprudential studies in VAT law, I compare Henkow 2008 and Lindgren Zucchini 2020 with Ek 2019, and denote the method used in Henkow 2008 and Lindgren Zucchini 2020 as a purely law dogmatic method compared to a customary law dogmatic method like what is used in Ek 2019. In pursuance of what I state above on differences between on the one hand Ek 2019 and on the other hand Öberg 2001 and Senyk 2018 lies Ek 2019 closer to Henkow 2008 and Lindgren Zucchini 2020 than what the other two theses do in a methodological respect. I note for the context that professor Ben J.M. Terra, who was supervisor at Papis-Almansa 2016 and Senyk 2018, was head supervisor at Henkow 2008, where professor Claes Norberg was assisting supervisor, and that professor Eleonor Kristoffersson was head supervisor at Lindgren Zucchini 2020.

Concerning the method question in Ek 2019, Henkow 2008 and Lindgren Zucchini 2020, I have stated that the awareness therein is weak about national precedential verdicts from the Member States, and not only verdicts from the Court of Justice of the EU, being of importance for the interpretation and application of the EU law. However, I state that Ek 2019 is different from Henkow 2008 and Lindgren Zucchini 2020 partly by not stating that a law dogmatic method would be especially suitable for the analysis of the VAT law, partly by referring to a brader material for interpretation and systematization of current law in the field of VAT. Thus, I have not denoted the law dogmatic method used in Ek 2019 as purely law dogmatic.[216]

In Forssén 2020c I concluded in section 5.2 that the risk of applying what I call a purely law dogmatic method, that is the risk of assuming at the choice of method in the VAT research that law dogmatics would be especially suitable like what is stated in Henkow 2008 or something that can be chosen uncritically like what is done in Lindgren Zucchini 2020,[217] is that the research in the end means that the VAT law no more is treated as a jurisprudential subject in Sweden.[218] I stated that the law dogmatic method should be developed, regardless whether it is combined with a comparative method or empirical investigations.[219] I have stated this also in Forssén 2021a, where I show that the choice of method in Lindgren Zucchini 2020 has led to delimitations that make a problemizing of the subject, composite supplies for VAT purposes, impossible, by the right of deduction not being mentioned. Thereby the author is delimiting

[216] See Forssén 2020c, p. 747.

[217] See Henkow 2008, p. 13 and Lindgren Zucchini 2020, section 2.2 with the headline *Legal dogmatics*. See also Forssén 2020c, p. 743 with these references, and where I state that it in Henkow 2008 (p. 13) is stated, to support of the application of "a traditional method of juris prudence", that VAT systems all over the world are similar, why a purely technical comparison would be especially suitable for VAT. This is not true. Instead, concerning a third country with a VAT- or GST-system it should be thoroughly examined if it corresponds with VAT according to the EU law, when such a country is mentioned in the VAT research in Sweden. See section 2.5.2.1, Forssén 2020c, pp. 739 and 740 and Forssén 2011, pp. 279–287 and Forssén 2021a, pp. 30 and 31 and Björn Forssén, *Tidningen Balans fördjupningsbilaga* 2/2021, pp. 22–28, 26 and 27, the article *Momsforskningen i Sverige – vart är den på väg? Del 1* (Eng., the VAT research in Sweden – where is it going? Part 1). (Forssén 2021b). Forssén 2021b is available in full text on www.tidningenbalans.se and on www.forssen.com.

[218] See Forssén 2020c, p. 750.

[219] See Forssén 2020c, p. 751.

away one of the criteria included in what constitutes the VAT principle according to article 1(2) of the VAT Directove, namely that an in principle general right of deduction shall be contained therein. Otherwise it is not a matter of an examination of what shall be understood with VAT acccording to the EU law, but of a gross tax (an excise duty), which thus should be regarded by somebody making a comparative analysis and thereby using third countries as material for comparison.[220]

I do not dismiss law dogmatics as a method for the research in VAT law, but state that if it is not completed with a comparative method, where at least one EU Member State is included in the material for comparison, it should be developed more to increase the probability that the research results will be useful for the implementation question. Thereby I refer in Forssén 2020c to one of my previous articles in JFT, where I concerning precisely composite supplies in the field of VAT state that a law dogmatic study in that respect should be completed with an analysis based on legal semiotics.[221] Furthermore, I have written a book where I describe how a tool (model) can be developed as support of a method applied at the analysis of composite supplies for VAT purposes in the research or for example in tax proceedings.[222]

2.5.4.2 The language issue in relation to my conception about the tendencies in the present theses for the research result regarding the implementation question

Henkow 2008 and Lindgren Zucchini 2020 are written in English, and I may mention the following concerning the language issue regarding those theses.

The review above of the EU-case C-216/97 (Gregg) shows that although if the language of the case was English it was necessary to also regard the own language Swedish and French. It was the language version in French of the verdict that was recommended by professor Ulf Bernitz and Leo Mulders to achieve exactness at interpretation of unclear EU-verdicts, which made it possible for me to conclude that the question of collection of VAT should be set before the question of the levying of VAT, where the upholding of the principle of a neutral VAT according to the EU law is concerned. This proves in my opinion there is a danger to over-emphasize the importance of English in a thesis on the subject of VAT, like what is the case in Henkow 2008 and Lindgren Zucchini 2020. Lindgren Zucchini 2020 is a thesis on VAT law carried out in the VAT research in Sweden, and it is in my opinion a considerable lack that it does not contain any writing ar all in Swedish. The sole VAT thesis in Swedish mentioned in the list of literature is Ek 2019 – not also for example the head supervisor's Alhager 2001.[223] Lindgren Zucchini 2020 is dominated by English, and neither French nor the own Swedish are used to interpret unclear EU-verdicts. Leo Mulders is warning for the risk of only using one

[220] See Forssén 2021a, p. 30 and also Forssén 2020c, pp. 720, 740, 744 and 745 and Forssén 2021b, pp. 26–28.

[221] See Forssén 2020c, p. 752 and the reference there to p. 320 in Forssén 2018a. See the same reference to Forssén 2018a in Forssén 2021a, p. 32. If a third country shall be included in a comparative analysis, I suggest that an EFTA country is chosen, inter alia since they are examples of third countries with VAT systems in the meaning of the EU law (see Forssén 2011, p. 283 and also above section 1).

[222] See Björn Forssén, *Vara och tjänst vid sammansatta transaktioner – tolkning och tillämpning enligt mervärdesskattelagen och EU:s mervärdesskattedirektiv* (Eng., Goods and services at composite supplies – interpretation and application according to the VAT Act and the EU's VAT Directive). Self-published 2020 (Forssén 2020d). In Forssén 2020d I create in Chapter 3 a tool for the case studies of composite supplies that I make in Chapter 4. Forssén 2020d is (since 23 August, 2020) available in full text on www.forssen.com.

[223] See Lindgren Zucchini 2020, pp. 269–277.

language at ”close reading” of EU-verdicts,[224] which I also mean to have proven by my linguistic analysis of the ”Gregg”-case. The researcher shall independently interpret EU-verdicts etcetera, why it in itself does not benefit the quality of the analysis in Lindgren Zucchini 2020 that the author has got help to enhance the language in the thesis.[225]

However, what is all the more important is that the application of what I call a purely law dogmatic method, like what is the case with Henkow 2008 and Lindgren Zucchini 2020, risks entailing that the research in the end means that the VAT law no more is treated as a jurisprudential subject in Sweden. That cannot be compensated by the theses being written in English. A development where English without any founded reason is set before Swedish within the VAT research in Sweden should be counteracted by the universities (Sw., universitet and högskolor).[226]

2.6 Conclusions

The review in sections 2.5.1–2.5.4.2 of the choice between Swedish and English for the writing of the theses mentioned 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.

In the tables below, I account for the two methodological main tracks according to Forssén 2020c and this article regarding the theses mentioned, and if a ”positive tendency” or a ”negative tendency” can be deemed to exist for the expected research result reagrding the implementation question and whether the thesis is written in Swedish or English.

[224] See Mulders 2010, p. 58. See also Forssén 2021a, p. 33.

[225] See *Acknowledgements*, where the author direct a special thanks to a Louise Ratford “for her work in enhancing the language of this thesis”, that is a thanks for the help to enhance English in Lindgren Zucchini 2020.

[226] By the way, I note that in the list of literature in Lindgren Zucchini 2020 it is like in Papis-Almansa 2016 referred to Henkow 2008 and Rendahl 2009 (see section 2.5.2.2), and to Papis-Almansa 2016, whereas Senyk 2018 – which is also a VAT thesis in Sweden written in English – is omitted, like what is the case in Lindgren Zucchini 2020 concerning other VAT theses in Sweden written in Swedish than Ek 2019. That Ek 2019, as law source, is set before Senyk 2018 in Lindgren Zucchini 2020 is precarious especially since the subject is similar in those theses and the approach is broader in Senyk 2018 than in Ek 2019 (see section 2.5.3.1).

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 (see section 2.5.3.1).]

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

In *Main track 1* all theses written in Swedish show a ”positive tendency”, and the method in thise cases is comparative or law dogmatic completed with a comparative method. Rendahl 2009 is written in English and the method is comparative. What is giving a ”negative tendency” is that the thesis shows a ”negative tendency” due to it lacking an internal perspective on the EU law in the field of VAT regarding the comparative analysis,[227] 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. However, I consider that that thesis also shows 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, which I base 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.[228] Marta Papis-Almansa does not have Swedish as native

[227] See section 2.5.2.1.

[228] See section 2.5.2.1.

language, but it should not have limited the references in Papis-Almansa 2016 to solely the theses in Sweden written in English at the time, that is Henkow 2008 and Rendahl 2009.[229] Any similar approach that I describe as clarifying at the interpretation of unclear EU-verdicts, by using more than one official language within the EU,[230] is neither used in Rendahl 2009 or Papis-Almansa 2016, but the openness to other languages than English I denote as weak in those theses.[231] Thus, my judgment of the language issue in connection with the theses of Main track 1 is that English 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 due to lacks at the choice of method.

In *Main track 2* it is also rather 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 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.[232] Although Senyk 2018 brings up questions on the placement of supply where deliveries and intra-Union acquisitions are concerned, it is 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.[233]

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, I show 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, why I consider that a development where English is set before Swedish within the VAT research in Sweden should be counteracted by

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[229] See section 2.5.2.2.

[230] See sections 2.5.1.2 and 2.5.4.2.

[231] See section 2.5.2.2.

[232] See section 2.5.3.1.

[233] See sections 2.5.3.1 and 2.5.3.2.

the universities (Sw., universitet and högskolor). This above all at a continuous acceptance of law dogmatics as something that is supposed to be especially suitable for jurisprudential studies in the subject VAT law, that is if what I denote a purely law dogmatic method would become something recurrent within the research in VAT law in Sweden.

3 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 and the Language Act of Sweden in 2009

I finish by commenting below 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* (Eng., the Act concerning Sweden's accession to the European Union in 1995) and according to *språklagen (2009:600)* – Eng., 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” – Eng., 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* (Sw., ”det svenska språket får i EU en starkare ställning än i någon annan utomnordisk organisation. Det blir ett av unionens officiella språk, vilket inte bara betyder att alla rättsakter och officiella dokument måste finnas i en svensk version, utan också att skriftväxling och muntliga kommunikationer i officiella sammanhang får ske på svenska”). 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* (Sw., ”angeläget att det svenska språket aktivt utnyttjas i umgänget med EU:s institutioner så att rätten att använda det egna språket hålls levande”).[234] In Forssén 2011 I also mention that it in sec. 4 of the Language Act, which came into force on 1 July, 2009, is stated that Swedish is the main language in Sweden, where I also noted that it by sec. 13 second paragraph of the Language Act follows that Swedish shall be defended as an official language within the EU.[235]

Thus, it is in my opinion not in compliance with the work on the EU-project to reduce Swedish in the VAT research in Sweden, by continuing to hold English before Swedish like what I consider is the case with reference to my revies of the language issue in that research. By sec. 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 sec. 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).

[234] See prop. 1994/95:19 Part 1, pp. 233 and 234.

[235] See Forssén 2011, p. 69.

I argue in this article for the Nordic to be emphasized in the VAT research in Sweden, and that it does not apply only to Scandinavian languages, but also to Finnish. This is supported not only by my review above of the language issue, but also of the Language Act stating in sec. 8 that *the State and local authorities have a special responsibility to defend and promote the national minority langages* (Sw., ”det allmänna har ett särskilt ansvar för att skydda och främja de nationella minoritetsspråken”). Finnish is not only one of the EU’s official languages, but Finnish has moreover according to sec. 7 of the Language Act a position as minority language in Sweden, together with the languages Yiddish, Meänkieli, Romani Chib and Lappish, which although are not official languages within the EU.

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INDEX