Indirect taxes – a Swedish experience of the research on the EU law

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PREFACE

Indirect taxes – a Swedish experience of the research on the EU law is a book on the research in Sweden regarding the indirect taxes, that is value-added tax (VAT), excise duties and customs. Therein, I give my detailed review of that research in Sweden during the period of 1994 – 2020, followed by a summary and some final remarks. Thereby, I have by this book put together two of my e-books: *Indirect taxes – the research in Sweden and the EU law* and *Indirect taxes – an introduction to the research in Sweden and the EU law*.

Thus, this book contains my translation into English of my book *Indirekta skatter – forskningen i Sverige och EU-rätten*, which is corresponding with three articles of mine published during the years of 2020, 2021 and 2022 in *Tidskrift utgiven av Juridiska Föreningen i Finland* – Eng., The journal published by the Law Society of Finland (JFT):

- *Momsforskningen i Sverige – metodfrågor* (Eng., The VAT research in Sweden – method questions);
- *Momsforskningen i Sverige – svenska språkets ställning* (Eng., The VAT research in Sweden – the position of the Swedish language); and
- *Punktskatteforskningen i Sverige – skattesubjektsfrågan* (Eng., The research on excise duties in Sweden – the tax subject question).

The parts I and II of this book are corresponding with the first two articles on the VAT research and Part III is corresponding with my third article on the research on excise duties. In the first two articles in the JFT on the research in Sweden about indirect taxes, I made an overview of the method questions and of the position of the Swedish language in the research regarding VAT. In the third article in the JFT, I also bring up the research on excise duties. A main thread is that I regarding the research on VAT and excise duties consider that the tax subject question has not been sufficiently treated in most of the Swedish theses in those two fields. Therefore, I am, regarding the VAT as well as the excise duties, emphasizing the importance of the research in the field of indirect taxes comprising not only questions on the tax object, but also questions on the tax subject. It is basic both for VAT and excise duties that the legislation shall distinguish the entrepreneurs from the consumers.

In the endings of the first and the third of my articles in the JFT, I mention some customs questions in Sweden. Concerning customs are both entrepreneurs and consumers tax subjects, unlike with VAT and excise duty, where the main aim is to distinguish the tax subjects from the consumers, whereby the tax subjects in principle are natural or legal persons with activities constituting what is normally denoted enterprises. Thus, I consider that the focus regarding the research within the customs law can be set on the tax object, whereby I mention that the research within the field of indirect taxes should be aiming at simplifications like preparing the introduction of a common concept on goods for the whole field.

This book is ended with an overview of its three parts and with some more comments regarding and besides what is mentioned in the parts I, II and III and in the end of it is, as above-mentioned, also to be found a summary and some final remarks. I also give a couple of follow-ups to what has happened after my work with the articles in the JFT and some additional info about a thesis that I deem an anomaly in the field of research in question. Furthermore, I express under ANNEX my translation into English of another article of mine,

which was published in the JFT in 2022, where I argue for the work to introduce the free trade agreement between the USA and the EU, the so-called TTIP, to be resumed, since I consider it would be of importance for the customs questions of the EU-project.

The summary of this book – including the final remarks – is a compilation of four articles of mine published in the authorized public accountants' periodical, *Tidningen Balans fördjupning* (The Periodical Balans Annex with advanced articles), during the period of 2021 – 2023, where I have made shorter reviews of the questions I have brought up in my detailed articles in the JFT regarding the research in Sweden during the years of 1994 – 2020 within the field of indirect taxes. Thus, the summary shall in the first place be seen as an introduction to the above-mentioned articles in the JFT, thereby corresponding with *Indirect taxes – an introduction to the research in Sweden and the EU law*. The four articles were originally published in Swedish with the following titles:

- *Momsforskningen i Sverige – vart är den på väg? Del 1* (The VAT research in Sweden – where is it going? Part 1), *Balans fördjupningsbilaga* (The Periodical Balans Annex with advanced articles) 2/2021 pp. 22-28;
- *Momsforskningen i Sverige – vart är den på väg? Del 2* (The VAT research in Sweden – where is it going? Part 2), *Balans fördjupningsbilaga* (The Periodical Balans Annex with advanced articles) 2/2021 pp. 29-36;
- *Momsforskningen i Sverige – vart är den på väg? Del 3* (The VAT research in Sweden – where is it going? Part 3), *Balans fördjupning* (The Periodical Balans Annex with advanced articles) 2/2022 pp. 1-8; and
- *Indirekta skatter och forskningen i Sverige – vart borde den vara på väg? Del 4* (Indirect taxes and the research in Sweden – where should it be going? Part 4), *Balans fördjupning* (The Periodical Balans Annex with advanced articles) 2023 pp. 1-8.

In *Balans fördjupning* parts 1 and 2 constitute the introduction to my first article in the series in the JFT. Part 3 constitutes the introduction to my second article in the series in the JFT and Part 4 ties together the whole series of my three articles in the JFT. Thus, with this book and its summary with some final remarks, I cover in the first place the research situation in Sweden during the period of 1994 – 2020 regarding the whole of the field of indirect taxes.

This book is intended for students and researchers within the field of indirect taxes, and above all I aim for it to function as a guidance to avoid pitfalls in studies or research within the field. It should also be of interest for the participants in proceedings where VAT, excise duties or customs are concerned.

Stockholm in February 2024
Björn Forssén

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ABBREVIATIONS

AFTA, ASEAN Free Trade Area.
AI, Artificial Intelligence
APEC, Asia-Pacific Economic Cooperation
approx., approximately
APT, ASEAN Plus Three
ASEAN – Association of Southeast Asian Nations
BFL, *bokföringslagen (1999:1078)* – the Swedih Book-keeping Act
bl.a., *bland annat* (inter alia)
BRICS, Brazil, Russia (Russian Federation), India, China (People's Republic of China) and South Africa.
C, curia (about the CJEU)
Ch., Chapter
Cit., citation
CJEU, the Court of Justice of the EU
CPTPP, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership
EC, European Community (Sw., EG)
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 (Sw., EES)
EEC, European Economical Communities (Sw., EEG)
EEG, *Europeiska ekonomiska gemenskaperna*
EES, *Europeiska ekonomiska samarbetsområdet*
EFTA, European Free Trade Association (Sw., *Europeiska frihandelssammanslutningen*)
e.g., exempli gratia, for example
EG, *Europeiska gemenskaperna*
Eng., English
et al., et alii, and others
etc., etcetera
EU, the European Union or the Union (Sw., *Europeiska unionen eller unionen*)
FML, *mervärdesskattelagen (1501/1993)* – the Finnish VAT Act
FPL, *punktskattelagen (182/2010)* – the Finnish Excise Duty Act
FS, fiscal sociology
Functional Treaty or TFEU (the Treaty on the Functioning of the European Union)
GST, Goods and Services Tax
GTuL, *tullagen (2000:1281)*, the former Swedish Customs Act
i.e., id est, that is
IL, *inkomstskattelagen (1999:1229)*, the Swedish Income Tax Act
JFT, *Tidskrift utgiven av Juridiska Föreningen i Finland* – The journal published by the Law Society of Finland
JPS, School of Law, Psychology and Social work at Örebro University
KL, *kommunalskattelagen (1928:370)*, the former Swedish Municipal Income Tax Act
KN, the combined nomenclature (Sw., *kombinerade nomenklaturen*) for customs purposes
Kungl. Maj:ts, *Kunglig majestäts* – former term for the Swedish Government
LSE, *lagen (1994:1776) om skatt på energi*, the Swedish Energy Tax Act
ML, *mervärdesskattelagen (1994:200)*, the Swedish VAT Act
m.m., *med mera* (etcetera)

Moms, *mervärdesskatt* (VAT)
no., number
nr, *nummer* (number)
OECD, Organisation for Economic Co-operation and Development (Sw., *Organisationen för ekonomiskt samarbete och utveckling*; French, *Organisation de coopération et de développement économiques*, OCDE)
p./pp., page/pages
PhD, Doctor of Philosophy
Prop., *Regeringens proposition* – the Government's bill
RF, *regeringsformen (1974:152)*, the 1974 Instrument of Government
RSL, *lagen (1972:266) om skatt på annonser och reklam*, the former Swedish Advertising Tax Act
sec., section
SEK, Swedish kronor
SFL, *skatteförfarandelagen (2011:1244)*, the Swedish Taxation Procedure Act
SFS, *svensk författningssamling*, Swedish Code of Statutes
SOU, *statens offentliga utredningar*, the Swedish Government's official reports
SVT, *Sveriges television* (Eng., Swedish television)
Sw., Swedish
t.ex., *till exempel* (e.g.)
TEU, the Treaty of European Union
TFEU, the Treaty on the Functioning of the European Union
TTIP or T-TIP, The Transatlantic Trade and Investment Partnership
TuL, *tullagen (2016:253)*, the Swedish Customs Act
UK, the United Kingdom (Sw., *Förenade kungariket*)
UN, the United Nations (Sw., *Förenta Nationerna, FN*)
USA, the United States of America (Sw., *Amerikas förenta stater*)
USMCA, the United States-Mexico-Canada Agreement.
VAT, value-added tax (Sw., *mervärdesskatt*)
VAT Directive, Council directive 2006/112/EC of 28 November 2006 on the common system of value added tax
WTO, the World Trade Organization
www, world wide web

INDIRECT TAXES – A SWEDISH EXPERIENCE OF THE RESEARCH ON THE EU LAW

PART I

[This part is my translation into English of my article *Momsforskningen i Sverige – metodfrågor*, published in original in Swedish in Tidskrift utgiven av Juridiska Föreningen i Finland – Eng., The journal published by the Law Society of Finland (abbreviated JFT), JFT 6/2020 pp. 716–757. (Forssén 2020a).]

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 1974 Instrument of Government, namely by Ch. 10 sec. 6 first paragraph first sentence of *regeringsformen (1974:152*, here abbreviated RF).[2]

In this part 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.

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[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 Åttonde upplagan* (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.

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 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]

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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).

[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* [Tax and payment liability to VAT in (approximately) joint ventures and shipping partnerships], Örebro Studies in Law 4/2013 (doktor’s thesis), p. 43 (Forssén 2013).

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

Thus, in this part 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 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 generak 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

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[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.

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 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

[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 (Stensgaard 2004). See also Forssén 2011, p. 273.

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 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 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] EU-ländernas territorier utgör i princip EU:s skatteområde beträffande moms (mervärdesskatteområde), genom hänvisning i artiklarna 5.1 och 5.2 i mervärdesskattedirektivet till de båda nyss nämnda artiklarna i Fördraget om EU och funktionsfördraget.[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 Swedish state.[17] The EU’s VAT system can in that way be considered

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[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.

[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.

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 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 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.

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[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.

4 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*.

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

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[19] See Forssén 2013, Chapter 2.

[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.

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]

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.

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[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, 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 2011, p. 58 (Habermas 2011); 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.

Thus, an EU conform interpretation cannot constitute 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 effifiency 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 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 on the EU level the importance of the Member States exercising effective

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[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.

[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. Overview of the collection of VAT), 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.

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 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 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.

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[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/EG, which is mentioned in recital 8 of the preamble to the VAT Directive [previously recital 2 of the preamble to the 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*.

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

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

4.1 Circumstances to which the question of 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]

[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). See also Forssén 2011, section 1.1.1 and Forssén 2013, section 3.2.

<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.

[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 are so far the following:[45]

- 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).[46]

- 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).[47]

- Pernilla Rendahl, Cross-Border Consumption Taxation of Digital Supplies, IBFD 2009. (Rendahl 2009).[48]

- 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* [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).

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[45] However, see Part II, section 2.1 about one more thesis, namely Senyk 2018.

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

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

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

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

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

In this part 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 in Forssén 2013 is using foreign law, but without claiming that I use a comparative method.[50] That is wrong: 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 compararive 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 the 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.

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

[50] See Katia Cejie, Comparative Method(s) and Tax Law Research, *Svensk Skattetidning* (Swedish Tax Journal) 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, p. 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.

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.

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 the 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,

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[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 EU 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 2020b).

[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.

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 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

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[59] See Westberg 1994, p. 27.

[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.

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]

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

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[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 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.

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 used and 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 weighted in 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-weighted 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

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[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.

[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.

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.

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.

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[75] See Sonnerby 2010, p. 25.

[76] See Sonnerby 2010, p. 30.

[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.

In Alhager 2001 a comparison is made between Swedish 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 that respect, I referred to 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*

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

[80] See Forssén 2011, p. 282.

[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* (Tax news) 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.

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 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 mentioning 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 2009 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

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[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*.

[88] See Alhager 2001, p. 26.

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 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

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[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*.

[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.

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.

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]

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[94] See Ek 2019, p. 33.

[95] See Ek 2019, p. 33.

[96] See Ek 2019, p. 33.

[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.

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 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

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[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 left the EU on 31 January, 2020.

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

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.

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.

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 weighted 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.

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

Main track 2, the alternative 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 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

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[106] See Björn Forssén, *Matematikfällan i forskningen – avseende mervärdesskatterätten* (The Trap of Mathematics in the Research – regarding the VAT law), *Tidningen Balans fördjupningsbilaga* (The Periodical Balans Annex with advanced articles) 2/2020, pp. 17–27 (Forssén 2020c).

[107] See Björn Forssén, *Juridisk semiotik och tecken på skattebrott i den artistiska miljön* (On signs of tax crime in an artistic environment), JFT 5/2018, pp. 307–328 (Forssén 2018a). See also Björn Forssén, *Kulturproduktion i enkla bolag och tillämpliga momssatser samt momssituationen för bolag som producerar artistframträdanden* [Cultural production in *enkla bolag* (joint ventures) and applicable VAT rates and the VAT situation for companies producing artistic performances], *Svensk Skattetidning* (Swedish Tax Journal) 2018, pp. 646–658 (Forssén 2018b).

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 *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

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[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) and Björn Forssén, 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 2020b, pp. 392 and 393.

[111] See Forssén 2018a, p. 320.

[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.

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 itself, 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 the EU level as a problem for the VAT collection.

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 and the European law in the broader perspective that also includes the European Convention.[117]

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[114] See Forssén 2020c.

[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.

[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* (The Periodical Balans Annex with advanced articles) 4/2017, pp. 15–19 (Forssén 2017). See also excerpt of section 10.4 in my book *Skatteförfarandepraktikan* (2019) – available on www.forssen.com.

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 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]

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[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 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.

[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).

- 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]

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

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[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.

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

followed by recitals 16 and 22 of the preamble that the tax liable still shall be *näringsidkare* (eng, traders). Thereby could 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, which – according to what follows by Part III – still is the case (concerning energy tax), although the concept trader is not used in the nowadays current Excise Duty Directive (EU) 2020/262.

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. See 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 that 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 my translation into English of my article *Momsforskningen i Sverige – svenska språkets ställning*, published in original in Swedish in the JFT, JFT 6/2021 pp. 412–447. (Forssén 2021a).[134]]

[134] I also make a shorter summary of my conclusions from Forssén 2021a in the article *Momsforskningen i Sverige – vart är den på väg? Del 3* (The VAT research in Sweden – where is it going? Part 3), *Tidningen Balans Fördjupning* (The Periodical Balans Annex with advanced articles) 2/2022, pp. 1-8 (Forssén 2022a).

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

1 Introduction

In Forssén 2020a, which thus is corresponded by Part I in this book, I thus wrote about the VAT research in Sweden regarding the method questions. In Forssén 2021a, which thus is correspinded by this part of the present book, I followed 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 EU also are repressed by English in the research. Here I call these aspects the language issue in 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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[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 2020a 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

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[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 in Björn Forssén. *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 2020a, pp. 732 and 733, where I list those eleven theses.

are doctoral theses and one is a licentiate's 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 2020a, 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 2020a 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 an 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 2020a does not change anything concerning the divison of applied methods into the two main tracks, and I assign that thesis to Main track.

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[143] See Forssén 2020a, pp. 739–747.

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

[145] See Forssén 2020a, 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 2020a (on p. 736). Therefore, I do not treat Westberg 1994 separately in this part, 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.

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[147] In Forssén 2020a 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 part 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 2021-08-27 with Assistant Professor Marta Papis-Almansa.

[149] In Forssén 2020a 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 part, and instead I assign it to Main track 2 in connection to the judgment of the language issue.

- 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.

- 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 2020a 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 part, 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.

[150] See Forssén 2020a, p. 716.

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 2020a 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 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.

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[151] See Forssén 2020a, p. 735.

[152] See Forssén 2020a, p. 735 with reference to Forssén 2011 pp. 71, 72, 279–297 (*Bilaga 2 – Internationell utblick*) and, regarding my foreign country inquiry for the main issue, 349.

[153] See Forssén 2011, p. 72.

[154] See Forssén 2013, p. 49.

[155] See Forssén 2019b, p. 63.

In Forssén 2020a 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.

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 2020b 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 2020a,[158] and do here as well.

In Forssén 2020b 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

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[156] See Forssén 2020b, pp. 388–399.

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

[158] See Forssén 2020a, p. 736.

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

proposal in SOU 2020:31.[160] Concerning the new Ch. 4 sec. 16 suggested in SOU 2020:31, I furthermore state in Forssén 2020b 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.

Concerning Westberg 1994, I mentioned in Forssén 2020a 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 2020a.[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 2020a , 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

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[160] See Forssén 2020b, p. 392.

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

[162] See Forssén 2020a, p. 737 with a reference to p. 17 in Westberg 1997.

[163] See Forssén 2020a, p. 738.

[164] See Westberg 1997, p. 35.

[165] See Forssén 2020a, 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

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 2020a, I state that that perspective increases the probability for the research result becoming useful for the legislator 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

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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 2020a.

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

[170] See Alhager 2001, p. 411.

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 2020a 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 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. 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 weighted, so that comparisons are made with third countries that have VAT or GST corresponding to the basic principles

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[171] See Alhager 2001, p. 26.

[172] See Forssén 2020a, p. 740.

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

[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).

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 without 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 Rendahl 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 2020a 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), 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 followed 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

[175] See Forssén 2011, p. 279.

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

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 2020a, I state that I used Leo Mulder's 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

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[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 Bernitz 2010, pp. 59–89, 78 and 84, and to Leo Mulders, Translation at the Court of Justice of the European Communities, in the work Sacha Prechal – Bert van Roermund, The Coherence of EU Law. Oxford University Press 2008, reprint 2010 (Mulders 2010), pp. 45-59, 47 and 58.

[180] See Björn Forssén, *Momsforskningen i Sverige – vart är den på väg? Del 2* (The VAT research in Sweden – where is it going? Part 2), *Tidningen Balans fördjupningsbilaga* (The Periodical Balans Annex with advanced articles) 2/2021, pp. 29–36, 32 and 33. (Forssén 2021b). See also 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.

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.

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

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[182] See Forssén 2020a, pp. 729 and 730 and Forssén 2011, pp. 69, 92 and 93, Forssén 2021b, pp. 32 and 33 and Forssén 2013, p. 72. TVA, taxe sur la valeur ajoutée, abbreviation in Fr. of value-added tax. See also Forssén 2022a, p. 7, where I refer to Forssén 2021b (pp. 32 and 33) regarding that I in Forssén 2011 (p. 93) mentioned, with the case Gregg as an exampel, that the French should be regarded for precision at interpretation of EU-verdicts.

[183] See Forssén 2011, p. 357.

[184] See van Doesum 2009, p. 243.

[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”.

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 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

[186] See Forssén 2011, p. 289.

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]

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 2020a, 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

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

[188] See Forssén 2021b, p. 36.

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

[190] See Forssén 2021b, 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 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.

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]

In Forssén 2020a, 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 am 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.

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

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[192] See Forssén 2020a, p. 726.

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

[194] See Forssén 2020a, p. 739.

[195] See Rendahl 2009, p. 3.

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

that respect, I referred 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 2020a.[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 external 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 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.

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[197] See Mutén 2006, p. 494. See – as mentioned in Part I – my references to Mutén 2006 in Forssén 2011, pp. 271 and 282 too.

[198] See Forssén 2020a, 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* (Swedish Tax Journal) and he proof-read these.

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

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 2020a.[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 Öberg 2001 to Westberg 1997.[204] However, I state in Forssén 2020a that Westberg 1997 as well as Westberg 1994 instead should have inspired to more EU law in Öberg 2001.[205] I

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[201] As a matter of form, it may be mentioned that Professor Leif 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 Terra and Kajus 2010 and Terra and Kajus 2012, and Henkow 2008 regardless of the criticism I present concerning the VAT research in Sweden in this part and in Forssén 2020a, that is in Part I of this book

[202] See Forssén 2020a, p. 738.

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

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

[205] See Forssén 2020a, p. 738.

mention in Forssén 2020a 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 2020a and in this part 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. In Forssén 2020a 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, material from IFRS (International Financial Reporting Standards) and verdicts from the

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[206] See Forssén 2020a, p. 738.

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

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, in opposition to 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

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[208] See also Forssén 2020a, 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.

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 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, FS (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 (Forssén 2019c and Forssén 2019d).

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[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* on the subject, The Entrepreneur and the Making of Tax Laws: An introduction of a new branch of Fiscal Sociology.

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.[215]

In Forssén 2020a 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,[216] is that the research in the end means that the VAT law no more is treated as a jurisprudential subject in Sweden.[217] I stated that the law dogmatic method should be developed, regardless whether it is combined with a comparative method or empirical investigations.[218] I have stated this also in

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[215] See Forssén 2020a, p. 747.

[216] See Henkow 2008, p. 13 and Lindgren Zucchini 2020, section 2.2 with the headline *Legal dogmatics*. See also Forssén 2020a, 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 2020a, pp. 739 and 740 and Forssén 2011, pp. 279–287 and Forssén 2021b, pp. 30 and 31 and Björn Forssén, *Momsforskningen i Sverige – vart är den på väg? Del 1* (The VAT research in Sweden – where is it going? Part 1), *Tidningen Balans fördjupningsbilaga* (The Periodical Balans Annex with advanced articles) 2/2021, pp. 22–28, 26 and 27 (Forssén 2021c).

[217] See Forssén 2020a, p. 750.

[218] See Forssén 2020a, p. 751.

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 away one of the criteria included in what constitutes the VAT principle according to article 1(2) of the VAT Directive, 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 (like an excise duty), which thus should be regarded by somebody making a comparative analysis and thereby using third countries as material for comparison.[219]

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 2020a 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.[220] 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.[221]

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

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[219] See Forssén 2021b, p. 30 and also Forssén 2020a, pp. 720, 740, 744 and 745 and Forssén 2021c, pp. 26–28. See also Forssén 2022a, p. 8.

[220] See Forssén 2020a, p. 752 and the reference there to p. 320 in Forssén 2018a. See the same reference to Forssén 2018a in Forssén 2021b, 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).

[221] See Björn Forssén, *Vara och tjänst vid sammansatta transaktioner – tolkning och tillämpning enligt mervärdesskattelagen och EU:s mervärdesskattedirektiv* (Goods and services at composite supplies – interpretation and application according to the VAT Act and the EU's VAT Directive). 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.

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.[222] 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 language at ”close reading” of EU-verdicts,[223] 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.[224]

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).[225]

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 2020a and this article regarding the theses mentioned, and if a ”positive tendency” or a

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

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

[224] 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.

[225] 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).

”negative tendency” can be deemed to exist for the expected research result regarding the implementation question and whether the thesis is written in Swedish or English.

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 2020a.]

In *Main track 1* all theses written in Swedish show a ”positive tendency”, and the method in those cases is comparative or law dogmatic completed with a comparative method. Rendahl 2009 is written in English and the method is comparative. 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,[226] 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

[226] See section 2.5.2.1.

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.[227] Marta Papis-Almansa does not have Swedish as native 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.[228] 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,[229] 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.[230] 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 question 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 to lacks at the choice of method. Concerning the customary law dogmatic theses are Öberg 2001 and Ek 2019 written in Swedish, whereas Senyk 2018 is written in English. I have marked ”negative tendency” for the usefulness of the research result of those, but Öberg 2001 in Swedish and Senyk 2018 in English cancel each other out regarding the language issue. The choice of a law dogmatic method without any completing comparative analysis in Öberg 2001 seems to be based on a misdirected conception therein of the EU law's importance for the subject, and the implementation question is not mentioned in Senyk 2018, but the VAT is mentioned more in a perspective of economics therein.[231] 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.[232]

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[227] See section 2.5.2.1.

[228] See section 2.5.2.2.

[229] See sections 2.5.1.2 and 2.5.4.2.

[230] See section 2.5.2.2.

[231] See section 2.5.3.1.

[232] See sections 2.5.3.1 and 2.5.3.2.

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 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 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”).[233] 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.[234]

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

[234] See Forssén 2011, p. 69.

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 reviews 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).

I argue in this part 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 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.

PART III

[This part is my translation into English of my article *Punktskatteforskningen i Sverige – skattesubjektsfrågan*, published in original in Swedish in the JFT, JFT 3/2022 pp. 242–276. (Forssén 2022b).]

The research on excise duties in Sweden – the tax subject question

1 Introduction

In two articles from 2020 and 2021 I have written in the JFT about the value-added tax (VAT) research in Sweden partly concerning the method questions for that research,[235] partly concerning the question on the Swedish language position in theses regarding VAT.[236] In this article I bring up that some of the rules on excice duties in Sweden are not complying (conform) with the EU law regarding the determination of the tax subject. At the review of that problem I mention my viewpoints regarding the treatment in the theses in Sweden in the field of VAT concerning the question of the determination of the tax subject. At this review by comparison of the tax subject question in the fields of excise duties and VAT I also mention to some extent Finnish law, to give a comparative analysis of the Swedish rules with the Finnish rules on the theme EU conformity. Thereby, I also aim at showing the importance of regarding in the research as well in practice how a discrepancy between a national set of rules on excise duties and the EU law can cause non-EU conform consequences for the VAT. Finally, I leave comments on the choice of method in the excise duty research and about that the right of deduction for input tax can be affected by an unclear determination of the tax subject for VAT purposes and a gap in the legislation on customs and suggestions on future research in the field of indirect taxes, which in the first place consists of VAT, excise duties and customs.

2 EU-demand for harmonisation of the rules on indirect taxes and approximation of the rules on direct taxes

By the EU's primary law follows that a demand of harmonisation of the Member States' legislations apply for the indirect taxes. Thus, it follows by article 113 of the Treaty on the Functioning of the European Union (the Functional Treaty) that the Member States' legislations on "turnover taxes, excise duties and other forms of indirect taxation" (Sw., "omsättningsskatter, punktskatter och andra indirekta skatter eller avgifter") shall be harmonised (the harmonisation demand). This to secure the internal market and avoiding competition distortion due to differences between the Member States with their national legislations in the field of indirect taxes. In article 288 of the Functional Treaty it is stated what applies concerning various secondary legislation. For this article I note what is stated regarding regulations and directives, namely the following. The EU's regulations are directly applicable in the Member States according to article 288 second paragraph of the Functional Treaty. This means that secondary legislation are not necessary to implement in the Member States' national legislations to become applicale. However, the EU's directives shall be implemented – carried through – into the Member States' national legislations. That follows by article 288 third paragraph of the Functional Treaty stipulating that a directive shall be binding upon each Member State within the EU as to the result to be achieved with the directive.

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[235] See Forssén 2020a.

[236] See Forssén 2021a.

Regarding direct tax, like income tas, there is no harmonisation demand for the Member States' national legislations. Where hamonisation of the direct taxation (direct tax) for example income tax, follows by article 115 of the Functiona Treaty that harmonisation shall be done by approximation of the Member States' national legislations to each other. The wording of article 115 of the Functional Treaty is the following:

> "Without prejudice to Article 114, the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market." (Sw., "Utan att det påverkar tillämpningen av artikel 114 ska rådet enhälligt i enlighet med ett särskilt lagstiftningsförfarande och efter att ha hört Europaparlamentet och Ekonomiska och sociala kommittén utfärda direktiv om tillnärmning av sådana lagar och andra författningar i medlemsstaterna som direkt inverkar på den inre marknadens upprättande eller funktion.")

Thus, regarding the rules on income tax there is no general demand on harmonisation like in article 113 of the Functional Treaty for the indirect taxes, but according to article 115 of the Functional Treaty are the EU's institutions, concerning te Member States' national rules on income tax, directed to use directives for the harmonisation of the legislations. The EU's Council has issued only a few directives regarding income tax, for instance the Merger Directive (2009/133/EC) and the Parent Companies and Subsidiaries Directive (2011/96/EU).[237] However, the EU-directives in the field of income tax do not regard the determination of the tax subject. Since I am treating the tax subject question in this part, I therefore use the expression *the non-harmonised income tax law* (Sw., den icke-harmoniserade inkomstskatterätten) when I am mentioning income tax rules in that respect.[238]

The most important EU legislations on the indirect taxes are

- concerning VAT, the EU's VAT Directive;
- concerning excise duties, Council directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty, which I call the Excise Duty Directive (EU) 2020/262; and
- concerning customs, Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, usually called the Union Customs Code.

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[237] The complete titles of the two directives are: Council directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States; and Council directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

[238] See also Forssén 2011, sections 1.2.2.1 and 1.2.2.2.

Concerning the excise duties in relation to the EU law and the Excise Duty Directive (EU) 2020/262 may be mentioned that certain excise duties are mandatory for the Member States (harmonised excise duties). In article 1(1) of the directive it is stated that the directive lays down ”general arrangements for excise duty which is levied directly or indirectly on the consumption of the following goods (‘excise goods’)” (Sw., ” allmänna regler för punktskatt som direkt eller indirekt påförs på konsumtion av följande varor (nedan kallade *punktskattepliktiga varor*)”:

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

According to article 1 of Directive 2003/96/EC shall energy products and electricity be taxed in the EU’s Member States in accordance with that directive.[239] In this part I mention excise duty in the form of energy tax, carbon dioxide tax and sulphur tax in Sweden with regard of certain fuels according to Ch. 1 sec. 3 a of *lagen (1994:1776) om skatt på energi* (here abbreviated LSE), i.e. the Swedish Energy Tax Act. The problem I bring up concerning the compliance with the EU law in the field of excise duties where the determination of the tax subject is concerned is that it in Ch. 1 sec. 4 no. 1 of the LSE exists a reference to *the non-harmonised income tax law* regarding what constitutes an *yrkesmässig verksamhet* (Eng., professional activity). However, I do not mention the other two harmonised excise duties, which in Sweden are comprised by *lagen (1994:1564) om alkoholskatt* (i.e. the Swedish Alcohol Tax Act) and *lagen (1994:1563) om tobaksskatt* (i.e. the Swedish Tobacco Tax Act) respectively, since such a connection to *the non-harmonised income tax law* does not exist therein.[240]

There are also several non-harmonised excise duties in Sweden, that is indirect taxes on consumption of various goods and services for which harmonised EU rules on what shall be taxed – and taxation procedure rules from the EU – are lacking. According to the Swedish tax authority’s (*Skatteverkets*) website are non-harmonised excise duties applying according to the following Swedish acts:

- *lagen (1994:1776) om skatt på energi*, the LSE (i.e. the Energy Tax Act), except the excise duty on the fuels comprised by the stay procedure (according to Ch. 1 sec. 3 a of the LSE – *my remark*),
- *lagen (1984:410) om skatt på bekämpningsmedel* (i.e. the Act on Tax on Biocides),
- Sections *35–40 a of lagen (1994:1563) om tobaksskatt* (that is the excise duty on moist snuff, chewing-tobacco and other tobacco),[241]

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

[240] By the way, the same applies according to *lagen (2022:156) om alkoholskatt* (i.e. the new Swedish alcohol tax act) and *lagen (2022:155) om tobaksskatt* (i.e. the new Swedish tobacco tax act), which on 13 February, 2023 will replace the two acts from 1994.

[241] The rules in question has been replaced in *lagen (2022:155) om tobaksskatt* by Ch. 2 sections 9 and 10.

- sec. 2 first paragraph no. 5 of *lagen (1990:661) om avkastningsskatt på pensionsmedel* (i.e. the Act on Tax on Return of Pension Means),
- *lagen (1990:1427) om särskild premieskatt för grupplivförsäkring, m.m.* (i.e. the Act on Special Premium Tax for Group Life Insurance, etc.),
- *lagen (1995:1667) om skatt på naturgrus* (i.e. the Act on Tax on Nature Gravel),
- *lagen (1999:673) om skatt på avfall* (i.e. the Act on Tax on Waste Products),
- *lagen (2007:460) om skatt på trafikförsäkringspremie m.m*. (i.e. the Act on Tax on Third Party Insurance Premium etc.),
- *lagen (2016:1067) om skatt på kemikalier i viss elektronik* (i.e. the Act on Tax on Chemicals in Certain Electronics),
- *lagen (2017:1200) om skatt på flygresor* (i.e. the Act on Tax on Air Trips),
- *lagen (2018:696) om skatt på vissa nikotinhaltiga produkter* (i.e. the Act on Tax on Certain Products with Nicotine Content),
- *lagen (2018:1139) om skatt på spel*, (i.e. the Act on Tax on Lotteries)
- *lagen (2019:1274) om skatt på avfall som förbränns* (i.e. the Act on Tax on Burn up Waste), and
- *lagen (2020:32) om skatt på plastbärkassar* (i.e. the Act on Tax on Plastic Carrier Bags).[242]

It is only in *lagen (1984:410) om skatt på bekämpningsmedel*, the Act on Tax on Biocides, that there exists such a connection to *the non-harmonised income tax law* regarding what is meant by the concept *yrkesmässig verksamhet* (professional activity) like in Ch. 1 sec. 4 of the LSE, namely in sec. 4 third paragraph whose wording corresponds completely with Ch. 1 sec. 4 of the LSE (which is expressed in section 3.2.1). I mention something about the Act on Tax on Biocides in connection with the LSE, whereas other non-harmonised excise duties of above will not be mentioned at all. However, I will mention something about another non-harmonised excise duty in Sweden, namely the recently abolished advertising tax.

3 The question on EU conformity regarding the determination of the tax subject according to certain rules on excise duties in Sweden in comparison with Finnish law

3.1 The secondary law in the field of excise duties and the determination of the tax subject

According to the EU's secondary law in the field of excise duties it is a matter of the tax subject being determined independently, and that the activities for which a person can become liable to pay excise duty typically is carried out by a person who in general is called an entrepreneur – not by an ordinary private person (a consumer). This follows by the current Excise Duty Directive (EU) 2020/262, which came into force on 18 March, 2020,[243] and which does not mean any alteration in relation to what applied concerning the determination of the tax subject according to the predecessors in the field. I state the following as support to my interpretation that current and previous EU-directives in the field of excise duties thus

[242] See <https://www4.skatteverket.se/rattsligvagledning/edition/2022.1/382794.html?q> (visited 2022-10-17).

[243] According to article 57 the Excise Duty Directive (EU) 2020/262 came into force on the twentieth day after that it had been published in the Official Journal of the European Union, which was done on 27 February, 2020 and thus the Excise Duty Directive (EU) 2020/262 came into force on 18 March, 2020. According to article 56 the alterations due to the Excise Duty Directive (EU) 2020/262 come into force on 13 February, 2023.

means that the determination of the tax subject in the field of excise duties should not be done by national rules in the field being connected to *the non-harmonised income tax law*.

When the Excise Duty Directive (EU) 2020/262 came into force on 18 March, 2020 the excise duty directive 2008/118/EC was rescinded. Previously, the excise duty directive 2008/118/EC had on 1 April, 2010 replaced the movement directive 92/12/EEC.[244]

In the excise duty directive 2008/118/EC and in its predecessor the movement directive 92/12/EEC respectively the tax subject was determined independently by the concept trader (Sw., *näringsidkare*). By article 7(2) of the movement directive and by recitals 16 and 22 of the preamble to the excise duty directive 2008/112/EC respectively it was evident that the tax liable shall be a trader, by the use of the expressions *a trader carrying out an economic activity independently* (Sw., *en näringsidkare som bedriver självständig verksamhet*) and *traders* (Sw., *näringsidkare*) respectively.[245] There is no connection to other legislations for the determination of the concept trader in the two directives, but the determination of the tax subject was made independently therein.

The concept trader is not used in the Excise Duty Directive (EU) 2020/262. Instead, it follows by article 7(1) of the Excise Duty Directive (EU) 2020/262 who the persons are that are liable to pay excise duty, whereby in the first place it is stated therein *authorised warehousekeeper, registered consignee or any other person releasing the excise goods or on whose behalf the excise goods are released from the duty suspension arrangement or, in the case of irregular departure from the tax warehouse, any other person involved in that departure* (Sw., *godkänd upplagshavare, registrerad mottagare eller någon annan person som frisläpper eller på vars vägnar de punktskattepliktiga varorna frisläpps från ett uppskovsförfarande eller, vid en otillåten avvikelse från skatteupplaget, varje annan person som är involverad i avvikelsen*). To save space, I do not express the complete article 7, but stay at esablishing that the Excise Duty Directive (EU) 2020/262, like the two predecessors, means that the tax subject is determined independently according to the EU law in the field of excise duties, and that the activities for which a person can become liable to pay excise duty according to article 7 is typically not carried out by an ordinary private person (a consumer), but by a person who in general is called an entrepreneur.

Although the expression trader (Sw., *näringsidkare*) is not used in the Excise Duty Directive (EU) 2020/262, it is thus so that the tax subject is still determined independently according to the EU law in the field of excise duties, and the taxation regarding excise duties typically still comprises persons who in ordinary parlance, that is in common, usually are called entrepreneurs (Sw., *företagare*) or traders (Sw., *näringsidkare*) – not ordinary private persons (consumers). The tax subject can be a natural or a legal person, which follows already by the headline of article 7 of the Excise Duty Directive (EU) 2020/262 having the following

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[244] The complete titles of the two directives are: Council directive 92/ 12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products; and Council directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC.

[245] See Forssén 2007, pp. 29 and 30. See also Forssén 2020a, section 5.3.2.

wording: ”Person liable to pay excise duty” (Sw., ”Person som är skyldig att betala punktskatt”).

3.2 Excise duty rules in Sweden which are not or neither have been EU conform concerning the determination of the tax subject and comparison with previous rules on VAT

3.2.1 Energy tax, carbon dioxide tax and sulphur tax

Energy tax shall according to Ch. 1 sec. 1 of the LSE be paid to the State for fuels and electrical energy. On the theme EU conformity the problem with the determination in the LSE of the tax subject is in a certain respect the reference there to the concept *näringsverksamhet* (Eng., business activity) in Ch. 13 of *inkomstskattelagen (1999:1229*, here abbreviated IL), i.e. the Swedish Income Tax Act, regarding which *activities* (Sw., *verksamheter*) that are considered *professional* (Sw., *yrkesmässiga*). Since 1 January, 2000 Ch. 1 sec. 4 of the LSE namely has the following wording:[246]

> *An activity is professional, if it*
> 1. *constitutes a business activity according to Ch. 13 of the IL, or*
> 2. *is carried out in forms comparable to such a business activity and the consideration for supplies in the activity during a calendar year exceeds SEK 30,000*
>
> (Sw., ”En verksamhet är yrkesmässig, om den
> 1. utgör näringsverksamhet enligt 13 kap. inkomstskattelagen (1999:1229), eller
> 2. bedrivs i former som är jämförliga med en till sådan näringsverksamhet hänförlig rörelse och ersättningen för omsättningen i verksamheten under ett kalenderår överstiger 30 000 kronor.”)

I do not make a complete review of who is tax liable according to Ch. 4 sec. 1 of the LSE, but note that according to Ch. 4 sec. 1 no. 1 of the LSE is a person tax liable for energy tax, carbon dioxide tax and sulphur tax when the person in the capacity of *authorised warehousekeeper* is handling certain fuels, namely fuels according to Ch. 1 sec. 3 a for which a procedure of stay is applied according to the LSE.

In section 3.2.5 I get back to that suggestions were presented in prop. 2021/22:61 (*Nytt punktskattedirektiv och vissa andra ändringar* – Eng., A new excise duty directive and certain other changes) regarding the Swedish excise duties for the purpose of implementing the Excise Duty Directive (EU) 2020/262 (prop., abbreviation of *regeringens proposition* – Eng., government bill). However, already here may be mentioned that it partly leads to the introduction of three new acts on excise duty in Sweden, the above-mentioned *lagen (2022:155) om tobaksskatt* (i.e. the new Swedish tobacco tax act) and *lagen (2022:156) om alkoholskatt* (i.e. the new Swedish alcohol tax act), which entail that the previous acts in those fields will become rescinded, and *lagen (2022:157) om Europeiska unionens punktskatteområde* (Eng., the Swedish Act on the European Union’s excise duty area), partly to certain alterations being introduced into the LSE, by SFS 2022:166. Those alterations due

[246] See Ch. 1 sec. 4 of the LSE, its wording since 1 January, 2000 according to SFS 1999:1289. SFS: abbreviation of svensk författningssamling – Eng., Swedish Code of Statutes.

to the Excise Duty Directive (EU) 2020/262 come into force on 13 February, 2023, that is when the alterations therein come into force according to article 56. Here I may mention that, although the LSE was mentioned in prop. 2021/22:61, the legislator did not mention the phenomenon with the connection in Ch. 1 sec. 4 no. 1 of the LSE to the concept *näringsverksamhet* (Eng., business activity) in Ch. 13 of the IL for the determination of the tax subject on the theme of EU conformity. This means that the alterations on 13 February, 2023 meaning that the determination of the tax subject regarding energy tax, carbon dioxide tax and sulphur tax is transferred from Ch. 4 to Ch. 5 of the LSE, but for that determination Ch. 1 sec. 4 no. 1 with its connection to *the non-harmonised income tax law* remains.[247]

Furthermore, concerning the fuels regarded they also follow by Ch. 1 sec. 3 a of the LSE, which has the following wording:

> *In accordance with what is especially stated in this act are certain procedure rules applicable for energy products according to the following KN-no.* (Sw., ”I enlighet med vad som särskilt anges i denna lag tillämpas vissa förfaranderegler för energiprodukter enligt följande KN-nr”)
> 1. KN-no. 1507–1518, when the products are intended to be used as fuel for heating or as motor fuel,
> 2. KN-no. 2707 10, 2707 20, 2707 30 and 2707 50,
> 3. KN-no. 2710 11–2710 19 69,
> 4. KN-no. 2711, however not KN-no. 2711 11, 2711 21 and 2711 29,
> 5. KN-no. 2901 10,
> 6. KN-no. 2902 20, 2902 30, 2902 41, 2902 42, 2902 43 and 2902 44,
> 7. KN-no. 2905 11 00, which is not of a synthetic origin, when the products are intended to be used as fuel for heating or as motor fuel,
> 8. KN-no. 3811 11 10, 3811 11 90, 3811 19 00 and 3811 90 00, and
> 9. KN-no. 3824 90 99, when the products are intended to be used as fuel for heating or as motor fuel.
>
> Regarding products according to KN-no. 2710 11 21, 2710 11 25 and 2710 19 29 what is stated in the previous paragraph only applies at *professional bulk transports* (Sw., *yrkesmässiga bulktransporter*).

That the fuels with the KN-numbers[248] according to the enumeration in Ch. 1 sec. 3 a of the LSE are comprised by excise duty that is harmonised follows by the articles 2 and 20(1) of the directive 2003/96/EC. All KN-numbers in Ch. 1 sec. 3 a except in first paragraph item 8 are corresponded by KN-numbers for which it is stated in article 20(1) that they constitute energy products which shall be comprised by the rules on monitoring and movement in the movement directive 92/12/EEC, whereby the same conditions are made in the article as in the rule in question. From article 2(1) f of the directive 2003/96/EC it is evident that the term energy products (Sw., *energiprodukter*) is applied on products according to KN-no. 3811, why Ch. 1 sec. 3 a of the LSE as a whole, that is including first paragraph item 8, is

[247] I refer to the rules from the time before the alterations of 13 February, 2023.

[248] KN, the combined nomenclature (Sw., *kombinerade nomenklaturen*) for customs purposes.

complying with the nearest corresponding rules in the original version of directive 2003/96/EC.[249] Furthermore, I use the expression *certain fuels* (Sw., *vissa bränslen*) regarding fuels according to Ch. 1 sec. 3 a of the LSE, and the review of directive 2003/97/EC shows that these fuels are comprised by what is meant by harmonised excise duties.

On the theme EU conformity with the energy tax in Sweden and the determination of the tax subject it is of interest that it by Ch. 4 sec. 3 first paragraph of the LSE follows that the person who may be authorised as warehousekeeper is the person who in its professional activity in Sweden (Sw., ”yrkesmässig verksamhet i Sverige”) is aiming at: manufacturing or working on fuels; storing in airports aviation kerosine; or in a larger extent keep fuels in warehouse. The problem by this theme of the determination of who is tax liable is that the meaning of the determination of which activity (Sw., *verksamhet*) that is professional (Sw., *yrkesmässig*) is made by the reference (connection) to *the non-harmonised income tax law* in Ch. 1 sec. 4 no. 1 of the LSE.

The connection to Ch. 13 of the IL, and the concept *näringsverksamhet* (Eng., business activity) therein, concerning which activities that are professional means partly that the determination of the tax subject in Ch. 4 sec. 1 no. 1 of the LSE is in conflict with the tax subject supposed, according to the Excise Duty Directive (EU) 2020/262, to be determined independently in the legislations in the field of excise duties, partly that the selection of tax subjects will be far too vast in relation to the directive. To illustrate the latter consequence concerning the scope of the persons that can be considered tax liable for energy tax, carbon dioxide tax and sulphur tax regarding *certain fuels* due to Ch. 1 sec. 4 no. 1 of the LSE, I compare in the nearest following section about the same connection to Ch. 13 of the IL existing in that rule in the LSE existed in Ch. 4 sec. 1 no. 1 of *mervärdesskattelagen (1994:200*, here abbreviated ML), i.e. the Swedish VAT Act, during the period of 1 January, 2001 to 30 June, 2013.

3.2.2 The connection to the non-harmonised income tax law for the determination of the tax subject – a comparison with the VAT law during the period of 1 January, 2001 – 30 June, 2013

On 1 January, 2001 a reference was, by SFS 1999:1283, introduced in Ch. 4 sec. 1 no. 1 of the ML, to the concept *näringsverksamhet* (Eng., business activity) to *the whole of* Ch. 13 of the IL, that is for the determination of who is deemed having an *yrkesmässig verksamhet* (Eng., professional activity). Thereby the determination of who shall be deemed a tax subject was connected to *the non-harmonised income tax law*. In Forssén 2011 the main question concerned that that connection was not complying with the main rule on who is *beskattningsbar person* (Eng., taxable person) according to the EU law in the field of VAT,

[249] According to the EU’s website there is a consolidated version of directive 2003/96/EG of 15 September 2018. Thereof follows that only certain adjustments have been made on which KN-no. that are stated in article 20(1) and that concern items 1 c and 1 h. I note that article 20(1) also in the consolidated version refers to the rules in the movement directive 92/12/EEC, despite that it was replaced on 1 April, 2010 by the excise duty directive 2008/118/EC. By the way, I note that article 2(1) f is unchanged in the consolidated version. See <https://eur-lex.europa.eu/legal-content/SV/TXT/?uri=CELEX%3A32003L0096> (visited 2022-10-17). The LSE should be adjusted due to the alterations in article 20(1) c and h, concerning KN-numbers stated in Ch. 1 sec. 3 a, but it does not change anything in principle regarding the meaning of this article.

that is according to article 9(1) first paragraph of the VAT Directive. It meant above all that legal persons already due to the subject registration of for instance an *aktiebolag* (Eng., limited company), whereas a natural person was deemed as a tax subject for VAT purposes provided that he or she fulfilled the rule on who has a real *näringsverksamhet* (Eng., business activity), that is by the wording of Ch. 13 sec. 1 first paragraph second sentence of the IL follows that *with business activity is meant that an activity for obtaining income is carried out professionally and independently* (Sw., ”Med näringsverksamhet avses förvärvsverksamhet som bedrivs yrkesmässigt och självständigt.” The prerequisite *obtaining income* (Sw., ”förvärvsverksamhet”) means that the activity shall have a purpose of obtaining income, that is an activity demand (Sw, *varaktighetsrekvisit*) lies within the prerequisites of Ch. 13 sec. 1 first paragraph second sentence of the IL.[250] A hobby activity is an achievement by a person for a private purpose, and thus not for obtaining income that can be deemed a real business activity.[251]

Before the change of the rule the reference was made to a real business activity both for natural and legal persons, but from 1 January, 2001 the reference to the whole of Ch. 13 of the IL came to comprise also for instance sec. 2 of Ch. 13 of the IL by whose wording follows that *for legal persons are incomes and expenditures due to possession of assests and debts or in the form of capital wins or capital losses included in the income tax schedule business activity, although the incomes or expenditures are not contained in a business activity according to sec. 1* (Sw., ”För juridiska personer räknas inkomster och utgifter på grund av innehav av tillgångar och skulder eller i form av kapitalvinster och kapitalförluster till inkomstslaget näringsverksamhet, även om inkomsterna eller utgifterna inte ingår i en näringsverksamhet enligt 1 §.”) Thereof follows thus that a legal person, in opposition to a natural person, is deemed having a business activity regardless whether the prerequisites for a real business activity are fulfilled. Before the IL came into force Ch. 4 sec. 1 no. 1 of the IL referred to the concept business activity in sec. 21 of *kommunalskattelagen (1928:370*, here abbreviated KL), which corresponded to Ch. 13 sec. 1 first paragraph second sentence of the IL.[252]

By the determination of professional activity according to Ch. 4 sec. 1 no. 1 of the ML being altered on 1 January, 2001 to refer to the concept business activity according to the whole of Ch. 13 of the IL the scope of the tax subjects according to the ML was expanded without any motive. In Forssén 2011, I emphasized that it was not complying with the main rule for the determination of the tax subject in article 4(1) of the Sixth VAT Directive (77/388/EEC) and neither with article 9(1) of the VAT Directive (which has replaced inter alia the Sixth VAT Directive).[253]

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[250] See Forssén 2011, pp. 132 and 149.

[251] See Forssén 2011, pp. 132 and 134.

[252] See prop. 1999/2000:2 (*Inkomstskattelagen* – Eng. the Income Tax Act) Part 1, p. 422. See also Ch.1 sec. 1 of lagen (1999:1230) om ikraftträdande av inkomstskattelagen (1999:1229), i.e. the act on the coming into force of the IL, where it is stated that the IL came into force on 1 January, 2000 and was applied for the first time at the tax assessment of 2002.

[253] See also Forssén 2021a, section 2.5.1.2.

I did not find any similar connection to the income tax law for the determination of the tax subject for VAT purposes in the legislations in the field of VAT in any other EU Member State. For example, I did not find any such connection to the income tax law in *mervärdesskattelagen (1501/1993*, here abbreviated FML), i.e. the Finnish VAT Act.[254] The legislator in Sweden seems almost affected by his ambition to use business activity as the common concept for the delimitation of Ch. 13 of the IL for natural persons as well as for legal persons,[255] not realizing that a reference to the whole of Ch. 13 of the IL for the determination of professional activity in Ch. 4 sec. 1 no. 1 of the ML was not EU conform. After I had submitted Forssén 2011 the legislator did also on 1 July, 2013 revoke, by SFS 2013:368, the connection in question to Ch. 13 of the IL, whereby article 9(1) first paragraph of the VAT Directive was implemented literally into Ch. 4 sec. 1 first paragraph first sentence of the ML. Then was also the concept professional activity (Sw., ”yrkesmässig verksamhet”) in that rule altered to taxable person (Sw., ”beskattningsbar person”), so that that concept nowadays also applies according to the ML for the determination of the tax subject for VAT purposes: *’Taxable person’ shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity*. (Sw., ”Med *beskattningsbar person* avses den som, oavsett på vilken plats, självständigt bedriver en ekonomisk verksamhet, oberoende av dess syfte eller resultat”.).[256]

In the same way as regarding the connection in Ch. 4 sec. 1 no. 1 to the income tax law being altrered on 1 January, 2001 had already on 1 January, 2000 the reference in Ch. 1 sec. 4 no. 1 of the LSE been altered from regarding business activity according to sec. 21 of the KL to apply to the concept business activity according to the whole of Ch. 13 of the IL.[257] Thus, for the energy tax applies according to Ch. 1 sec. 4 of the LSE that the tax subject is determined by a definition of professional activity which according to no. 1 of the rule consists of a main rule referring to the concept business activity in Ch. 13 of the IL, whereby furthermore applies, according to the supplementary rule in Ch. 1 sec. 4 no. 2 of the LSE, that an activity also is professional if it is carried out as a businesslike activity – provided that the annual turnover exceeds the amount limit in the supplementary rule. By the determination of professional activity according to Ch. 1 sec. 4 no. 1 of the LSE being determined since 1 January, 2000 by the connection to the concept business activity according to the whole of Ch. 13 of the IL the selection of tax subjects has been expanded in conflict with the then applying movement directive 92/12/EEC, which as well is in conflict with the now current Excise Duty Directive (EU) 2020/262. I do not find any motive for the alterations in question in the LSE, on 1 January, 2000, and in the ML, on 1 January, 2001, respectively in their common preparatory work.[258] The same applies concerning the alteration of sec. 4 third paragraph of *lagen (1984:410) om skatt på bekämpningsmedel*, Eng., the Act on Tax on

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[254] See Forssén 2011, pp. 289 and 290 regarding my inquiry to tax authorites in inter alia Finland.

[255] See prop. 1999/2000:2 Part 1, p. 514.

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

[257] See prop. 1999/2000:2 Part 1, p. 432.

[258] See prop. 1999/2000:2 Part 1.

Biocides. For the determination of professional activity the reference therein to sec. 21 of the KL was altered to regard the concept business activity according to the whole of Ch. 13 of the IL. That was also done on 1 January, 2000, by SFS 1999:1252, and as well without any motive in the preparatory work, which also consisted of prop. 1999/2000:2.[259]

3.2.3 Comparison with Finnish law

Thus, by the connection in Ch. 1 sec. 4 no. 1 of the LSE a breach of EU law by Sweden exists due to thar phenomenon meaning an incorrect implementation of the secondary law in the field of excise duties. A legal person is comprised by tax liability by the connection inter alia comprising sec. 2 in Ch. 13 of the IL, which means that business activity exists for such a person, although it is not a matter of a real business activity, but only a matter of placing a hobby activity into for example a limited company. This means that the selection in Sweden of tax subjects regarding energy tax, carbon dioxide tax and sulphur tax is typically larger than concerning energy tax in for instance Finland.

In the Finnish Excise Duty Act, *punktskattelagen (182/2010*, here abbreviated FPL), like in the FML, there is not any such connection to *the non-harmonised income tax law* for the determination of the tax subject as is existing in Ch. 1 sec. 4 no. 1 of the LSE. That follows above all of sec. 12 of the FPL which states who are tax liable regarding energy tax. According to sec. 12 item 1 no. 1 of the FPL is an authorised warehousekeeper, a registered consignee, a temporarily registered consignee or any other person releasing or on whose behalf the excise goods are released from a duty suspension arrangement liable to pay excise duty. According to the Finnish tax authotity's website there are nine different excise duties in Finland: alcohol and tobacco tax, tax on soft drinks, soft drinks packages, liquid fuels, electricity and certain fuels, tax on waste products and oil protection fee.[260] Concerning the mentioned connection to *the non-harmonised income tax law* I note that it is the energy taxation in Finland that is of interest for a comparison with the excise duties in Sweden, since there is not any tax on either biocides or advertising in Finland. Thus, it is of interest that it concerning the energy taxation is stated in the Finnish tax authority's detailed instructions that inter alia authorised warehousekeepers and registered consignees are tax liable, whereby a reference is made to sections 12 and 13 of the FPL.[261] There it does not exist any such connection to the income tax law for the determination of the tax subject like regarding the energy tax in Ch. 1 sec. 4 no. 1 of the LSE, which is conform with the EU law in the field of excise duties.

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[259] See prop. 1999:2000:2 Part 1, p. 366.

[260] See <https://www.vero.fi/sv/foretag-och-samfund/skatter-och-avgifter/punktbeskattning/> (visited 2022-10-17).

[261] See the Finnish tax authority's detailed instructions regarding energy taxation 19 February, 2021, dnr VH/904/00.01.00/2021, section 1.4, <https://www.vero.fi/sv/Detaljerade_skatteanvisningar/anvisningar/56206/energibeskattning2/> (visited 2022-10-17).

3.2.4 The advertising tax during the period of 1 January, 2000 – 31 December, 2021

A connection had also been introduced on 1 January, 2000, by SFS 1999:1241, in the first paragrah first sentence of the instructions to sec. 9 of *lagen (1972:266) om skatt på annonser och reklam* (here abbreviated RSL), i.e. the former Swedish Advertising Tax Act, to the concept business activity according to the whole of Ch. 13 of the IL for the determination of professional activity, and thereby of who was tax liable – a tax subject – regarding advertising tax according to sec. 9 of the nowadays rescinded RSL.[262] Thus, it was the same kind of alteration that was, according to the above-mentioned, introduced into the LSE on 1 January, 2000 and into the ML on 1 January, 2001, and inte common preparatory work to the alterations in question there was neither any motive to the alteration in the RSL.[263]

In Forssén 2011 I also brought up that the legislator should look at the same circumstance with a connection to *the non-harmonised income tax law* for the determination of the tax subject on certain legislations in Sweden regarding excise duties like in the ML.[264] However, no such reform like what the legislator made in that respect regarding the ML has ever been done regarding either the LSE or the RSL, and the phenomenon has, as I mentioned in Forssén 2020a, not been treated otherwise in the research concerning indirect taxes in Sweden.[265] However, after that Forssén 2020a was published has the change occurred meaning that there is no longer any Swedish advertising tax, since it was abolished on 1 January, 2022, by SFS 2021:1166.[266] The phenomenon with a connection to the concept business activity in Ch. 13 of the IL for the determination of the tax subject is nowadays not to be found for advertising tax as a consequence of that that excise duty was abolished by the revoking of the RSL on 1 January, 2022.

3.2.5 The legislator and the research in Sweden do not treat the non-EU conform determination of the tax subject regarding the energy tax

With respect of the concept professional activity remaining in Ch. 1 sec. 4 no. 1 of the LSE I suggest once again that the research or the legislator brings up on the theme EU conformity with that determination being made by a connection to *the non-harmonised income tax law*, more precisely to the concept business activity in the whole of Ch. 13 of the IL. In consideration of my analysis in Forssén 2011 of the same phenomenon concerning the ML, it is, in my opinion, obvious that the connection in question in Ch. 1 sec. 4 no. 1 of the LSE to Ch. 13 of the IL still gives a selection of tax subjects also for the energy tax in the field of

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[262] See also prop. 1999/2000:2 Part 1, p. 343.

[263] See prop. 1999/2000:2 Part 1.

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

[265] See also Forssén 2020a, section 5.3.2.

[266] See also prop. 2021/22:20 (*Avskaffad reklamskatt* – Eng., Abolished advertising tax), p. 1.

excise duties which is far too comprehensive in relation to the Excise Duty Directive (EU) 2020/262.[267]

In prop. 2021/22:61 were, as mentioned, suggestions presented regarding the Swedish excise duties for the purpose of implementing the Excise Duty Directive (EU) 2020/262. Thus, the Excise Duty Directive (EU) 2020/262 leads to three new acts on excise duty being introduced in Sweden: *lagen (2022:155) om tobaksskatt*, i.e. the new Swedish tobacco tax act, and *lagen (2022:156) om alkoholskatt*, i.e. the new Swedish alcohol tax act, which, as mentioned, leads to the previous acts in those fields being rescinded; and *lagen (2022:157) om Europeiska unionens punktskatteområde*, i.e. the Swedish Act on the European Union's excise duty area. Furthermore are, as also mentioned, inter alia certain alterations introduced in the LSE, by SFS 2022:166. The alterations due to the Excise Duty Directive (EU) 2020/262 come into force on 13 February, 2023, that is when, as mentioned above, the alterations therein come into force according to article 56. Furthermore were in prop. 2021/22:61 certain alterations suggested in the ML and several excise duty legislations because of the Council's directive (EU) 2019/2235 of 16 December 2019 on alteration of the VAT Directive and the excise duty directive 2008/118/EC where common defense efforts within the EU are concerned. Those alterations came into force on 1 July, 2022.[268]

The LSE was in itself mentioned in prop. 2021/22:61, but the phenomenon with the connection in Ch. 1 sec. 4 no. 1 of the LSE to the concept business activity in Ch. 13 of the IL for the determination of the tax subject regarding the energy tax was, as mentioned, not brought up by the legislator on the theme EU conformity.[269]

Besides what I have mentioned in Forssén 2007, Forssén 2011 and Forssén 2020a about the connection in the LSE and in the nowadays rescinded RSL to the concept business activity in Ch. 13 of the IL for the determination of the tax subject,[270] there is nothing to be found in the research in Sweden regarding indirect taxes on the theme EU conformity about the phenomenon. Concerning excise duties (Sw., *punktskatter*) there is only one thesis in Sweden, namely Professor Stefan Olsson's thesis, *Punktskatter – rättslig reglering i svenskt och europeiskt perspektiv* – Eng., Excise duties – legal regulation in a Swedish and European perspective.[271]

Within the VAT research in Sweden there is only in Forssén 2011 and in my doctor's thesis "*Skatt- och betalningsskyldighet för moms i enkla bolag och partrederier*" [Eng., Tax and

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[267] Besides is that selection expanded further by the supplementary rule in Ch. 1 sec. 4 no. 2 of the LSE regarding persons that carries out activities in the field of energy under businesslike forms (provided that they have an annual turnover exceeding SEK 30,000).

[268] See regarding: the ML, SFS 2022:160; *lagen (1994:1563) om tobaksskatt*, SFS 2022:163; *lagen (1994:1564) om alkoholskatt*, SFS 2022:164; and *lagen (1994:1776) om skatt på energi*, SFS 2022:165. See also prop. 2021/22:61, p. 1.

[269] See prop. 2021/22:61, pp. 109–154.

[270] See Forssén 2011, pp. 54 and 76 and Forssén 2020a, section 5.3.2.

[271] See Olsson 2001.

payment liability to VAT in (approximately) joint ventures and shipping partnerships][272] and in Jesper Öberg's thesis "*Mervärdesbeskattning vid obestånd*" (Eng., Value-added taxation at insolvency)[273] that the tax subject question is given a closer analysis.[274] In the research so far in Sweden on the field of excise duties, that is in Olsson 2001, questions about the tax subject are given a rather limited treatment. My criticism regarding Olsson 2001 is mainly about that circumstance.

Olsson 2001 is written in Swedish, which is in line with what I state in Forssén 2021a about the importance for the research in jurisprudential subjects that are influenced by the EU law to promote Swedish at such studies. With respect of methodology is Olsson 2001 also in line with what I state in Forssén 2020a. A traditional law dogmatic method is used in Olsson 2001, but with the statement that *various methods can of course complete each other* (Sw., "olika metoder kan givetvis komplettera varandra").[275] Thereby can Olsson 2001 not be considered to have been conducive to the development within the VAT research in Sweden that I am warning for by Forssén 2020a and Forssén 2021a, namely the risk that the jurisprudential studies will be made by application of what I call a purely law dogmatic method, whereby I in that respect refer to two theses on the subject VAT law.[276] My criticism regarding Olsson 2001 concerns instead the lack of analysis on the theme EU conformity of the determination of the tax subject in the national Swedish legislation in the field of excise duties.

In the introduction to the closer examination of the legal regulation of the excise duties are both the tax subject and the tax object mentioned in Olsson 2001.[277] Furthermore, it is noted therein that the tax liability is divided into two parts: the tax subject and the tax object.[278] It is in itself also stated that the concepts professional (Sw., *yrkesmässig*) and professionality (Sw., *yrkesmässighet*) are central concepts within the tax law,[279] but a rather limited analysis is made in a Swedish and EU law perspective of the tax subject question in the Swedish legislation on excise duties and in the then applying movement directive 92/12/EEC

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[272] Forssén 2013.

[273] See Öberg 2001.

[274] See also Forssén 2020a, p. 738.

[275] See Olsson 2001, pp. 23 and 24. In the tables on p. 443 in Forssén 2021a I account for both the methodological main tracks according to Forssén 2020a regarding the theses on the subject VAT in Sweden. Olsson 2001 is comparable with two of the theses in *Tabell – huvudspår 2* (Eng., Table – Main track 2), namely Öberg 2001 and Ek 2019. In Ek 2019 is the jurisprudential study made by application of a customary law dogmatic method and the thesis is written in Swedish, which thus is comparable with Olsson 2001, where a traditional – customary – law dogmatic method also is used and the thesis is written in Swedish as well. See also Forssén 2021a, section 2.5.3.1 and Forssén 2020a, pp. 738 and 745.

[276] The two theses are Henkow 2008 and Lindgren Zucchini 2020.

[277] See Olsson 2001, p. 143.

[278] See Olsson 2001, p. 159.

[279] See Olsson 2001, p. 168.

respectively.[280] Professor Stefan Olsson mentioned that the term tax liable (Sw., *skattskyldig*) is lacking in the movement directive 92/12/EEC, and that the Swedish legislator is under the impression to have the right to choose for himself how to implement the directive in that respect.[281] He pointed out in the conclusions regarding the concept tax liability that its meaning in Swedish tax law cause an unfortunate confusion of concepts.[282] After the introduction to the closer examination in Chapters 4 and 5 about tax liability were however in the remaining part of Olsson 2001 mostly treated facts of interest for the application of the time of the occurrence of the tax liability (Chapter 6), of what is a tax object (Chapter 7) and questions about deduction and reimbursement, that is how to account for excise duties (Chapter 8). However, finally in Olsson 2001 (Chapter 9) was not the suggestions *de lege ferenda* made that could be expected concerning the tax liability question.[283]

Thus, in Olsson 2001 was not regarded that the same problem that 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 in that rule of *the non-harmonised income tax law*, existed also in the field of excise duties regarding the LSE and the RSL. Professor Stefan Olsson participated at the final seminar regarding Forssén 2011. He said he did not understand my comparison with Olsson 2001 concerning the precarious with connections from the indirect taxes to *the non-harmonised income tax law*, when it was a matter of the concept professional activity (Sw., *yrkesmässig*) and thereby the determination of the tax subject. I stated in Forssén 2011 that Olsson 2001 does not have a focus on the tax subject in the way I do in Forssén 2011. To stimulate further research in Sweden in the field of excise duties I noted the following as a considerable lack in Olsson:[284]

- On page 144 in Olsson 2001 it is stated that within income and value-added taxation it is *often enough to delimit the tax subject with far definitions like e.g.* 'professionality' (Sw., "oftast tillräckligt att avgränsa skattesubjektet med vida definitioner som t.ex. 'yrkesmässighet'"). However, he refers in a footnote to that statement to *Ch. 13 sec. 1 of the IL, Ch 1 sec. 1 no. 1 of the ML* (Sw., "13 kap. 1 § IL, 1 kap. 1 § 1 p. ML". Thus, I noted that it in Olsson 2001 is not regarded that the connection from Ch. 4 sec. 1 no. 1 of the ML from 2001 applied to the concept business activity (Sw., *näringsverksamhet*) in the whole of Ch. 13 of the IL.

I stated in Forssén 2011 that an explanation to Professor Stefan Olsson not bringing up in Olsson 2001, concerning the mentioning therein of the determination of the concept professional (Sw., *yrkesmässig*) in the main rule in the ML, that the reference for that

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[280] See Olsson 2001, pp. 170–203.

[281] See Olsson 2001, p. 186.

[282] See Olsson 2001, p. 203.

[283] 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 Melin 2010, p. 94 and Bergström et al. 1997, p. 35. See also Forssén 2011, p. 33 and Forssén 2013, p. 31.

[284] See Forssén 2011, p. 76.

determination to Ch. 13 sec. 1 (first paragraph second sentence) of the IL was altered on 1 January, 2001 to apply to the concept business activity in the whole of Ch. 13 of the IL, could be that Olsson 2001 was issued during June 2001, that is after that alteration of the rule.[285] However, in the preface of Olsson 2001 it is stated that new material has been regarded until 31 December, 2000.[286] Thus, it is a considerable lack in Olsson 2001 that the connection in Ch. 1 sec. 4 no. 1 of the LSE and the instructions to sec. 9 of the RSL respectively to the concept business activity in the whole of Ch. 13 of the IL, for the determination of the tax subject regarding energy tax and advertising tax respectively, is not mentioned, since that phenomenon emerged, as mentioned above, already on 1 January, 2000, by SFS 1999:1289 and SFS 1999:1241 respectively and, concerning tax on biocides, also on 1 January, 2000, by SFS 1999:1252.

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 on 1 July, 2013. However, nobody has yet showed any interest for the same problem existing also in the field of excise duties regarding energy tax and advertising tax.[287] 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 taxation,[288] like according to what is mentioned above still is the case regarding Ch. 1 sec. 4 no. 1 of the LSE and sec. 4 third paragraph *lagen (1984:410) om skatt på bekämpningsmedel*, i.e. the Act on Tax on Biocides, by the connection in those rules to Ch. 13 of the IL for the determination of the concept professional activity (Sw., *yrkesmässig verksamhet*).

I expected that the research or the legislator would after Forssén 2011 take up the question on the compliance with the EU law concerning that the connection mentioned to the IL exists also in the field of excise duties, but this has not happened. A part of the problem in that field was resolved simply as a consequence of the abolishment of the advertising tax in Sweden on 1 January, 2022, whereby, as mentioned, the RSL was rescinded according to SFS 2021:1166. However, it remains, as also mentioned, concerning the determination of the tax subject regarding energy tax, carbon dioxide tax and sulphur on *certain fuels*, by who thereby is professional (Sw., *yrkesmässig*) still is determined by Ch. 1 sec. 4 no. 1 of the LSE referring to the concept business activity (Sw., *näringsverksamhet*) in the whole of Ch. 13 of the IL. Thus, this phenomenon is the basic problem on the theme of EU confirmity where the determination of the tax subject regarding those excise duties is concerned.

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[285] See Forssén 2011, p. 76.

[286] See Olsson 2001, p. 6.

[287] In the years of 2018 and 2019 I contacted Professor Stefan Olsson via e-mail about that phenomenon should be addressed, but without any result. On 3 June, 2019 I informed him that I was aiming to write an article on the question, which thus hereby is realized.

[288] 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, etc.), pp. 81 and 82, whereof it is evident that the motive to, with the ML as model, connect the concept professional (Sw., *yrkesmässig*) in the act on tax on energy to the income tax and the concept business activity (Sw., *näringsverksamhet*) was to retain the tradition mentioned. See also Forssén 2020a, section 5.3.2 and Forssén 2019a,, section 12 201 024.

I use the term basic problem regarding that Ch. 1 sec. 4 no. 1 of the LSE cannot be deemed complying with the EU law in the field of excise duties due to the connection to Ch. 13 of the IL, since a question whether taxation occur according to the Excise Duty Directive (EU) 2020/262 is not decided concerning the tax object in itself in the form of an authorised warehousekeeper's handling of *certain fuels*, but for taxation is also requested that such a person is a tax subject according to what I state above, that is typically a – natural or legal – person who in general is called an entrepreneur (or trader). That a legal person by the connection in Ch. 1 sec. 4 no. 1 of the LSE to Ch. 13 of the IL, and thereby to inter alia sec. 2 in Ch. 13, constitutes a tax subject although it is only a matter of a hobby activity is not EU conform. By forming for instance a foundation (Sw., *stiftelse*), a limited company (Sw., *aktiebolag*) or another legal person, by which the handling of *certain fuels* is carried out as a hobby activity, may namely ordinary private persons with an activity carried out without the purpose of obtaining income, who typically constitute consumers, transform into tax subjects according to the wording of Ch. 1 sec. 4 no. 1 of the LSE that has applied since 1 January, 2000, by forming for example a foundation or a limited company for the activity.

Thus, the legislator should suggest that the connection in question from Ch. 1 sec. 4 no. 1 of the LSE to the concept business activity in the whole of Ch. 13 of the IL would be revoked, so that the determination of the tax subject will become conform with the Excise Duty Directive (EU) 2020/262. To increase the terminological clarity should the concept professional (Sw., *yrkesmässig*) be completely abolished from the LSE, since it is not used in the directive.

In the latter respect, I may also mention that private persons can be comprised by excise duty on electric power regarding self-produced electricity in sun-cell installations on the own house, the summer house or the garage. By Ch. 1 sec. 2 second paragraph of the LSE follows that rules on energy tax on electric power are to be found in Ch. 11. In Ch. 11 sec. 1 of the LSE is stated that electric power consumed in Sweden is taxable, if not anything else follows by sec. 2. According to Ch. 11 sec. 2 first paragraph no. 1 a and 1 b and second paragraph no. 2 of the LSE is electric power not taxable if it is produced in for example a sun-cell installation that has a total installed generator effect less than 500 kilowatts.[289] Thereby the tax is limited regarding such electricity production at private persons regarding the tax object. The alterations of Ch. 11 sec. 2 of the LSE that was made on 1 July, 2021 meant inter alia that the mentioned top-effect limit in second paragraph no. 2 of the rule was raised from 255 to 500 kilowatts. However, that expansion of the exemption from energy tax for self-produced electricity was according to the preparatory work not judged to affect the households, since self-use of electricity produced in the households' installations already normally was exempted from taxation of energy tax. In the Swedish Energy Agency's (Sw., *Energimyndighetens*) register over authorised installations in the electricity-certificate system there were only a few sun-cell installations with an installed effect between 255 and 500

[289] See Ch. 11 sec. 2 of the LSE, its wording from 1 July, 2021, according to SFS 2021:411. See also prop. 2020/21:113 (*Utökad befrielse från energiskatt för egenproducerad el* – Eng., Increased exemption from energy tax for self-produced electricity) pp. 1 and 25 and the tax authoriy's (Sw., *Skatteverkets*) standpoint of 2021-07-02, "Beskattningskonsekvenser för den som har en solcellsanläggning på sin villa eller fritidshus som är privatbostad" (Eng., Taxation consequences for those having sun-cell installations on the own house or summer house being private residences), dnr 8-1080745, section 2. It may also be mentioned that *Skatteverket* in the introduction of the standpoint is referring in a note to the recently mentioned SFS 2021:411 and prop. 2020/21:113.

kilowatts owned by private persons.[290] Thus, in practice there is no problem concerning the limitation of energy tax on electric power for privat persons.

Although the concept professional (Sw., *yrkesmässig*) in itself is not *préjudiciel* to the tax liabilty regarding electric power, may it yet cause interpretation and application problems concerning the determination of who is a tax subject regarding the taxation of electric power, when the production of electric power – the tax object – is not exempted from taxation. An example of such problems is proved by Ch. 6 a of the LSE, regarding tax exempted fields of use etc., in sec. 3 first paragraph first sentence stipulating that *at simultaneous production of heat and taxable electric power in one and the same process, when the heating emerging is used, shall the division of fuel used for the production of heat, taxable electric power and such electric power which is not taxable respectively be made by proportioning in relation to each energy production* (Sw., ”vid samtidig produktion av värme och skattepliktig elektrisk kraft i en och samma process, när den värme som uppkommer nyttiggörs, ska fördelning av bränslet som förbrukas för framställning av värme, skattepliktig elektrisk kraft respektive sådan elektrisk kraft som inte är skattepliktig ske genom proportionering i förhållande till respektive energiproduktion”).[291] Thus, those circumstances also constitute reasons to refine the terminology in the LSE, by completely abolishing the concept *yrkesmässig* (Eng., professional) from the LSE.

3.3 A non-EU conform determination of the tax subject in the field of excise duties may cause non-EU conform consequences for the taxation amount for VAT

The excise duties are gross taxes. This means that the enterprises do not have such a general right to get back from the State paid excise duty on purchases, which instead is a fundamental characteristic of what is meant by VAT according to the EU law.[292]

Regardless whether it is a matter of harmonised excise duties or non-harmonised excise duties, such a connection to *the non-harmonised income tax law* for the determination of the tax subject that is made by the connection in Ch. 1 sec. 4 no. 1 of the LSE and in sec. 4 third paragraph *lagen (1984:410) om skatt på bekämpningsmedel* (Eng., the Act on Tax on Biocides) to the concept business activity in the whole of Ch. 13 of the IL cause a competition distortion regarding the VAT in conflict with the secondary law and recital 4 of the premable to the VAT Directive and article 1(2) of the VAT Directive as well as with the primary law and article 113 of the Functional Treaty.[293] That will be the consequence for the VAT of the

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[290] See prop. 2020/21:113 pp. 5 and 25.

[291] By Ch. 6 a sec. 3 first paragraph second sentence and second paragraph respectively of the LSE follow furthermore that the proportionate division of fuels which are used is further complicated if various fuels are used and if it besides the mentioned electricity production is simultaneously made condensation-power production from the same fuel respectively.

[292] See article 1(2) of the VAT Directive of which follows that the principles which form the VAT principle according to the EU law are the principles of a general right of deduction, reciprocity and passing on the tax burden. See also Forssén 2011, pp. 86, 87, 272 and 281.

[293] See Forssén 2019b, pp. 65 and 66.

selection of tax subjects becoming far too comprehensive for the two excise duties regarding the legal persons, whereby I state the following to confirm this.

If it in a chain of producers and distributors comes in a legal person that would not belong to he chain if it was not for the connection to Ch. 13 of the IL existing for the energy tax or the tax on biocides, the costs increase at real traders occurring in a later link of the ennobling chain, since they cannot deduct that – due to that in the present respect non-EU conform LSE or *lagen (1984:410) om skatt på bekämpningsmedel* (Eng., the Act on Tax on Biocides) – undesired excise duty (gross tax). Due to the enterprises in later links of the ennobling chain cannot deduct excise duty that normally would not occur on the acquisitions, the costs increase for the determination of the taxation amount for VAT on their taxable supplies of goods or services. Thus, that the selection of tax subjects is expanded regarding the legal persons in relation to article 7 of the Excise Duty Directive (EU) 2020/262, compared to what would apply if they like what applies for natural persons would have been considered tax subjects only regarding real business activity, cause a non-EU conform determination of the taxation amount for VAT according to the ML and the VAT Directive.[294] Under the mentioned circumstances will in the end the consumer, as tax carrier of the VAT, be burdened by a higher price including VAT on the purchase of goods or services compared to if the expansion of the selection of tax subjects would not occur concerning the legal persons regarding the energy tax and the tax on biocides.

By the reform on 1 July, 2013 ended, as mentioned, the connection to Ch. 13 of the IL for the determination of the tax subject in Ch. 4 sec. 1 no. 1 of the ML, so that the wording of Ch. 4 sec. 1 first paragraph first sentence of the ML corresponds literally with the main rule on who is a taxable person in article 9(1) first paragraph of the VAT Directive. However, that reform has, as mentioned, never had any correspondence in the field of excise duties. I consider that my review shows that the connection to Ch. 13 of the IL should be abolished concerning the harmonised energy tax as well as the non-harmonised tax on biocides. That the problem was resolved on 1 January, 2022 concerning the non-harmonised advertising tax may be signified as chance as a consequence of that tax being abolished.

4 An adjustment of the income tax law to the rules on VAT and excise duties for the determination of the tax subject should be investigated

I have previously mentioned in the JFT that it was a guiding-star in Forssén 2011 and Forssén 2013 to emphasize that it is decisive for analyses of VAT issues to observe both the tax subject question and the tax object question, so that the first mentioned will not be left aside to go directly to writing about the tax object.[295] I stated that academics writing on the subject VAT law should focus more on emphasizing that complicated issues demand that both the tax

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[294] See Ch. 7 sec. 2 first paragraph of the ML and articles 73 and 78 of the VAT Directive. See also Forssén 2019a, section 12 201 024 and section 2.3 in Björn Forssén, *IMPAKT – Avtal och momsproblem: Tredje upplagan* (Eng., IMPAKT – Agreements and VAT problems: Third edition). (Self-published 2019). (Forssén 2019e).

[295] See Björn Forssén, *Moms och bemanning inom vård och omsorg – den finska och svenska mervärdesskattelagen i förhållande till EU-rätten* (Eng., VAT and staffing within care – the Finnish and Swedish VAT acts in relation to the EU law), JFT 4/2019, pp. 240–253 (Forssén 2019f).

subject question and the tax object question are analysed, whereby I emphasized that there has been a far to big focus on the tax object question from Swedish writes on the subject.[296] The same phenomenon exists in the field of exise duties, which I have accounted for above at the review of Olsson 2001, that is of the only thesis in Sweden on the subject excise duties. The fundamental fault concerning the Swedish determination of the tax subject for VAT purposes was that it was made by the described connection to *the non-harmonised income tax law*, which the legislator took care of by revoking that connection on 1 July, 2013, whereby the phenomenon however still remains in the field of excise duties in Sweden regarding the tax subject for the energy tax and the tax on biocides. I do not comment this further, but may only mention that I in Forssén 2011 stated that current law at the time was like that such an adjustment of the income tax law in Sweden to the rules on VAT and excise duties for the determination of the tax subject was possible. I consider that the possibilities for such a reform should be investigated – as a suggestion in co-operation by Sweden and Finland – whereby I state the following to confirm this.

- On 1 January, 2009 was, by SFS 2008:1316, a second paragraph introduced into Ch. 13 sec. 1 of the IL, whereby the independence prerequisite for what is meant by a real business activity in the first paragraph second sentence was clarified. That led to interpretation and application problems concerning VAT and staffing within care (Sw., *vård och omsorg*) that I bring up in Forssén 2019f, but which I do not comment here. Instead I go back to what I brought up in Forssén 2011 regarding the possibility to let the VAT guide for corporate taxation purposes the income tax concerning the tax subject question. In that respect, I mentioned that the investigation that led to the reform of Ch. 13 sec. 1 of the IL pondered upon *letting the VAT Directive be directly steering for the IL's rules* (Sw., ”att låta mervärdesskattedirektivets regler vara direkt styrande för IL:s regelverk”).[297] However, the preparatory work expressed that it would not be suitable to abolish the prerequisite of profit purpose (Sw., *vinstsyfte*) for the determination of business activity, by connecting that concept in the IL to the VAT Directive's concept economic activity, whereby I assumed that the legislator's standpoint was based on that it in the case-law still was made a profit prerequisite as a necessary prerequisite for real business activity. If so, it would be incompatible with article 9(1) first paragraph of the VAT Directive whereof follows that an economic activity can exist ”whatever the purpose or results of that activity” (Sw., ”oberoende av dess syfte eller resultat”).[298]

- However, the analysis in Forssén 2011 proved that the profit prerequisite for real business activity that was considered obstructing a reverse scheme, where the VAT Directive's rules on taxable person would be directly steering for corporate taxation

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[296] See Forssén 2019f, pp. 252 and 253.

[297] See reference to SOU 2008:76 (*F-skatt åt flera* – Eng., F-tax for more) in prop. 2008/09:62 (*F-skatt åt fler* – Eng., F-tax for more), p. 24, and my reference in Forssén 2011, p. 105 to those preparatory works to the reform of Ch. 13 sec. 1 of the IL on 1 January, 2009. The F in F-tax stands for *företagare* (Eng., entrepreneur) – see prop. 1991/92:112 (*F-skattebevis, m.m.* – Eng., F-tax certificate, etc.), p. 76. SOU, *statens offentliga utredningar* – Eng., the Government's official reports.

[298] See Forssén 2011, pp. 105 and 106.

purposes who is considered having a business activity, no longer was upheld in the Swedish case-law.[299] The question whether it was possible to introduce a reverse scheme where the ML is guiding the IL concerning who is an entrepreneur I left open, for instead only suggesting that the connection in Ch. 4 sec. 1 no. 1 of the ML to Ch. 13 of the IL would be revoked, which as mentioned then also was made on 1 July, 2013, but I noted that advantages can be achieved with a common taxation frame by also introducing the mentioned reverse scheme, namely for evidence, procedure and proceedings purposes.[300]

– If the reverse scheme is introduced, can also the connection from Ch. 4 sec. 8 of the ML to the IL, for the limitation of the value-added taxation of incomes in non-profit associations and registered religious communities, be revoked.[301] In Ch. 4 sec. 8 of the ML is stated that an activity carried out by a non-profit association or a registered religious community is not considered an economic activity, if the incomes in the activity constitute income of business activity that do not cause tax liability for the association or the religious community according to Ch. 7 sec. 3 of the IL. According to Ch. 7 sec. 3 first paragraph of the IL are foundations which fulfil the so called purpose, activity and completion demands and non-profit associations and registered religious communities, which besides the demands mentioned also fulfil the so called openness demand – with exemption for capital wins and capital losses – tax liable only for income of business activity according to Ch. 13 sec. 1 of the IL. Thus, the limitation of the value-added taxation regarding incomes in non-profit associations and registered religious communities is made with respect of the tax subject. If the connection to the IL thereby is revoked, the question of a breach of EU law that the EU Commission brought up in the notification about Ch. 4 sec. 8 of the ML on 26 June, 2008 would get its solution.[302] Thereby would namely the limitation of the value-added taxation within the non-profit sector be made with respect of the tax object in someone of the exemption rules in Ch. 3 of the ML, instead of regarding the tax subject like in Ch 4 sec. 8 of the ML. The Swedish Government applied on 20 January, 2011 for a permit according to article 395 of the VAT Directive to introduce an annual turnover limit of SEK 1,000,000 for the application of Ch. 4 sec. 8 of the ML, which the EU Commission rejected, whereon the Government according to a press release on 31 March, 2011 expressed that it would continue working with the question.[303] However, nothing has happened since then, and such an amount limit with respect of the tax subject that the Government brought up with the EU Commission does not solve the problem that the limitation of the value-added taxation within the

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[299] See Forssén 2011, p. 267.

[300] See Forssén 2011, pp. 267 and 268.

[301] See Forssén 2011, pp. 268 and 269.

[302] See 2007/2311 K(2008) 2803 (*EU-kommissionens formella underrättelse den 26 juni 2008 om behandlingen av ideella föreningar och registrerade trossamfund i ML*), i.e. the EU Commission's formal notification on 26 June, 2008 about the treatment of non-profit associations and registered religious communities in the ML. See also Forssén 2011, p. 269.

[303] See Forssén 2011, p. 269.

> non-profit sector shall be made with respect of the tax object, like in articles 132–134 of the VAT Directive, and besides the Government's suggestion would lead to a non-EU conform competition distortion.[304]

Thus, I consider that an adjustment of the income tax law to the VAT Directive for the determination of the tax subject should be investigated. To achieve such advantages that I am mentioning with a common taxation frame for corporate taxation purposes should thereby also the Excise Duty Directive (EU) 2020/262 be considered. An investigation of an adjustment of the income tax law to the rules on VAT and excise duties for the determination of the tax subject could be made by Sweden and Finland in co-operation bringing up the question on the EU level. As a suggestion it could be done at the same time as Sweden and Finland possibly take up my proposal in Forssén 2013 of bringing up on the EU level the question whether enterprises ran by non-legal entities should be made tax subjects for VAT purposes, since such legal figures are treated differently in the two countries for VAT purposes, where *enkla bolag och partrederier* (Eng., approx., joint ventures and shipping partnerships) are not considered tax subjects according to the ML, whereas *sammanslutningar och partrederier* (Eng., approx., joint ventures and shipping partnerships) are considered tax subjects according to the FML.[305] I have iterated that proposal previously in the JFT during 2019 and 2020,[306] and I do the same here. Besides, I also iterate – from Forssén 2011 – that the described reverse scheme for the determination of the tax subject for corporate taxation purposes should make it easier to introduce an EU-tax in the future.[307]

5 Final comments and suggestions on future research in the field of indirect taxes

5.1 Concerning the choice of method in the excise duty research

In section 2.5.4.1 in Forssén 2021a I state that I do not dismiss law dogmatics as a method for the research in the VAT law. However, I state there that that method should be completed with a comparative method, where at least one EU Member State is included in the material for comparison.[308] This to increase the probability for the research results to become useful regarding the implementation question. Thereby I mean the implementation of the VAT Directive into the ML or for that matter into the FML. Article 1(2) of the VAT Directive defines, as mentioned, the VAT principle according to the EU law. In Forssén 2020a I state that if a jurisprudential study concerns the implementation question regarding the VAT it is, at the choice of a third country as material for comparison for the use of a comparative method in itself or as a complement to the law dogmatic method, decisive that the country has a VAT

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[304] See Forssén 2011, p. 269.

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

[306] See Forssén 2019b, pp. 69 and 70 and Forssén 2020b, p. 394.

[307] See Forssén 2011, p. 269 (and 327). See also Forssén 2013, pp. 41 and 42.

[308] If a third country shall be part of a comparative analysis, I suggest that an EFTA-country is chosen, inter alia since those are examples of third countries which have VAT systems in the meaning of the EU law. See Forssén 2011, p. 283 and also Forssén 2021a, section 1.

system in accordance with what is meant by VAT according to the EU law, to judge whether it is suitable as material for comparison in that respect, so that the choice of method can be expected to give a useful research result for the implementation question.[309]

Since there is no specific definition of what is meant with excise duties according to the EU law in the Excise Duty Directive (EU) 2020/262, I consider that it is more open than regarding the VAT to use third countries as material for comparison at the use of a comparative method for jurisprudential studies regarding the implementation of the Excise Duty Directive (EU) 2020/262 into the national legislations regarding harmonised excise duties. What is important is in my opinion to, in the same way as concerning the implementation questions regarding VAT, consider both the tax subject question and the tax object question at a study of the implementation question in the field of excise duties. Regarding Olsson 2001 I note above that the method therein is not what I call a purely law dogmatic method, which I consider typically means that the choice of method can be expected to give a useful research result for the implementation question also in the field of excise duties. My criticism regarding Olsson 2001 concerns instead, as mentioned, the circumstance that questions about the tax subject are given a rather limit treatment therein, and above all, as also mentioned, that the phenomenon, with a connection for the determination of professional activity in Ch. 1 sec. 4 no. 1 of the LSE and in sec. 4 third paragraph of *lagen (1984:410) om skatt på bekämpningsmedel*, Eng., the Act on Tax on Biocides, to the concept business activity in Ch. 13 of the IL, is not treated at all. However, Olsson 2001 serve as guidance for the future research regarding the excise duties insofar as the thesis confirms that neither such research in the field of indirect taxes shall be made by the aplication of a purely law dogmatic method.

By the way, concerning the law dogmatic method in itself I state in section 2.5.4.1 in Forssén 2021a that it can be developed by the addition of legal semiotics.[310] Besides, it promotes of course also a jurisprudential study of the implementation question in the field of excise duties if the law dogmatic method is completed with an empirical investigation of the application of the rules concerned by the study, which also can constitute a further complement at the use of a comparative method in itself or as a completion of the law dogmatic method. In Forssén 2020a I mention that I am when advising against the application of a purely law dogmatic method, where the method is not completed with neither a comparative method nor empirical investigations in the form of inquiries that can capture what is not to be found in the jurisprudential literature, warning in an article for what I call the trap of mathematics in the VAT research,[311] which I also do concerning the research in the field of excise duties. In Forssén 2020a I also state that tools – models – can be developed by the researcher to support for example the law dogmatic method at analyses of questions within the VAT law, whereby I

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[309] See Forssén 2020a, p. 734.

[310] See Forssén 2020a, p. 752 and reference there to Forssén 2018a, p. 320. See the same reference to Forssén 2018a in Forssén 2021b, p. 32.

[311] See Forssén 2020a, pp. 750 and 751, where I – concerning the risk of falling into the trap of mathematics with your research – refer to Forssén 2020c.

exemplify with a tool that I had mentioned previously in Forssén 2018a.[312] I did that reference also in Forssén 2021a,[313] and mentioned then also a book wherein I describe how a tool (model) could be developed to serve as support for a method that is applied in the VAT research or for example in a tax case.[314] Anyone carrying out jurisprudential studies in the field of excise duties should in my opinion also have a support by developing tools for this, for example to clearly structure when the problemizing of the implementation question concerns the tax subject and the tax object respectively.

5.2 About that the right of deduction for input tax can be affected by an unclear determination of the tax subject for VAT purposes and a gap in the legislation on customs

Concerning the third of the above-mentioned indirect taxes, that is customs, I come back here to me finally in section 5.3.2 in Forssén 2020a stating that it, like concerning the field of excise duties, only exists one thesis withing the research on customs law in Sweden, namely Professor Christina Moëll's thesis, *Harmoniserade tulltaxor Införlivande, tolkning och tillämpning av internationella regler för varuklassificering* (Eng., Harmonised customs tariffs Incorporation, interpretation and application of international rules on classification of goods).[315] However, customs does not present any problem regarding the determination of the tax subject. According to the secondary law is in article 5(19) of the above-mentioned Union Customs Code a person who is liable to pay a customs debt, the debtor (Sw., *gäldenären*), defined as "any person liable for a customs debt" (Sw., "varje person som är skyldig att betala en tullskuld"). Thus, the use in the rule of the expression *any person* (Sw., *varje person*) means that the debtor can be an ordinary private person (consumer) as well as an entrepreneur. The Union Customs Code is an EU regulation and thereby directly applicable in the Member States, according to article 288 second paragraph of the Functional Treaty. Thus, there is no need to implement the Union Customs Code into the Member States' national legislations for it to apply, and by Ch. 1 sec. 1 first paragraph first indent of *tullagen (2016:253*, here abbreviated TuL), i.e. the Swedish Customs Act, follows that that act only completes (Sw., *kompletterar*) the Union Customs Code and the regulations issued by the EU by virtue of that regulation. In a corresponding way it is stated in Ch. 1 sec. 1 item 1 first sentence of the Finnish Customs Act, *tullagen (304/2016)*, that that act is applied on customs

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[312] See Forssén 2020a, p. 752 and the reference there to Forssén 2018a, p. 320 and the idea figure of a doll's house as the complete joint work, when several persons participate in creating for example a musical work to be performed at a concert, a stage play or a film. I refer to the same idea figure in Forssén 2018a, p. 320 and also in Björn Forssén, *Sammansatta transaktioner och semiotik beträffande moms* (Composite transactions and semiotics concerning VAT). *Svensk Skattetidning* (Swedish Tax Journal) 2020, pp. 160–172, 171 and 172 (Forssén 2020e).

[313] See Forssén 2021a, p. 441 and the reference there to Forssén 2020a, p. 752 with reference to Forssén 2018a, p. 320.

[314] See Forssén 2021a, p. 441 and the reference there to Forssén 2020d. In Forssén 2020d I create in Chapter 3 a tool for the case studies of composite transactions that I do in Chapter 4 therein. By the way, I refer in Forssén 2020d inter alia to the following: Forssén 2011, Forssén 2013, Forssén 2018a, Forssén 2019a, Forssén 2019b, Forssén 2019f, Forssén 2020c and Forssén 2020e.

[315] See Moëll 1996. See also Forssén 2020a, section 5.3.2.

clearance, customs supervision and customs taxation in addition to (Sw., *utöver*) what is determined about this in the EU legislation.

For future research concerning indirect taxes, I may mention that an interpretation problem regarding the determination of the tax subject in the ML and a gap in the TuL can cause that the scope of the right of deduction for input tax becomes far too vast. I treated the interpretation problem thoroughly in an article 2018.[316] I state there that the gap in the TuL can open for an undesired arrangement meaning that for example holding companies, non-profit associations and registered religious communities can get deduction for import-VAT, despite imported goods will not be sold in their turn and leading to liability to account for outut tax but used purely for consumption. If the assumed gap in the TuL can be used in that way it is due to the ML since the mentioned reform on 1 July, 2013, by SFS 2013:368, has come to contain two determinations of the concept taxable person (Sw., *beskattningsbar person*), namely the general in Ch. 4 sec. 1 and a special in Ch. 5 sec. 4, which is used in connection with the application of the rules in Ch. 5 of the ML determining if a supply of a service is made within or outside the country.[317] I bring up this interpretation problem also in a book from 2019,[318] and as well in a commentary that I submitted in the JFT in the year 2020 regarding a proposal of a new VAT act in Sweden according to the Government's official report *En ny mervärdesskattelag (SOU 2020:31)*, Eng., A new VAT act, which was suggested to come into force on 1 January, 2022.[319] When this is written a proposal of 17 February, 2022 has been made to the Council on Legislation for consideration (Sw., *lagrådsremiss*), where the coming into force instead is suggested to be on 1 January, 2023 (which however thereafter has been altered to 1 July, 2023 – see prop. 2022/23:46, p. 1). Here I mention the interpretation problem in question as an example of the importance to observe that the determination of the tax subject regarding the VAT together with a gap in the TuL may cause undesired effects of for example the mentioned kind. I summarize the interpretaion problem in question according to the following.

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[316] See Björn Forssén, *Lucka i tullagen öppnar för ej avsett momsavdrag på grund av två olika bestämningar av vem som är beskattningsbar person* (Eng., Gap in the customs act opening for unintended VAT deduction due to two different determinations of who is a taxable person). *Tidningen Balans fördjupningsbilaga* (The Periodical Balans Annex with advanced articles) 3/2018, pp. 17–19 (Forssén 2018c).

[317] The rule in Ch. 5 sec. 4 of the ML was introduced on 1 January, 2010, by SFS 2009:1333 (and the regulation SFS 2009:1034 on the coming into force of SFS 2009:1333), and then was the concept trader (Sw., *näringsidkare*) used – see also prop. 2009/10:15 (*Nya mervärdesskatteregler om omsättningsland för tjänster, återbetalning till utländska företagare och periodisk sammanställning* – Eng., New VAT rules on country of the placement of supply of services, refund to foreign entrepreneurs and periodical statements) p. 19. At the reform on 1 July, 2013, by SFS 2013:368, *näringsidkare* was replaced with *beskattningsbar person* (taxable person) in Ch. 5 sec. 4 of the ML, whereby the motive only was to thereby achieve an increased formal correspondence with the VAT Directive – see prop. 2012/13:124 (*Begreppet beskattningsbar person – en teknisk anpassning av mervärdesskattelagen* – Eng., The concept taxable person – a technical adjustment of the VAT act), pp. 1 and 25.

[318] See Björn Forssén, *Ord och kontext i EU-skatterätten: En analys av svensk moms i ett law and language-perspektiv Tredje upplagan* (Eng., Words and context in the EU tax law: An analysis of Swedish VAT in a law and language-perspective Third edition), self-published 2019, sections 3.7.1 and 3.7.2 (Forssén 2019g).

[319] See Forssén 2020b, section 3.4. I refer to Forssén 2018c also in Forssén 2020b, p. 396.

The TuL replaced on 1 May, 2016 *tullagen (2000:1281*, here abbreviated GTuL). On 1 January, 2015 *Skatteverket* (i.e. the Swedish tax authority) took over the value-added taxation of certain kinds of import from the Swedish Customs (Sw., *Tullverket*). According to SFS 2014:50 and SFS 2014:51 was on 1 January, 2015 the scheme introduced meaning that *import-VAT* (Sw., *importmoms*) is taken out by *Skatteverket* in accordance with *skatteförfarandelagen (2011:1244*, here abbreviated SFL) – Eng., the Swedish Taxation Procedure Act – of those VAT-registered in Sweden, whereas the Customs still is the taxation authority for imports in other cases. In an e-mail of 12 December, 2014, I pointed out to the Swedish Treasury the existence of a risk for an undesired arrangement, if not Ch. 5 sec. 11 a first paragraph no. 1 and no. 2 of the GTuL were changed so that no. 2 referred to *beskattningsbar person* (En., taxable person) according to the ML *except in the special meaning the concept is given in Ch. 5 sec. 4 of the ML* (Sw., *utom i den särskilda betydelse begreppet ges i 5 kap. 4 § ML*). In Ch. 5 sec. 11 a first paragraph no. 2 of the GTuL, its wording according to SFS 2014:51, was stated as one of the conditions for *import-VAT* to be taken out according to the SFL, that the person making a tax return *acts in the capacity of taxable person according to the ML at the import* (Sw., ”agerar i egenskap av beskattningsbar person enligt mervärdesskattelagen vid importen eller införseln”). The word *vid* (Eng., at) is conducive to the interpretation problem in question, and the expression *i samband med* (Eng., in relation to) should have replaced it, but the problem with two determinations of the concept *beskattningsbar person* (Eng., taxable person) would have disappeared by a clarification that no. 2 with the reference to the concept *beskattningsbar person* did not regard its determination in Ch. 5 sec. 4 of the ML. The lack in Ch. 5 sec. 11 a first paragraph no. 2 of the GTuL of the expression *utom i den särskilda betydelse begreppet ges i 5 kap. 4 § ML* (Eng., *except in the special meaning the concept is given in Ch. 5 sec. 4 of the ML*) meant in my opinion there was a gap in the act, that is a gap in the GTuL. The gap could in my opinion give an unjustified right of deduction for input tax on imports according to the main rule on the right of deduction in Ch. 8 sec. 3 first paragraph of the ML. It existed in my opinion an obvious risk for the following undesired arrangement:

- For example a non-profit association or a holding company acquiring a service from abroad can already because of that be a taxable person according to Ch. 5 sec. 4 of the ML. If the non-profit association or the holding company combines that with import of goods for pure consumption, can right of deduction emerge according to Ch. 8 sec. 3 first paragraph of the ML for input tax corresponding to the import-VAT by those subjects, regardless of whether they in their activities supply taxable goods or services.

- Thus, the interpretation problem concerns the tax subject question and that there were two relevant determinations of the concept *beskattningsbar person* (Eng., taxable person) in the ML to which the rule in question in the GTuL could be deemed referring to, namley Ch. 4 sec 1 and Ch. 5 sec. 4. In Ch. 5 sec. 4 of the ML is by *beskattningsbar person* meant not only persons carrying out economic activity etc., but also for example holding companies and non-profit associations and registered religious communities that do not have an economic activity according to Ch. 4 sec. 1 of the ML.

- Thus, in the e-mail to the Treasury, I pointed out the presumed gap in the GTuL, and the Treasury answered on 16 December, 2014 (Dnr. Fi2014/4452). What is in my opinion precarious is that the Treasury referred to await the case-law rather than making my suggested alterations of the rule in the GTuL to reduce the risk of

undesired arrangements regarding VAT due to the presumed gap in the act. The legislator had the opportunity to easily rectify the gap, when the TuL replaced the GTuL on 1 May, 2016, which however has not happened yet, but the word *vid* (Eng., at) is also used in Ch. 2 sec. 2 first paragraph of the TuL, which corresponds to the former Ch. 5 sec. 11 a of the GTuL.

Thus, I may suggest that the interpretation problem in question will be brought up in the research concerning indirect taxes in Sweden, so that the legislator gets another stimulus to rectify by altering the legislation the gap that I consider exists, rather than waiting for an undesired arrangement to be tried in case-law. I do not go into the customs law, but mention in the next section something more about customs partly regarding corporate taxation questions and whether they can be treated assembled for evidence, procedure and proceedings purposes, partly regarding the concept goods [Sw., *vara* (the singular)].

5.3 Suggestions on future research in the field of indirect taxes

In Forssén 2020a I mentioned finally in section 5.3.1 the question on how the VAT research in Sweden considers the collection of VAT. I came back to that I in the article emphasized the importance of an effective collection of VAT as an important law political aim for the common VAT system within the EU, whereby I had 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. I reiterate here that the collection of the VAT is not only important for the public treasury in each Member State, but also to finance the EU's institutions. For future research concerning the indirect taxes, that is not only regarding VAT but also regarding excise duties and customs, I also got back to me in Forssén 2020a, section 5.3.1 emphasizing that if the law political aim witn an effective collection shall be promoted 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 be aiming at the formal VAT questions, whereby I exemplified with the question whether the SFL is conform in relation to the rules on VAT registration in articles 213–216 of the VAT Directive. I mentioned that side question E in Forssén 2011 concerned the question on VAT registration,[320] but that I did not find it to have been mentioned in any other thesis on VAT in Sweden. In section 5.3.1 of Forssén 2020a I therefore got back to section 3.5 in the article, where I state that without research efforts with focus on the registration question cannot the legislator get any conception of the range of how many persons are due to inefficient control *given entrance into* the VAT system on faulty grounds, and causing the State tax evasion or tax losses, which I also mentioned has been pointed out on the EU level as a problem for the VAT collection.

Thus, I suggested in section 5.3.1 in Forssén 2020a, that the VAT research in Sweden also would aim at formal questions such as the question on the collection of VAT, and not only on the material questions of taxation, whereby I suggested that also the law of procedure should be brought up in inter alia the research in the field of VAT. I reiterate my suggestions and may, in the light of what I state in this part about the advantages with a common taxation frame regarding VAT and income tax, also state that the VAT research in the future should

[320] 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.

focus also on the accounting questions, which also would be in line with what I have emphasized about that the law political aim with an effective collection should be promoted by impulses from the VAT research.

Olsson 2001 is a fine example of a theis that considerably regards not only the material taxation questions, by also especially treat, in Chapter 8, questions on deduction and reimbursement, that is how the excise duties are accounted for. I suggest that future VAT research follows that example and that the VAT and accounting questions even could be a subject in itself, where the research effort concerns the material VAT questions only to the extent that they need to be mentioned to give context to the accounting questions. What could be mentioned in the latter respect is in that case that the prerequisites for a person to be *required to maintain accounting records* (Sw., *bokföringsskyldig*) regarding natural persons, according to Ch. 2 sec. 6 of *bokföringslagen (1999:1078*, here abbreviated BFL), i.e. the Swedish Book-keeping Act), resemble the prerequisites in the main rule on who is a taxable person in article 9(1) of the VAT Directive. In the preparatory work to the BFL it is stated that the *requirement to maintain accounting records* for a natural person who is carrying out business activity occur according to Ch. 2 sec. 6 of the BFL when he or she is *professionally carrying out activity of economic sort* (Sw., ”yrkesmässigt bedriver verksamhet av ekonomisk art”).[321] Thus, the concept *bokföringsskyldig* (i.e. the concept person required to maintain accounting records) has a value for evidence purposes to determine who is a tax subject. The *requirement to maintain accounting records* (Sw., bokföringsskyldigheten) gives thereby a certain – however not decisive – guidance to that question, and thereby stability to the taxation procedure and proceedings. Thus, that the evidence influence from the accounting law in that way affects the procedure and the proceedings regarding the determination of the tax subject for VAT purposes promotes the legal rights of the individual.[322] Although a common taxation frame for corporate taxation purposes is not introduced insofar as the ML would be steering for the IL from a material perspective regarding who is an entrepreneur, which I, as mentioned above, left open in Forssén 2011, it would in my opinion be an advantage for evidence, procedure and proceedings purposes to keep the two taxes together in a common taxation frame.[323]

Since also excise duties are included for procedure purposes in the tax account system (Sw., *skattekontosystemet*) and comprised by the SFL, my suggestion in the respects mentioned also apply to those, that is if also excise duties are urgent for an enterprise it promotes the legal rights of the individual if such a common taxation frame as I recommend includes excise duties together with VAT and income tax. However, it provides, regarding the energy tax and the tax on biocides, that the material connection to the concept business activity (Sw., *näringsverksamhet*) in the whole of Ch. 13 of the IL made in Ch. 1 sec. 4 no. 1 of the LSE and sec. 4 third paragraph of *lagen (1984:410) om skatt på bekämpningsmedel* (the Act on Tax on Biocides), for the determination of the concept professional activity (Sw., *yrkesmässig verksamhet*), will be revoked. Thereby would, as mentioned, the tax subject regarding the

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[321] See prop. 1998/99:130 (*Ny bokföringslag m.m.* – Eng., New book-keeping act) Part 1, p. 205. See also Forssén 2011, pp. 33 and 176.

[322] See Forssén 2011, pp. 180 and 181.

[323] See Forssén 2011, p. 267.

Swedish excise duties be determined independently, like what is the case according to the FPL, which thus is EU conform in that respect, which also is mentioned above.

Concerning customs applies, as mentioned, since 1 January, 2015 the scheme that *import-VAT* (Sw., *importmoms*) is taken out by *Skatteverket* (the Swedish tax authority) in accordance with the SFL for those VAT-registered in Sweden, whereas the Customs still is the taxation authority for imports in other cases, where the taxation procedure follows by the TuL. Thus, for VAT-registered enterprises should it benefit them from a legal certainty point of view that the question on the determination of the tax subject is kept together for corporate taxation purposes in a common tax frame for evidence, procedure and proceedings purposes, where thus that determination would be made assembled thereby for customs and the other taxes in question. Regarding the customs questions I iterate what I state in section 5.3.2 in Forssén 2020a about the concept goods [Sw., *vara* (the singular)], namely that it at research in the field of indirect taxes should be made analyses of the opportunity to accomplish simplications for the determination of the tax object, by establishing *a uniform concept goods* for the taxes within the corporate taxation. I mentioned that in Moëll 1996 (p. 41) was stated that *it would hardly be possible or even meaningful to establish a uniform concept goods for all fields of law*, but that it therein was stated that the meaning of the concept should be determined *field by field based on the present legislation*. I consider that that attitude will typically not favour the EU project, and that the research instead should be conducive to an effective collection in the field of indirect taxes, by preparing for the introduction there of a uniform concept goods. Thereby I also iterate that the result of such a research result can be used in a work on the introduction of the free trade agreement between the EU and the USA,[324] that is the TTIP-agreement,[325] if this will be resumed.

To the research regarding formal rules and accounting rules on VAT I can contribute in a decriptive respect by Forssén 2019a, where I treat such issues especially in the sections 30 000 000–33 000 000. Furthermore, I have made a SFS-register over taxation procedure and administration proceedings concerning the entire field of taxation from the 1950's until present times.[326] The acts are stated in Forssén 2019h with their numbers according to *svensk författningssamling (SFS)*, i.e. the Swedish Code of Statutes, whereby the preparatory work to each SFS-number are stated regarding *regeringens propositioner* (i.e. the Swedish Government's bills) and *riksdagsutskottens betänkanden* (i.e. the reports from the Swedish Parliament's committees) and, when so is current, the EU's legislations.[327] Concerning the Customs system the SFS-register in Forssén 2019h contains, like for the VAT, SFS-numbers both for procedure rules and material rules. The book gives a good historical *SFS-outline* (Sw., *SFS-överblick*) of the procedure rules of the entire Swedish field of taxes. It should

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[324] USA, United States of America (Sw., *Amerikas Förenta Stater*).

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

[326] See Björn Forssén, *SFS-register över beskattningsförfarandet och förvaltningsprocess: Andra upplagan* (Eng., SFS-register over the taxation procedure and administration proceedings: Second edition). (Self-published 2019). (Forssén 2019h).

[327] The source to the information in Forssén 2019h is the law data bases by the secretariat of the Swedish Government (www.regeringen.se).

serve as support for researchers who for example plan to write about the taxation procedure in the field of indirect taxes, as I am suggesting in this section. Since the Swedish procedure rules are hard to take in historically, I have put in a schematic, historical guide to the SFS-register under *ÖVERSIKT* (Eng., outline) in the book.[328] I may also emphasize that the list of abbreviations in the book gives a simple information on which existing or former committees of the Parliament that are meant by abbreviations regarding those in various law sources.[329]

[328] See Forssén 2019h, p. 12.

[329] See Forssén 2019h, p. 8.

THE PARTS I, II AND III – OVERVIEW

1 The VAT research and the research on excise duties

1.1 The VAT research in Sweden

1.1.1 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

In Part I, section 5.2 I summarize the following from the review in that part regarding the two methodological main tracks that I identify for the VAT research in Sweden 1994 – 2000.

Main track 1

- Regarding the alternative with application of a comparative method with only an external perspective on the EU law in the field of VAT I conclude that it gives a negative tendency for the implementation question (that is the question on implementation of the rules in the VAT Directive into the ML) regarding expected research result.

- Regarding the alternative with application of a comparative method with an internal perspective on the EU law in the field of VAT I conclude that it gives a positive tendency for the implementation question regarding expected research result.

- Regarding the alternative with application of a law dogmatic method completed with a comparative method I conclude that it gives a positive tendency for the implementation question regarding expected research result.

Main track 2

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

In section 5.2 I make comments to the mentioned conclusions from the review in Part I.

1.1.2 The position of the Swedish language

In Part II, section 2.6 I summarize according to the following in two tables over both the methodological main tracks regarding the VAT research in Sweden 1994 – 2020 if a ”positive tendency” or a ”negative tendency” can be deemed to exist for the expected research result regarding the implementation question and whether the thesis is written in Swedish or English.

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 2020a.]

The review in Part II of the choice between Swedish and English for the writing of the theses in question in relation to a ”positive tendency” or a ”negative tendency” for the research result at various choice of method supports 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.

See also my comments in section 2.6 to the conclusions I make from the review in Part II.

In Part II, section 3 I comment what is stated concerning the position of the Swedish language within the EU according to the preparatory work to the Act concerning Sweden’s accession to the EU in 1995 and according to the Language Act of Sweden in 2009.

1.2 The research on excise duties in Sweden

1.2.1 Harmonised and non-harmonised excise duties in Sweden and the determination of the tax subject

In Part III, section 2 I account for inter alia that according to article 113 of the Functional Treaty there is a demand of harmonisation of the Member States' legislations for the indirect taxes, that is not only for VAT and customs, but also for excise duties. However, the harmonisation demand does not comprise all excise duties in Sweden, why I in that section account for the following for the mandatory (harmonised) excise duties according to the EU law, which are applying in Sweden (and shall be applying in the other Member States), and for the non-harmonised excise duties, which also are charged in Sweden:

Harmonised excise duties

Concerning the excise duties in relation to the EU law and the Excise Duty Directive (EU) 2020/262 may be mentioned that certain excise duties are mandatory for the Member States (harmonised excise duties).

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

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

Non-harmonised excise duties

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

- *lagen (1994:1776) om skatt på energi*, the LSE (i.e. the Energy Tax Act), except the excise duty on the fuels comprised by the stay procedure (according to Ch. 1 sec. 3 a of the LSE – *my remark*),
- *lagen (1984:410) om skatt på bekämpningsmedel* (i.e. the Act on Tax on Biocides),
- Sections *35–40 a of lagen (1994:1563) om tobaksskatt* (that is the excise duty on moist snuff, chewing-tobacco and other tobacco),[330]
- sec. 2 first paragraph no. 5 of *lagen (1990:661) om avkastningsskatt på pensionsmedel* (i.e. the Act on Tax on Return of Pension Means),
- *lagen (1990:1427) om särskild premieskatt för grupplivförsäkring, m.m.* (i.e. the Act on Special Premium Tax for Group Life Insurance, etc.),
- *lagen (1995:1667) om skatt på naturgrus* (i.e. the Act on Tax on Nature Gravel),
- *lagen (1999:673) om skatt på avfall* (i.e. the Act on Tax on Waste Products),

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

- *lagen (2007:460) om skatt på trafikförsäkringspremie m.m*. (i.e. the Act on Tax on Third Party Insurance Premium etc.),
- *lagen (2016:1067) om skatt på kemikalier i viss elektronik* (i.e. the Act on Tax on Chemicals in Certain Electronics),
- *lagen (2017:1200) om skatt på flygresor* (i.e. the Act on Tax on Air Trips),
- *lagen (2018:696) om skatt på vissa nikotinhaltiga produkter* (i.e. the Act on Tax on Certain Products with Nicotine Content),
- *lagen (2018:1139) om skatt på spel*, (i.e. the Act on Tax on Lotteries)
- *lagen (2019:1274) om skatt på avfall som förbränns* (i.e. the Act on Tax on Burn up Waste), and
- *lagen (2020:32) om skatt på plastbärkassar* (i.e. the Act on Tax on Plastic Carrier Bags).[331]

Regarding *the harmonised excise duties* I state that according to article 1 of Directive 2003/96/EC shall energy products and electricity be taxed in the EU's Member States in accordance with that directive,[332] and that I in this part mention excise duty in the form of energy tax, carbon dioxide tax and sulphur tax in Sweden with regard of certain fuels according to Ch. 1 sec. 3 a of the LSE. The problem I bring up in this part is that it for the determination of the tax subject exists in Ch. 1 sec. 4 no. 1 of the LSE a reference to *the non-harmonised income tax law* regarding what constitutes an *yrkesmässig verksamhet* (Eng., professional activity). Although the concept trader (Sw., *näringsidkare*) is not used in the Excise Duty Directive, unlike what was the case in the two previous directives in the field, the tax subject is determined independently in article 7(1), why the connection in Ch. 1 sec. 4 no. 1 of the LSE to the concept *näringsverksamhet* (Eng., business activity) in Ch. 13 of the IL is not EU conform.[333] I do not mention the other two harmonised excise duties, which in Sweden are comprised by *lagen (1994:1564) om alkoholskatt* (i.e. the Swedish Alcohol Tax Act) and *lagen (1994:1563) om tobaksskatt* (i.e. the Swedish Tobacco Tax Act) respectively, since the connection to *the non-harmonised income tax law* does not exist therein.[334]

Regarding *the non-harmonised excise duties* it is only in *lagen (1984:410) om skatt på bekämpningsmedel*, the Act on Tax on Biocides, that there exists such a connection to *the non-harmonised income tax law* regarding what is meant by the concept *yrkesmässig verksamhet* (Eng., professional activity) like in Ch. 1 sec. 4 of the LSE, namely in sec. 4 third paragraph whose wording corresponds completely with Ch. 1 sec. 4 of the LSE (which is expressed in section 3.2.1).[335] I mention something about the Act on Tax on Biocides in connection with the LSE, whereas other non-harmonised excise duties are not be mentioned at

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[331] See <https://www4.skatteverket.se/rattsligvagledning/edition/2022.1/382794.html?q> (visited 2022-10-17).

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

[333] See Part III, section 3.2.1.

[334] By the way, the same applies according to *lagen (2022:156) om alkoholskatt* (i.e. the new Swedish alcohol tax act) and *lagen (2022:155) om tobaksskatt* (i.e. the new Swedish tobacco tax act), which on 13 February, 2023 will replace the two acts from 1994.

[335] Ch. 1 sec. 4 of the LSE is expressed in Part III, section 3.2.1.

all. However, I mention something about another non-harmonised excise duty in Sweden, namely the recently abolished advertising tax, which was abolished by the RSL, i.e. the Swedish Advertising Tax Act, being revoked on 1 January, 2022 according to SFS 2021:1166.

1.2.2 Regarding the choice of method in the research on excise duties

In Part III, section 5.1 I state regarding the choice of method in the research on excise duties inter alia that its is more open than regarding the VAT to use third countries as material for comparison at the use of a comparative method for jurisprudential studies regarding the implementation of the Excise Duty Directive (EU) 2020/262 into the national legislations regarding harmonised excise duties. It depends in my opinion on that there is no specific definition of what is meant with excise duties according to the EU law in the Excise Duty Directive (EU) 2020/262. I consider what is important is to, in the same way as concerning the implementation questions regarding VAT, consider both the tax subject question and the tax object question at a study of the implementation question in the field of excise duties.

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

In Part III, section 3.2.5 I state inter alia that Olsson 2001 is written in Swedish, and that it is in line with what I state in Forssén 2021a[336] about the importance for the research in jurisprudential subjects that are influenced by the EU law to promote Swedish at such studies. With respect of methodology I moreover state that Olsson 2001 is also in line with what I state in Forssén 2020a.[337] A traditional law dogmatic method is used in Olsson 2001, but with the statement that *various methods can of course complete each other*, why I state that Olsson 2001 thereby cannot be considered to have been conducive to the development within the VAT research in Sweden that I am warning for by Forssén 2020a and Forssén 2021a, namely the risk that the jurisprudential studies will be made by application of what I call a purely law dogmatic method, like what I have stated is the case with Henkow 2008 and Lindgren Zucchini 2020. My criticism regarding Olsson 2001 concerns instead the lack of analysis on the theme EU conformity of the determination of the tax subject in the national Swedish legislation in the field of excise duties, which I come back to also in the nearest following section.

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[336] Part II in this bok.

[337] Part I in this book.

1.2.3 The legislator and the research in Sweden are not treating the non-EU conform determination of the tax subject regarding the energy tax

In Part III, section 3.2.5 I state regarding the energy tax that the legislator and the research in Sweden are not treating the non-EU conform determination of the tax subject. In Forssén 2011 I brought up that the then existing connection in the ML to *the non-harmonised income tax law* and the concept *näringsverksmhet* (Eng., business activity) in the whole of Ch. 13 of the IL for the determination of the tax subject existing also in Ch. 1 sec. 4 no. 1 of the LSE for the determimation of the concept *yrkesmässig verksamhet* (Eng., professional activity). That connection still remains for the determination of the tax subject, despite the connection in Ch. 4 sec. 1 of the ML to Ch. 13 of the IL being revoked on 1 July, 2013, by SFS 2013:368. I suggest once again that the research or the legislator brings up the phenomenon with the connection in Ch. 1 sec. 4 no. 1 of the LSE to Ch. 13 of the ML, since I consider it obvious that the phenomenon still gives a selection of tax subjects which is far too comprehensive in relation to the Excise Duty Directive (EU) 2020/262. Besides is that selection expanded further by the supplementary rule in Ch. 1 sec. 4 no. 2 of the LSE comprising persons that carries out activities in the field of energy under businesslike forms (provided that they have an annual turnover exceeding SEK 30,000). By the way, I am mentioning that the phenomenon existed in the field of excise duties also regarding advertising tax, but ceased on 1 January, 2022 only becaise that excise duty was abolished by the RSL, as mentioned, was then revoked according to SFS 2021:1166.[338]

In Part III, section 3.2.3 I note inter alia that the comparison I am making with Finnish law in the field of excise duties shows that there is no support for retaining the mentioned connection in the LSE to *the non-harmonised income tax law* for the determination of the tax subject. Concerning the energy taxation it is stipulated in the Finnish tax authority's detailed instructions that inter alia authorised warehousekeepers and registered consignees are tax liable, whereby a reference is made to sections 12 and 13 of the FPL, and therein it does not exist any such connection to the income tax law for the determination of the tax subject like regarding the energy tax in Ch. 1 sec. 4 no. 1 of the LSE, and that is conform with the EU law in the field of excise duties.

In Part III, section 3.2.5 I iterate (from Part I, section 4.4) that within the VAT research in Sweden it is only in Forssén 2011 and Forssén 2013 and in Öberg 2001 that the tax subject question is given a closer analysis, whereby I inter alia state that in the research so far in Sweden on the field of excise duties, that is in Olsson 2001, questions about the tax subject are given a rather limited treatment. My criticism regarding Olsson 2001 is mainly about that circumstance, and I iterate here above all the following.

- In Olsson 2001 it was not regarded that the same problem that 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 in that rule of *the non-harmonised income tax law*, existed also in the field of excise duties regarding the LSE and the RSL. Professor Stefan Olsson participated at the final seminar regarding

[338] See Part III, section 3.2.4.

Forssén 2011, and said he did not understand my comparison with Olsson 2001 concerning the precarious with connections from the indirect taxes to *the non-harmonised income tax law*, when it was a matter of the concept professional activity (Sw., *yrkesmässig*) and thereby the determination of the tax subject. I stated in Forssén 2011 that Olsson 2001 does not have a focus on the tax subject in the way I do in Forssén 2011. To stimulate further research in Sweden in the field of excise duties I noted the following as a considerable lack in Olsson 2001.

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

- I stated in Forssén 2011 that an explanation to Professor Stefan Olsson not bringing up in Olsson 2001, concerning the mentioning therein of the determination of the concept professional (Sw., *yrkesmässig*) in the main rule in the ML, that the reference for that determination to Ch. 13 sec. 1 (first paragraph second sentence) of the IL was altered on 1 January, 2001 to apply to the concept business activity in the whole of Ch. 13 of the IL, could be that Olsson 2001 was issued during June 2001, that is after that alteration of the rule.

- However, in the preface of Olsson 2001 it is stated that new material has been regarded until 31 December, 2000. Therefore, it is a considerable lack in Olsson 2001 that the connection in Ch. 1 sec. 4 no. 1 of the LSE and the instructions to sec. 9 of the RSL respectively to the concept business activity in the whole of Ch. 13 of the IL, for the determination of the tax subject regarding energy tax and advertising tax respectively, is not mentioned, since that phenomenon emerged already on 1 January, 2000, by SFS 1999:1289 and SFS 1999:1241 respectively and, concerning tax on biocides, also on 1 January, 2000, by SFS 1999:1252.

I expected that the research or the legislator would after Forssén 2011 take up the question on the compliance with the EU law concerning that the connection mentioned to the IL exists also in the field of excise duties, but this has not happened. A part of the problem in that field was resolved, as mentioned, simply as a consequence of the abolishment of the advertising tax in Sweden on 1 January, 2022, whereby, as mentioned, the RSL was rescinded according to SFS 2021:1166. However, it remains concerning the determination of the tax subject regarding energy tax, carbon dioxide tax and sulphur on *certain fuels*, by who thereby is professional still is determined by Ch. 1 sec. 4 no. 1 of the LSE referring to the concept business activity in the whole of Ch. 13 of the IL. Thus, this phenomenon is the basic problem on the theme of EU confirmity where the determination of the tax subject regarding those excise duties is concerned.

In Part III, section 3.3 I state that a non-EU conform determination of the tax subject in the field of excise duties may cause non-EU conform consequences for the taxation amount for VAT, regardless whether it is a matter of harmonised excise duties or non-harmonised excise duties. Such a connection to *the non-harmonised income tax law* for the determination of the tax subject, which since 1 January, 2022 is made only regarding the connection in Ch. 1 sec. 4

no. 1 of the LSE and in sec. 4 third paragraph of the Act on Tax on Biocides to the concept business activity in the whole of Ch. 13 of the IL, cause a competition distortion regarding the VAT in conflict with the secondary law and recital 4 of the premable to the VAT Directive and article 1(2) of the VAT Directive as well as with the primary law and article 113 of the Functional Treaty. That will be the consequence for the VAT of the selection of tax subjects becoming far too comprehensive for the two excise duties regarding the legal persons. Thus, I state above all the following:

- The legislator should suggest that the connection from Ch. 1 sec. 4 no. 1 of the LSE to the concept business activity in the whole of Ch. 13 of the IL would be revoked, so that the determination of the tax subject will become conform with the Excise Duty Directive (EU) 2020/262. Besides, to increase the terminological clarity should the concept professional (Sw., *yrkesmässig*) be completely abolished from the LSE, since it is not used in the directive.[339]

- My review in Part III shows that the connection to Ch. 13 of the IL in the national Swedish legislation in the field of excise duties should be abolished concerning the harmonised energy tax as well as the non-harmonised tax on biocides. That the problem was resolved on 1 January, 2022 concerning the non-harmonised advertising tax, I signify as random as a consequence of that tax being abolished.[340]

2 Concluding viewpoints – indirect taxes

2.1 The VAT research in Sweden should regard also formal questions and procedural law

In Part I, section 5.3.1 I mention that I in that part, with reference to Forssén 2011 and Forssén 2013, have emphasized the importance of an efficient collection of VAT as a law political aim for the common VAT system within the EU, and that the collection of VAT is important for the public treasury in the respective Member State and for the financing of the EU's institutions, whereby I left the following concluding viewpoints on the collection question.

- 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.

- Such a question concerns whether the Swedish Taxation Procedure Act 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, but 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.

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[339] See Part III, section 3.2.5.

[340] See Part III, section 3.3.

- 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 Forssén 2017 – regarding a norm hierarchy that regards national law and the European law in the broader perspective that also includes the European Convention.

- Since the recently mentioned problem has been pointed out on the EU level as a problem for the VAT collection, 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.

I iterate here from Part II, section 2.5.4.1 that an in principle general right of deduction is one of the criteria included in what constitutes the VAT principle according to article 1(2) of the VAT Directive. To make it possible to problemize the subject of VAT law the researcher cannot do like in Lindgren Zucchini 2020, where the author has delimited the right of deduction and thereby treating the study of composite supplies as if the examination did not concern VAT according to the EU law, but a gross tax like an excise duty. By that way of doing the research the research result will not be useful for the legislators and the appliers of law within the EU, where it is a matter of judging whether for example the law political aim with an efficient collection of VAT is fulfilled or not.

2.2 Summary on the language question in the VAT research in Sweden

I may also reiterate from Part II, section 2.6 that the review of the language question indicates that the English language is used – consciously or not consciously – in the VAT research in Sweden to compensate a research result which can become negative for the implementation question due to lacks at the choice of method. It becomes, as I mention in section 2.6, the most clear in Main track 2 concerning the application of what I denote as a purely law dogmatic method in Henkow 2008 and Lindgren Zucchini 2020. In sections 2.5.1–2.5.4.2 I show, as mentioned, 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 repeat that a development where English is set before Swedish within the VAT research in Sweden should be counteracted by the universities (Sw., universitet and högskolor), which I state as especially important if a purely law dogmatic would be proven recurrent within the research in VAT law in Sweden. Thereby I am warning in Part I, section 5.2 and Part III, section 5.1 for somebody who is carrying out VAT research or research on excise duties to fall into what I call the trap of mathematics in the research. If tools – models – are used to support for example the law dogmatic method for the analysis of questions on VAT or excise duty, may the tool – the model – not be made into the method in itself for the study. Such an approach for a jurisprudential study is only a matter of deduction, and no induction developing the knowledge on the subject. It would merely be a matter of calculating with law rules, if mathematics and logic would be made the method in itself, and not only used in the study as a supporting tool at the application of a law dogmatic method. However, I do not dismiss the use of only law dogmatics as a method, but state that it in such a case should be developed by the addition of legal semiotics.

I repeat from Part II, section 3 that I mention in Forssén 2011 that it of sec. 4 of the Language Act follows that the Swedish language's position as an official language in the EU shall be

defended, why it is not compying with the work on the EU-project to reduce the Swedish language's position in the VAT research in Sweden, by continuing to set English before Swedish in that research. Thus, 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*). I argue, as mentioned, instead for that the Nordic should 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 of the language issue, but also by 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 namely not only one the EU's official languages, but Finnish has 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 however are not official languages within the EU.

I repeat also from Part II, section 2.5.1.2 that the review of the language question shows that English should neither be superseding any other of the EU's official languages, but a researcher in the subject VAT law in Sweden should write in Swedish, but be open to also use English and other official languages within the EU. Thus, 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.

2.3 More suggestions for continuing research in Sweden within the field of indirect taxes

From Part I, section 5.3.2 I repeat here the following suggestions concerning the research in Sweden regarding excise duties and customs about how it relates to the VAT research in Sweden so far.

- I suggest that the research or the legislator in Sweden brings up the question on the determination of the tax subject in the legislation on excise duties, since an incorrect treatment of the excise duty question in that respect affects the determination of the taxation amount for VAT. That applies regarding Ch. 1 sec. 4 no. 1 of the LSE and sec. 4 third paragraph of the Act on Tax on Biocide, and the in Part III mentioned connection in these rules to Ch. 13 of the IL for the determination of the concept professional activity.

- Concerning customs are both entrepreneurs and consumers tax subjects. Therefore, focus regarding the research within the customs law can be set on the tax object. In opposition to what is stated in Moëll 1996, efforts should be made within the field of indirect taxes aiming at simplifications, for example by a common concept on goods being prepared within the EU. Such research would not only lead to simplifications within the EU regarding VAT, excise duties and customs, but also preparing for customs questions at a future introduction of the free trade agreement between the USA and the EU, that is regarding the TTIP-agreement, if the work with TTIP will be resumed.

- Like what is the case concerning the research within the field of excise duties, there is only one Swedish thesis regarding the research on customs law, Moëll 1996. For continuing research within customs law, I note that since then the following change of

the primary law has occurred regarding the indirect taxes, that is VAT, excise duties and customs. When Moëll 1996 was written article 113 of the Functional Treaty was corresponded by article 99 of the Rome Treaty. Article 99 of the Rome Treaty was first replaced by article 93 of the EC Treaty, which, by the Lisbon Treaty, was replaced on 1 December, 2009 by article 113 of the Functional Treaty. Thereby, a principle of neutrality has come to be clearly expressed by the primary law for the indirect taxes, unlike what was the case in article 99 of the Rome Treaty.

I finish by referring to the following suggestions in Part III concerning further research:

- In section 5.2 I mention that the right of deduction for input tax can be affected by an unclear determination of the tax subject for VAT purposes and a gap in the legislation on customs.

- In section 4 I suggest that an adjustment of the income tax law to the rules on VAT and excise duties for the determination of the tax subject should be investigated. Such a common taxation frame for corporate taxation would lead to a considerable simplification of the taxation procedure and also regarding the handling of processes on the taxation of enterprises. Such an investigation could be made by Sweden and Finland in co-operation bringing up the question on the EU level, whereby I suggest that Sweden and Finland at the same time take up my proposal in Forssén 2013 of bringing up on the EU level the question whether enterprises ran by non-legal entities should be made tax subjects for VAT purposes. Such legal figures are namely treated differently in the two countries for VAT purposes, by *enkla bolag och partrederier* (Eng., approx., joint ventures and shipping partnerships) not being considered tax subjects according to the ML, whereas *sammanslutningar och partrederier* (Eng., approx., joint ventures and shipping partnerships) are considered tax subjects according to the FML. I have iterated that proposal previously in the JFT during 2019 and 2020,[341] and I reiterate it here. Besides, I also reiterate – from Forssén 2011 – that the described reverse scheme for the determination of the tax subject for corporate taxation purposes should make it easier to introduce an EU-tax in the future.[342]

See more about my suggestions to further research in the field of indiect taxes in Part III, section 5.3.

3 More from Björn Forssén regarding what is mentioned in the parts I, II and III

In section 2.2 I mention that I argue 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.[343] For that reason, I have had a translation done of my article in the JFT on the language question, that is Forssén 2021a, which is corresponded by Part II in this book, into Finnish. Besides, I

[341] See Forssén 2019b, pp. 69 and 70 and Forssén 2020b, p. 394.

[342] See Forssén 2011, p. 269 (and 327). See also Forssén 2013, pp. 41 and 42.

[343] See also Part II, sections 1 and 3.

have put together the original version of the article in Swedish, my translation into English and the translation from Swedish into Finnish that I have had the translation agency ArthemaxX Business Services ay in Turku (Suomi/Finland) to do, into a special book, *Momsforskningen i Sverige – studiematerial avseende svenska språkets ställning* (Eng., The VAT research in Sweden – a material for studies regarding the position of the Swedish language) – Forssén 2023a.

In section 2.3 I mention the EU's free trade agreement with the USA, that is the TTIP-agreement.[344] I consider that the work to introduce the TTIP should be resumed, since a future introduction of a free trade agreement between the USA and the EU is important for the customs questions of the EU-project. I have written an article on this which the JFT will publish soon – the work title is *EU:s frihandelsavtal med USA, TTIP – en motvikt till förflyttningen av världsekonomins tyngdpunkt till Asien och till gagn för världsfred* (The EU's free trade agreement with the USA, TTIP – a counterbalance to the transfer of the main focus of the global economy to Asia and to the advantage of world peace).

In Part I, section 5.3.1 and Part III, section 5.3 I suggest that the VAT research in Sweden also should aim at formal questions such as the question on the collection of VAT, and not only on the material questions of taxation, whereby I suggest that also the law of procedure should be brought up in inter alia the research in the field of VAT. In that context I may mention too that I in 2015 started – as I am mentioning also on www.forssen.com – a research project on the use of tax revenues, where I thus is aiming to focus on the sociology questions, whereby I made a pre study to that project within the subject of fiscal sociology or, as it is also called, sociology of taxation by Forssén 2019c. If I will get funding to carry on, I am aiming to continue the project with empirical studies of the use of tax revenues within various fields funded by taxes. Thereafter will probably a study follow of method issues, and I have mentioned in the pre study algorithms to make tools for method development. Of course will Artificial Intelligence (AI) be useful thereby, but only as a tool. Thus, like I am repeating in section 2.2 the warning for somebody who is carrying out VAT research or research on excise duties falling into the trap of mathematics, I consider as well for studies regarding FS that for example AI shall not be made into the method in itself, but only used as a tool – a model – for the research. However, in such a model can for example legal semiotics too be included as an element. Finally, I may mention that I also in the present context have brought up the language question by Forssén 2019d (which is ended with my translation into English of Forssén 2018a). About law and language: see also Forssén 2019g.

[344] See also Part I, section 5.3.2 and Part III, section 5.3.

SUMMARY AND FINAL REMARKS

The VAT research in Sweden – where is it going? Part 1

Björn Forssén gets back in this article, of two parts, to the research on value-added tax (VAT) in Sweden. He refers to inter alia a couple of his previous articles in Balans fördjuping (The Periodical Balans Annex with advanced articles), and starts out concerning method questions from his overview in Tidskrift utgiven av Juridiska Föreningen i Finland [The journal published by the Law Society of Finland (abbreviated JFT)], where the conclusion is that the VAT research might be going in a direction where it is no longer treated as a jurisprudential subject. Then the Swedish research results within the field of VAT law cannot be expected to be useful for the legislators in the various Member States of the European Union (EU) or for other appliers of law. Björn Forssén considers that it would totally have an injurious effect on the realization of the EU project, above all in Sweden.

In Part 1 I summarize my conclusions from Forssén 2020a, which was published in JFT 6/2020 pp. 716-757. The overall conclusion is about the choice of method for various research efforts about the subject of VAT law in Sweden. When to choose between using a law dogmatic method, a comparative method or a law dogmatic method completed with a comparative method, it is decisive for the research result to be expected to be useful for the legislators within the various Member States, for courts and tax authorities within the EU or for other appliers of law that the researcher is aware of what is meant with VAT according to the EU law. The material rules on VAT consist of rules on obligations and rights respectively according to the common VAT system of the EU, and it is the right of deduction for input tax on acquisitions and imports to the taxable person's economic activity (the right of deduction) which in the first place is decisive in the mentioned respect.

If the researcher does not take into consideration the importance of the right of deduction for the determination of what is meant by VAT according to the EU law, such a typical lack emerges at the choice of method for the research effort that the probability for a useful research result in the mentioned respects decreases. Such a research effort can even become totally useless for the appliers of law, where the judgment of the implementation question is concerned, that is the question whether the implementation into for instance *mervärdesskattelagen (1994:200)*, ML (i.e. the Swedish VAT act), of the rules in the EU's VAT Directive (2006/112/EC) is EU conform. With respect of the importance, in pursuance of the primary law article 113 of the Treaty on the Functioning of the European Union (the Functional Treaty), on harmonisation of the legislations in the Member States regarding turnover taxes, excise duties and other forms of indirect taxation, that is inter alia regarding VAT, to secure the internal market being established and functioningnd and to avoid competition distortion, it has an injurious effect on the realization of the EU project, above all in Sweden, if the VAT research in Sweden is going in a direction where the research results will be useless for the judgment of the implemenation question. In accordance with article 288 third paragraph of the Functional Treaty, it is namely binding for each Member State to carry out (implement) directives like the VAT Directive as to the result to be ahieved with the directive.

Value-added is a concept not defined in the VAT Directive and neither in the ML. Instead the VAT principle according to the EU law is defined, and thereby what is meant by VAT according to the EU law, in article 1(2) of the VAT Directive: the principle of a general right of deduction is, together with the reciprocity principle and the principle of passing on the tax

burden, a part of the VAT principle. Thereby, the right of deduction is not only a decisive criterion to determine what is meant by VAT according to the EU law, but also central for at all being able to make deeper reasoning on VAT according to the EU law (see Forssén 2020a, sections 2.1 and 4.6.1).

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

- Westberg 1994,
- Öberg 2001,
- Alhager 2001,
- Henkow 2008,
- Rendahl 2009,
- Sonnerby 2010,
- Forssén 2011 (licentiate's dissertation),
- Forssén 2013,
- Papis-Almansa 2016,
- Ek 2019 and
- Lindgren Zucchini 2020.

In Forssén 2020a I divided the review of the theses into two main tracks with respect of the question of the choice of method for the study of the VAT law issue: 1) application of only a comparative method or of a law dogmatic method completed with a comparative method as support and 2) application of only a law dogmatic method.

About Westberg 1994, Öberg 2001 and Sonnerby 2010

In both of the first two theses on the subject of VAT law in Sweden, Westberg 1994 and Öberg 2001 respectively, a comparative method and a law dogmatic was used respectively. I deem Öberg 2001 to be of a less importance in the present respect, since the analysis therein is limited regarding the EU law. However, Westberg 1994 is of great importance for the VAT research. There was current law in the field of VAT in all Nordic countries reviewed, whereby also the EC law rules were regarded, despite that thesis is from April 1994 and thus from the time before the ML replaced on the 1 July, 1994 *lagen (1968:430) om mervärdeskatt* (GML) and the time before Sweden's EU-accession in 1995. 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. This is meaningful not least for the researcher's suggestions *de lege ferenda* to the legislator, that is about changing a certain rule in the ML based on an analysis of the nearest corresponding rule of the VAT Directive (the implementation question). The EC law in the field influenced the Swedish VAT legislation already at the introduction of the GML in 1969. Westberg 1994 should in my opinion 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 implementation question, regardless whether the concepts and expressions concerned are used or defined by the EU law in the field, that is in the first place by the VAT Directive (see Forssén 2020a, section 4.4). In this context, I may also mention from Sonnerby 2010 (p. 30), where the analysis of the question of a neutral withdrawal taxation in the field of VAT was made by application of a law dogmatic method, that also a comparative method was used to get a further perspective of the question on implementation of the VAT Directive into the ML,

and that it thereby is stated in Sonnerby 2010 that *a comparative method is conducive to the understanding of the own legal system and to see new possibilities* (see Forssén 2020a, section 4.5.2).

From Forssén 2020a, I may, about the theses of the two main tracks etc., mention the following.

About main track 1 with Alhager 2001, Rendahl 2009, Sonnerby 2010 and Papis-Almansa 2016 and about Westberg 1994, Forssén 2011 and Forssén 2013

In the third Swedish thesis about the subject VAT, Alhager 2001, it is stated (on page 26) that it is disposed in the same way as Westberg 1994. In Alhager 2001 a comparison is made between Swedish law and German law regarding the implementation question. Such a comparative analysis from an internal EU-perspective for the study of that question increases in my opinion the probability for the research result to become useful for the appliers of law, 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 (see Forssén 2020a, section 4.5.2). Professor Eleonor Kristoffersson (previously Alhager)[345] was the main supervisor at my work with Forssén 2011 and Forssén 2013, and thereby Alhager 2001 served as a model for my work, precisely like Westberg 1994 served as a model for how the work with Alhager 2001. The method in Westberg 1994 was, as mentioned above, comparative, and a comparative method was also used in Rendahl 2009. In Alhager 2001 and Papis-Almansa 2016 was, like in Sonnerby 2010, a law dogmatic method completed with a comparative method applied. In Rendahl 2009 and Papis-Almansa 2016 the comparative method with only an external perspective on the EU law in the field of VAT was used.

In Forssén 2011, I reasoned about the relevance of completing the law dogmatic method with a comparative method. The international outlook and my inquiry to tax authorities and treasuries in a number of countries, which I made in that work, showed, concerning the main question on the EU conformity with the determination of the tax subject, that the connection to the non-harmonised income tax law for the determination of the tax subject in Ch. 4 sec. 1 no. 1 of the ML was unique for Sweden [see Forssén 2011 pp. 71, 72, 279-297 [*Bilaga 2 – Internationell utblick* (Appendix 2 – International outlook)] and 349 and also Forssén 2020a, section 4.3]. Therefore, I deemed that for the question on the EU conformity with that connection it was sufficient to make a law dogmatic analysis. That led to my suggestion in Forssén 2011 meaning that the concept *yrkesmässig verksamhet* (professional activity) regarding the determination of the tax subject in Ch. 4 sec. 1 no. 1 of the ML should be adapted to the concept *beskattningsbar person* (taxable person) according to article 9(1) first paragraph of the VAT Directive. By SFS 2013:368 was thereafter also a revision of the law made, so that the determination of the tax subject according to Ch. 4 sec. 1 of the ML no longer connects to Ch. 13 of *inkomstskattelagen (1999:1229)*, i.e. to the Swedish income tax act. Thereby was instead the determination of who is taxable person according to the main rule in article 9(1) first paragraph of the VAT Directive literally implemented into Ch. 4 sec. 1 first paragraph first sentence of the ML.

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[345] Professor Eleonor Kristoffersson: professor of tax law at Örebro University (JPS) and guest professor at Linköping University.

In Forssén 2013, I did, regarding the representative rule concerning VAT in *enkla bolag* (joint ventures) and *partrederier* (shipping partnerships), as a support to the law dogmatic method, a comparative analysis from an internal EU-perspective of the implementation question and thus with Alhager 2001 serving as a model, whereby I compared that rule in the ML with the treatment of *sammanslutningar* and *partrederier* according to *finska mervärdesskattelagen (1501/1993)*, i.e. the Finnish VAT act. 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 (pp. 225 and 226) that Sweden should bring up the question on EU level in consultation with Finland. In Forssén 2020a, section 4.3, I also state that I have iterated the problem and my suggestion in an article in the JFT during the year of 2019 and in a commentary to a proposition of legislation in JFT 2020.[346]

Since the right of deduction is a decisive criterion to determine what is meant by VAT according to the EU law, and thereby also central for at all being able to make deeper reasoning on VAT in this meaning, I state in Forssén 2020a, regarding Rendahl 2009 and Papis-Almansa 2016, that only an external perspective on the EU law in the field of VAT should not be made when applying a comparative method, but some Member State ought to be included too, so that an internal perspective makes it more likely that the research result will be useful for the appliers of law concerning the implementation question. If also an external perspective shall exist, it should be carefully investigated, like I do in Appendix 2 (pp. 279-297) of Forssén 2011, whether the third country in question has VAT according to what is meant by VAT according to the EU law, whereby absence of the principle of a general right of deduction disqualifies the country in question as material for a comparative study of the implementation question. If a third country is lacking a general right of deduction in the system described as a VAT system or a system of Goods and Services Tax (GST), it is namely not a matter of VAT according to the EU law, but of some gross tax like excise duty. Otherwise, I emphasize in the present context as something very important from Rendahl 2009 that it is stated therein (pp. 50 and 51) 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 for inter alia goods and services exists (on the internal market), which I also mention on page 282 of Forssén 2011 (see Forssén 2020a, sections 4.5.1, 4.5.2 and 5.2).

By the way, I hold Papis-Almansa 2016 before Rendahl 2009, since the GST systems of New Zealand and Australia have been chosen for the comparison in the first mentioned thesis, whereas the GST systems of Australia and Canada have been chosen in Rendahl 2009 and Canada, unlike Australia – and New Zealand – is way apart from the EU law in the field of VAT as a third country lacking a uniform VAT, that is a common VAT system for the countries various parts. 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*.

[346] See Forssén 2019b pp. 69 and 70 and Forssén 2020b pp. 392 and 393.

About main track 2 with Henkow 2008, Ek 2019 and Lindgren Zucchini 2020 and about the other mentioned Swedish theses on the subject of VAT law

In Henkow 2008, Ek 2019 and Lindgren Zucchini 2020 a law dogmatic method is applied. I denote the methods in Henkow 2008 and Lindgren Zucchini 2020 and as purely law dogmatic, since it is stated therein that a purely technical comparison would be especially suitable for VAT and the choice of the law dogmatic method is made unconditionally. In Ek 2019 a law dogmatic method is also used, but, in opposition to Henkow 2008 and Lindgren Zucchini 2020, it is not stated as the only suitable for the study, why I do not denote the method in Ek 2019 as purely law dogmatic. In Ek 2019 can namely 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* only *in the sense that a law dogmatic method or basis is not unusual in VAT law theses* (see Forssén 2020a, sections 4.6.1 and 4.6.2).

In Henkow 2008 *a traditional method of jurisprudence* was applied for the analysis of financial activities in relation to the EU's common VAT system, and there it was stated, as a notorius fact, that the VAT systems which have been adopted all over the world are similar to each other, which means that a purely technical comparison would be especially suitable for VAT. Thus, I denote the method in Henkow 2008 as a purely law dogmatic method. In Lindgren Zucchini 2020 was also only a law dogmatic method (”legal dogmatics”) used for the analysis of composite transactions (”composite supplies”) for VAT purposes, but therein was not any such motive as in Henkow 2008 presented for the choice of the law dogmatic method. Since a comparative method to support the law dogmatic is neither used in Lindgren Zucchini 2020, and the choice of the law dogmatic method is made unconditionally, I denote also the law dogmatic method used in Lindgren Zucchini 2020 as purely law dogmatic (see Forssén 2020a, section 4.6.1).

The choice of method in Lindgren Zucchini 2020 is in line with the choice of method in Henkow 2008, but in Lindgren Zucchini 2020 it should have been noted that already Rendahl 2009 may be considered to have dismissed the motive in Henkow 2008 to choose a purely law 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. In Forssén 2020a, I reminded of what I am mentioning above from Rendahl 2009, namely that it concerning third countries exist fundamentally constitutional differences, insofar that it is only within the EU that freedom of movement inter alia for goods and services exists. The freedom of movement is fundamental for a neutral VAT to function on the EU's internal market and secure that the internal market is established and functioning. Therefore, 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 not be neglected for methodological purposes. Rendahl 2009 should have been a strong incentive to complete the law dogmatic method with a comparative method in Lindgren Zucchini 2020 (see Forssén 2020a, section 4.6.1). Furthermore, I note that it in Lindgren Zucchini 2020 – without any explanation – is disregarded not only from Forssén 2011 and Forssén 2013, but also from Westberg 1994, Öberg 2001, Alhager 2001 and Sonnerby 2010. References to Swedish theses about the subject of VAT are made in Lindgren Zucchini 2020 only to Henkow 2008, Rendahl 2009, Papis-Almansa 2016 and Ek 2019. Professor Eleonor Kristoffersson was the main supervisor

at the work with both my theses, at the work with Sonnerby 2010 and at the work with Lindgren Zucchini 2020.

I state that if what I describe as a purely law dogmatic method 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. With such a development the reserach in the field of VAT will become 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. If Henkow 2008 and Lindgren Zucchini 2020 will serve as models for the VAT research, it leads to a regressive development of the VAT research in Sweden (see Forssén 2020a, section 5.2). In Forssén 2020a (section 5.2), I also mention that I have brought up the risk of an application of a purely law dogmatic method, which thus is not completed with neither a comparative method nor empiric surveys in form of inquiries (which can seize what is not to be found in the literature in the field of tax etc.), leading the researcher into what I call the trap of mathematics (see Forssén 2020c). To *find a legal rule within the legal rule*, and similar methodical deduction, is only expressions of law genetics, that is in the meaning of *counting with legal rules*, whereby the researcher in the subject of VAT goes into *the trap of mathematics*. Although I do not denote Ek 2019 as purely law dogmatic, it is in the present respect disquieting for the development of the VAT research in Sweden that Mikael Ek in an article in *Skattenytt* (Tax news) 2021 refers to Lindgren Zucchini 2020 as a thesis that would *contain a thorough review and analysis* of *how* composite transactions should be treated *within the frame of the VAT system*.[347]

What is especially problematic with Lindgren Zucchini 2020 is that the work has been done not only by disregarding the importance for the choice of method of the principle of a general right of deduction, but by being carried out under the premise that it would be acceptable in a thesis on the subject of VAT law to delimit the right of deduction for the study. In Lindgren Zucchini 2020 it is namely stated 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.

The delimitation, and thereby the limitation of the subject, is made despite that it at the same time is expressed an awareness in sections 1.3 and 8.5 in Lindgren Zucchini 2020, with the headlines *Delimitations* and *Future Research Opportunities*, 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 taxable person shall account for and pay output tax, that is for which the person in question is tax liable. To consider the right of deduction should in Lindgren Zucchini 2020 have been deemed as central regardless of the choice of method, since the principle of a general right of deduction is, as mentioned 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.

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[347] See p. 14 in *Skattenytt* (Tax news) 2021 pp. 4-17, *Förhållandet mellan användning av vara och vederlagsfritt tillhandahållande av tjänst i mervärdesskatterätten* (The relationship between the usage of goods and supply of service free of charge in the VAT law), by Mikael Ek.

This should have been considered as especially important, since Lindgren Zucchini 2020 furthermore concerns an expression, composite supplies (Sw., *sammansatta transaktioner*), which neither is defined in nor used in the VAT Directive, and nor is defined in the so-called implementing regulation (EU) No 282/2011, where implementing measures for certain rules in the VAT Directive are established,[348] nor in a primary law rule. With respect of the right of deduction's decisive importance for the determination of what is meant by VAT according to the EU law, I may emphasize as especially problematic, that Lindgren Zucchini 2020 for the study of composite supplies for VAT purposes is not regarding the right of deduction (see Forssén 2020a, section 4.6.1). Therefore, as a Part 2, I will come back next, in The Periodical Balans Annex with advanced articles, to Lindgren Zucchini 2020 and lacks in that work inherent to the research effort of the subject VAT inter alia as a result of the right of deduction being totally disregarded therein. In this context, it may also be mentioned that the implementing regulation, as precisely a regulation from the EU, is directly applicable in each Member State according to article 288 second paragraph of the Functional Treaty, and thus, unlike the VAT Directive, does not need to be implemented into for instance the ML.

[348] 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.

The VAT research in Sweden – where is it going? Part 2

In this second part, of an article series of two, Björn Forssén continues with giving his point of view on the research about value-added tax (VAT) in Sweden. He is still starting out from his overview in Tidskrift utgiven av Juridiska Föreningen i Finland [The journal published by the Law Society of Finland (abbreviated JFT)], the article Momsforskningen i Sverige – metodfrågor (The VAT research in Sweden – method questions),[349] *and is emphasizing here what he deems is lacking in the VAT research, if it is carried out by disregarding the right of deduction etcetera.*

By Lindgren Zucchini 2020 disregarding the right of deduction of input tax the analysis in the thesis cannot correctly concern the EU's common VAT system, since the material rules on VAT according to the EU's VAT Directive (2006/112/EC) consist of rules on obligations and rights. By delimiting questions on the right of deduction of input tax in Lindgren Zucchini 2020, it has been from the beginning impossible to make a deeper reasoning on VAT according to the EU law. The thesis cannot keep what it is promising by its title, an analysis of *Composite Supplies in the Common System of VAT*. Any problemizing is not possible regarding composite transactions for VAT purposes based on what is meant by VAT according to the EU law, that is based on the VAT Directive, which acording to its title is a directive *on a common system of value added tax* and where article 1(2) is defining the VAT principle based on three principles: an in principle general right of deduction, the reciprocity principle and the principle of passing on the tax burden. By disregarding the right of deduction can neither a chapter on theory and method be made for the purpose of problemizing questions on output tax. Then the analysis is made as if it was a matter of a gross tax, like excise duty.

Below, I come back – as mentioned in my previous article *in Balans fördjupingsbilaga* (The Periodical Balans Annex with advanced articles) – to Lindgren Zucchini 2020 and certain further aspects on that work, where the fulfillment of the demands for an acceptable academical level of a thesis is regarded, whereby I divide the comments into material rules, formal rules and source material.

Material rules

The implementation question, the right of deduction and the scope of the complex of problems

In section 1.3 about the delimitations in Lindgren Zucchini 2020 it is motivated that the implementation question is omitted by the argument that the EU's common VAT system in practice would already be realized and that a study of the implementaion of the rules of the VAT Directive into the EU Member States' national VAT legislations therefore principally give knowledge about those than about the EU's common system for VAT. This seems to be an attempt to moivate the choice of method rather than to carry out the study by recognizing recital 7 of the preamble to the VAT Directive, where it is inter alia stated, in opposition to recently mentioned section 1.3, that the tax rates and exemptions from taxation are not fully

[349] Forssén 2020a.

harmonised. The main supervisor of Lindgren Zucchini 2020, Professor Eleonor Kristoffersson (previously Alhager), has in effect also noted precisely this in her own thesis, Alhager 2001. In section 4.5.2 of Forssén 2020a I mention that it is staed in Alhager 2001 (p. 26) that a comparative method should complete the law dogmatic inter alia for the reason that the tax rates constitute the substantial field which remains to be harmonised.

Thus, Professor Kristoffersson has in her own thesis presented a conception about the scope of the problems which nowadays are described in recital 7 of the preamble to the VAT Directive on the theme of harmonisation, but has not succeeded to convey this to Giacomo Lindgren Zucchini. In section 4.6.1 of Forssén 2020a I note that recital 7 of the preamble to the VAT Directive is not mentioned in Lindgren Zucchini 2020. This despite that I at the opening seminar (19 October, 2015) brought up for the choice of subject in question the importance of regarding recital 7 of the preamble to the VAT Directive. Then I also pointed out the importance of thoroughly set up a chapter on theory and method, which would have made it possible to make a deeper analysis of the subject.

Thus, Professor Kristoffersson and Giacomo Lindgren Zucchini have not only let themselves be guided in the choice of method in Lindgren Zucchini 2020 by the same false assumption as in Henkow 2008 about law dogmatics being the only suitable method for the analysis of VAT questions. They have also treated the complex of problems regarding composite transactions for VAT purposes as if it in a rule would exist something to dig out to be presented like such a transaction concerns the tax object as a single supply. Thereby they have also disregarded that the thesis should have contained a problemizing meaning that composite transactions for VAT purposes also can concern transactions supplied by more than one person. Despite that Professor Kristoffersson was the main supervisor at the work with my theses it is not mentioned that I in Forssén 2013 have brought up a side issue concerning this. Neither has any effort been made in Lindgren Zucchini 2020 to make a stylistic description of the scope of the complex of problems. Figures for a theoretical description of what questions on composite transactions can comprise is lacking. *Composite supplies* (Sw., *sammansatta transaktioner*) is a concept not defined in or used in the VAT Directive, and it is neither defined in the so-called implementing regulation (EU) No 282/2011 or in any primary law rule. In Forssén 2020d, I state that an analysis of composite transactions for VAT purposes should be made by an examination partly of what should be considered composite transactions, partly of what is similar to such transactions and partly of what sometimes is called composite transactions, but should not be comprised by the concept.

One of the members of the grading committee of Giacomo Lindgren Zucchini's disputation at Örebro University on 30 September, 2020, Professor Robert Påhlsson,[350] has written a notification of Lindgren Zucchini 2020 in *Skattenytt* (Tax news) 2020 (pp. 856-859) – with the title *Ett eller flera tillhandahållanden? Anmälan av Giacomo Lindgren Zucchini,* Composite Supplies in the Common System of VAT (Eng., One or more supplies? Notification of Giacomo Lindgren Zucchini, Composite Supplies in the Common System of VAT). He seems to accept the idea from Henkow 2008 and in Lindgren Zucchini 2020 meaning that a law dogmatic method would be the only suitable for studies in the subject

[350] Professor Robert Påhlsson: professor at the Department of Law, School of Business, Economics and Law, University of Gothenburg.

VAT law. Jag followed the disputation via Zoom, and noted that the opponent, Professor Edoardo Traversa,[351] inter alia criticized that Lindgren Zucchini 2020 is lacking an analysis of the question of composite transactions supplied by more than one person and that the examination in the thesis in a methodological meaning only consists of a casuistic review of EU-verdicts. This was not mentioned by Professor Påhlsson in his notification, but he is instead trying to motivate the absence of verdicts from *Högsta förvaltningsdomstolen*, i.e. the Supreme Administrative Court of Sweden, with the argument that *the Swedish implementation* is not mentioned due to *the purpose with the thesis being an examination of how composite supplies are treated in the VAT system according to the EU law*. Thus, Professor Påhlsson has not understood Professor Traversa's criticism and the scope of the complex of problems on composite transactions for VAT purposes, which is considerable since it is an undefined concept. That the case-law of the Court of Justice of the EU (CJEU) would be sufficient to give the complex of problems a serious analysis is a far too narrow perspective. Professor Traversa presented further criticism, which inter alia consisted of Lindgren Zucchini 2020 lacking reasoning on abusive practice. Regarding the question on the importance of the right of deduction to examine composite transactions for VAT purposes, Professor Påhlsson expressed by the way in his notification of Lindgren Zucchini 2020 – and without any other commentary thereby – only that the *right of deduction is neither comprised by the thesis*.

Lindgren Zucchini 2020 is written in English, and an observant reader notes that the expression *joint ventures* is lacking therein, that is a consideration is lacking of the important example of problems regarding composite transactions supplied by more than one person who are not constituting a legal entity together. Concering joint ventures (Sw., approx. *enkla bolag*) can guidance instead be found in Forssén 2013 with regard of the above-mentioned side issue therein. With that question I opened up for further research on composite transactions, by it concerning a problem regarding both the tax subject and the tax object, about artistic work carried out under the enterprise form *enkelt bolag* (pl. enkla bolag).[352] Compare *enkla bolag* with *joint ventures*, which expression I use in the title of my translation into English of Forssén 2013: *Tax and payment liability to VAT in joint ventures and shipping partnerships*.

That Professor Påhlsson does not realize that the analysis of composite transactions for VAT purposes has been made a mere introvert study in Lindgren Zucchini 2020 is clearly demonstrated by his notification, by him emphasizing the example in the beginning of the thesis with an arrangement of a film festival as especially interesting to describe the problems with composite transactions. There the question is whether the determination of applicable VAT rate for the film, a meal and a glass of wine means that a transaction and a VAT rate shall be determined or if it exists three different transaction for which various VAT rates may apply. The question that should have been put is also the one I am raising by the side issue in Forssén 2013, namely what applies concerning the actual film making and the questions whether exemption from taxation applies or what or which VAT rates apply, if the film is created by two or more persons. Lindgren Zucchini 2020 does not get there, by Giacomo

[351] Professor Edoardo Traversa: professor at Université catholique de Louvain Louvain-la-Neuve, Belgium.

[352] See Forssén 2013, sections 1.1.2, 2.8, 6.5, 6.6 and 7.1.3.6.

Lindgren Zucchini delimiting such cases from the study, to instead treating the complex of problems as if a composite transaction concerns the tax object as one single supply. It is first by the delimited question that civil law in the form of intellectual property law comes into the context, which Professor Traversa also wanted.

Legal semiotics, certain law political aims, language questions and abusive practice

By the way, I went further with the side issue in Forssén 2013, and have emphasized that there is not only a need of clarifying whether non-legal entities, like *enkla bolag* (joint ventures) and *partrederier* (shipping partnerships) in Sweden and *sammanslutningar* and *partrederier* in Finland, are comprised by the main rule in article 9(1) first paragraph o the VAT Directive on who is a taxable person, which I have iterated,[353] and especially come back to below. In Forssén 2018a I have also pointed out *the importance of completing a law dogmatic study of composite transaction in the field of VAT with an analyis based on legal semiotics*.[354]

No identification or review of law political aims is made in Lindgren Zucchini 2020. A cohesive VAT system, a uniform VAT is a law political aim with the VAT according to the EU law that should have been mentioned in the thesis. I may also mention two more examples of important law political aims in that respect which are missing in the thesis: an efficient collection of VAT and the principle of a neutral VAT, which I somewhat mention below.

Professor Påhlsson states in his notification of Lindgren Zucchini 2020 that *the strictly union law perspective* motivates that the thesis is written in English. I disagree about it. Instead, the circumstance that English is the only language used in the thesis means that the possibility of a deeper interpretation of the EU-cases has been limited. In that respect I may exemplify with the EU-case C-216/97 (Gregg),[355] which I also mention in section 3.5 in Forssén 2020a on the theme of efficient collection. Since no identification or review of law political aims is made in Lindgren Zucchini 2020, any reasoning about an efficient collection as a law political aim with the VAT Directive is also totally lacking therein. In Forssén 2011 (p. 93) I referred to the ”Gregg”-case as an example of that French ought to be regarded for exactness when interpreting EU-cases. I referred thereby in Forssén 2011 (p. 69) to Professor Ulf Bernitz and Leo Mulders.[356] English is, also after the Brexit, like for instance Swedish and French one of the official languages within the EU. In the EU-case C-216/97 (Gregg) the language of the case was actually English, but it was, as I mention in Forssén 2011 (p. 93) and come back to in Forssén 2013 (p. 72) and in Forssén 2020a (section 3.5), French that showed that the CJEU emphasizes the collection of VAT, that is the more general meaning of the principle of neutrality and not limited to the specific meaning of charging of VAT that follows by the English language version of the verdict. This proves in my opinion the risk of over-

[353] See Forssén 2013, sections 7.1.3.2 and 7.1.3.6 and also Forssén 2019b pp. 69 and 70 and Forssén 2020b pp. 393 and 394. The titles of Forssén 2019b och Forssén 2020b: see Part 1.

[354] See Forssén 2018a p. 320.

[355] EU-case C-216/97(Gregg), ECLI:EU:C:1999:390.

[356] See Bernitz 2010 pp. 78 and 84 and Mulders 2010 pp. 47 and 58.

emphasizing the importance of English for a thesis about the subject of VAT, like what has been done in Lindgren Zucchini 2020. I used at the interpretation of the ”Gregg”-case the recommendation from Leo Mulders in the mentioned work (p. 58) concerning the use of language for exactness when interpreting EU-verdicts, that is I interpreted and accounted for (on the pages 92-94 in Forssén 2011) item 20, which was decisive for the question in the case, in my own language Swedish, in the language of the case English, and in French. Then I could make the judgment that the question of the collection of VAT should be set before the question of the charging of VAT, when it is a matter of upholding the principle of a neutral VAT according to the EU law. Lindgren Zucchini 2020 is a Swedish thesis about VAT, and it is a great lack that it does not contain any reading on the Swedish language. The thesis is completely dominated by English – French or any other foreign language for that matter is neither used therein. There is a warning from Leo Mulders on the recently mentioned page for the risk of only using one language at ”close reading” of EU-verdicts, which I consider is also proven by my example.

The importance of making in the Swedish VAT research interpretations of unclear concepts in verdicts or orders from the CJEU also with regard of Swedish, French and, if possible, other official languages in the EU than English is also shown by Lindgren Zucchini 2020 beginning in section 1.1, with the headline *Background*, with an interpretation of two EU-cases according to footnote 1 therein,[357] and that the result of the interpretaion of those meaning that the analysis of composite transactions for VAT purposes thereafter is made by deduction and a casuistic review only in the English language of EU-cases. Any induction that would develop the knowledge of the subect is thereby not achieved in Lindgren Zucchini 2020. In section 3.4.4 in the thesis, with the headline *The Directionality of, and Participants in, a Single Supply*, it is stated that it would only exist as an exception that *a composite supply* – a composite transaction – also comprises that a consideration is corresponded by some efforts in return from various persons, and not only a supply from one person. Giacomo Lindgren Zucchini interprets the two EU-cases so that ”a composite supply” shall be deemed considering the tax object as ”a single supply”, one single transaction. He states that a definition can be interpreted of what is a composite transaction meaning that ”A composite supply is a single supply that consists of various distinguishable parts that are combined to form a cohesive unit assessed as such for VAT purposes, even though at least some of those parts might constitute their own single supplies in other circumstances.” Based on that definition of ”composite supplies” are in section 1.2, with the headline *Aim and Research Questions*, by deduction, five questions drawn up for the study of the concept, but law political aims with the EU law in the field are never identified for the analysis in Lindgren Zucchini 2020.

I consider that the two EU-cases are not giving any support to formulate the definition mentioned of what is meant with a composite transaction – *a composite supply* – for VAT purposes, and that problems regarding composite transactions consisting of efforts by more than one person could be delimited as exceptional cases. In that in footnote 1 in section 1.1 of the thesis referred item 27 in the case C-208/15, where the language of the case by the way is Hungarian, the CJEU is only giving two examples of which situations constitute *a single*

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

supply. A reading of that item in the verdict's English, French and Swedish language versions, does not show that the expression only in exceptional cases would comprise that a consideration is corresponded by efforts from various persons. By the way, it is stated in that section, that it, at supplies made by more than one person, would be unclear to what extent those must be taxable persons, for such a supply to be taxable. The question is however incomplete put. In the first place that problem concerns whether legal figures which are not constituting legal entities are comprised by the main rule on who is a taxable person according to article 9(1) first paragraph of the VAT Directive. I have shown already in Forssén 2013 that the implementation of the directive rule is made in different ways in the national VAT legislations in Sweden and Finland respectively, where non-legal entities are concerned, which of course can consist of constellations where not only taxable persons are included, but also ordinary private persons can be included together with them. See more about this in Forssén 2013, inter alia in sections 7.1.3.2, 7.1.3.3 and 7.2 therein.

In the other EU-case invoked in footnote 1 in section 1.1 of the thesis, C-117/11, where the language of the case is English, it is only stated, in that in the footnote referred item 39 in the CJEU's *order*, that it follows by the CJEU's case-law that the treatment of several services as "a single supply" with necessity entails that the treatment for tax purposes becomes different compared to the one that the services would have been given if they had been supplied separately, whereby the CJEU also states that a complex supply of services consisting of several parts not automatically resembles separate supplies of those parts. Thus, that aim is neither showing that it would only exist as an exception that the expression *a composite supply* also comprises that a consideration is corresponded by efforts from more than one person.

By his interpretation of the two mentioned EU-cases, Giacomo Lindgren Zucchini has taken the introvert approach to delimit such cases that I am describing above with the example of a film work which is created by more than one person. By treating the complex of problems as if a composite transaction concerns the tax object as one single transaction, whereby problems regarding composite transactions supplied by more than one person would be possible to disregard, the thesis does not reach so far. Since such cases are likely to be very extensive, and should have led to an empirical examination thereby, I deem that Giacomo Lindgren Zucchini has limited his study in an unacceptable way, by treating them as exceptional situations. He should have made the study of the present subject, which is hard to determine, unbiassed by an examination partly of what should be considered composite transactions, partly of what is similar to such transactions and partly of what sometimes is called composite transactions, but should not be comprised by the concept.

An efficient collection of VAT is counteracted by abusive practice and pure fraud – tax fraud – in the field of VAT. Professor Traversa's criticism regarding questions on abusive practice not being mentioned in Lindgren Zucchini 2020 is of a particular importance precisely for questions about an effective collection of VAT.

In my article *Konkurrensfördelar med varuomsättningar efter momsfria omsättningar av varor i vissa lager och av finansiella tjänster* (Eng., Competition advantages with supplies of goods after VAT free supplies of goods in certain warehouses and of financial services), in *Balans fördjupingsbilaga* (The Periodical Balans Annex with advanced articles) 1/2018 pp. 3-10, I show how special rules in the VAT Directive on goods in certain warehouses can be used to reduce the taxable amount compared with according to the general rules after

acquisitions of goods which have been placed in such warehouses, if a set-off has been made during the time the goods were placed there of transactions regarding the acquisition which can be denoted as composite and which are comprised by exemption from taxation accoding to the special rules. I state that repeated suchlike transactions can be disqualified as cases of abusive practice. Of a particular interest is then how private law options are treated. I had expected that those would be treated in Henkow 2008 based on the exemption from taxation of financial services in article 135(1) b-f of the VAT Directive, but this never happened.

After Henkow 2008 came during the year of 2011 the so-called implementing regulation (EU) No 282/2011 with rules laying down implementing measures for certain rules in the VAT Directive, like chapter IV on taxable transactions in the form of supply of services according to articles 24-29 of the directive, where article 9 of the implementing regulation means that the sale of an option constitutes a supply of a service according to the main rule in article 24 of the directive, if the sale is a transaction within the scope of application for article 135(1) f of the directive. Such a supply of services is considered as separate from the underlying transactions to which the services are pertaining. This should have been mentioned in Lindgren Zucchini 2020, but there is no interpretation made of the VAT Directive in relation to the implementing regulation, but it is only stated (on page 35) that the implementing regulation exists.

Regarding the principle of a neutral VAT as a law political aim with the VAT ccording to the EU law, I may also mention that I in section 3.3 in Forssén 2020a is stating that it in recital 7 of the preamble to the VAT Directive is mentioned that the tax rates and the exemptions from taxation are not fully harmonised, but that the principle of a neutral VAT yet applies so that similar goods and services are burdened with an equally large taxation within each Member State's territory. This also proves that it is not only precarious with regard of the choice of method that Lindgren Zucchini 2020 does not contain any reference to Sonnerby 2010, since the analysis there concerned precisely the principle of a neutral VAT and that principle is considered following by inter alia article 1(2) of the VAT Directive by the parts of the VAT priciple, which is expressing what is meant with VAT according to the EU law.

Formal rules

Lindgren Zucchini 2020 does not contain anything about the formal rules of the VAT Directive. Since the right of deduction, with the main rule thereof in article 168 a), is not mentioned in a material sense, the reader of the thesis may also assume that it also explains why the formal rules in the articles 178 a) and 226 of the VAT Directive are lacking, that is about the exercise of right of deduction – article 178 a) – and the importance thereby of the taxable person receiving an invoice fulfilling the demand of content of an invoice according to article 226. There are no explanations in section 1.3 about the delimitations in Lindgren Zucchini 2020 as to why the formal rules of the VAT Directive are left out. Although the right of deduction has been disregard in the material and formal meaning, it was possible to problemize the directive's obligation side starting from its formal rules, by mentioning the articles 220 and 226 about a taxable person's obligation to secure that an invoice is issued which fulfills the main rule on the content of an invoice regading a taxable transaction and certain exempted tansactions and article 213 about the liability for a taxable person to register for VAT. Such a problemizing of the directive's obligation side would have made the thesis useful for the appliers of law at least in these respects.

Source material

The only Swedish theses on the subject VAT which are mentioned in Lindgren Zucchini 2020 are, as mentioned in Part 1, Henkow 2008, Rendahl 2009, Papis-Almansa 2016 and Ek 2019. That is only 4 of 10 of the Swedish theses on the subject preceding Lindgren Zucchini 2020, why it is not only the usefulness of the research result that is lacking in the thesis, but also that completeness is lacking which is amongst the criteria that always should apply for jurisprudential theses in Sweden. Already a review of the list of references, which is named *References* in Lindgren Zucchini 2020 and to be found on the pages 259-278 therein, shows there are lacks in the source material, and I stay here by mentioning something about public printing in that respect.

The question is why public printing as well in Sweden as in any other Member State is totally lacking in the source material of Lindgren Zucchini 2020. Regarding Swedish public printing, I am missing that about the EU law in the field of VAT so informative SOU 2002:74, *Mervärdesskatt i ett EG-rättsligt perspektiv* (Eng., Value added tax in an EC law perspective) and also for example SOU 1989:35, *Reformerad mervärdeskatt m.m.* (Eng., Reformed value-added tax etc.), and SOU 2006:90, *På väg mot en enhetlig mervärdesskatt* (Eng., On the way towards a uniform VAT). Especially with respect of recital 7 of the preamble to the VAT Directive, as I mention above, not being mentioned in Lindgren Zucchini 2020, I may state that both the latterly mentioned of the Government's official reports should have induced Giacomo Lindgren Zucchini to do so in his thesis. SOU 1989:35, which meant a closer association of *lagen (1968:430) om mervärdeskatt* (GML) to the EC's Sixth VAT Directive (77/388/EEC), that is to the most important of the directives preceding the VAT Directive, led to alterations in the GML by SFS 1990:576, inter alia meaning that a uniform VAT rate applied in Sweden during the year of 1991. Thereafter were reduced VAT rates gradually introduced again beside the general one, but the question of an reintroduction of a uniform VAT rate was brought up again in SOU 2006:90, which however has not led to legislation. Since the problem of harmonising the VAT rates – and the exemptions – remains to be resolved in the EU's common VAT system according to recital 7 of the preamble of the VAT Directive, which I also mention above, should SOU 1989:35 and SOU 2006:90 have been mentioned in the thesis.

SOU 2002:74 should also have been mentioned in the thesis. The report concerned the terminology of *mervärdesskattelagen (1994:200)*, ML compared with the EC's Sixth VAT Directive. To resolve the problem with obscurities in the Swedish translation of the directive's text or when the terms differ from what has been used in other language versions the report weights them together (see page 49 in SOU 2002:74 Part 1), and then using the directive's term in Swedish, English and French. On the pages 51-53 in SOU 2002:74 Part 1 there is a table over the fundamental terms in those languages in the directive. I had use of SOU 2002:74 in the work with my theses, and may especially emphasize that the report regards French to resolve the mentioned problem with the terminology. The report SOU 2002:74 constitutes another evidence of the precarious with only using English in Lindgren Zucchini 2020.

Giacomo Lindgren Zucchini has gone into what I in The Periodical Balans Annex with advanced articles has called the trap of mathematics for the (see in Part 1: Forssén 2020c), when he is making the analysis of composite transactions for VAT purposes based on questions set up by deduction of his definition of the expression *a composite supply* – a

composite transaction – in the beginning of Lindgren Zucchini 2020, and only on a casuistic review of EU-vedicts. He should have made the analysis based on a considerably broader source material and unbiassed, by an examination partly of what should be considered composite transactions, partly of what is similar to such transactions and partly of what sometimes is called composite transactions, but should not be comprised by the concept. A study giving new knowledge of the subject shall in that way be able to lead to inductive conclusions.

The VAT research in Sweden – where is it going? Part 3

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

In *Balans Fördjupningsbilaga 2/2021* I have, in a series of two articles with the title *Momsforskningen i Sverige – vart är den på väg?* (The VAT research in Sweden – where is it going?), gone through method questions in that research, where Forssén 2021c corresponds with Part 1 in this summary and Forssén 2021b with Part 2 of it. The two articles are based on Forssén 2020a. In that article is my overall conclusion that the VAT research can be heading for no longer being treated as a jurisprudential subject. It is a matter of breaking that development of the research on the subject VAT law. Otherwise, the Swedish research results within the VAT law will not be useful for the legislators within the various EU Member States, for courts and tax authorities within the EU or for other appliers of law. It will altogether have an injurious effect on the realization of the EU project, above all in Sweden.

I followed up Forssén 2020a with an article in the JFT on the position of the Swedish language in relation to the English language in the VAT research in Sweden, namely Forssén 2021a. With the present article – Forssén 2022a – I am building out my series of articles in *Balans fördjupning* (The Periodical Balans Annex with advanced articles) with a Part 3 regarding the question on where the VAT research in Sweden is going, by summarizing my conclusions from Forssén 2021a about the position of the Swedish language compared with English in the VAT research in Sweden, and how this relates to the method questions.

The languages in a European law perspective

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

French, Italian, Netherlands and German became EU-languages – EEC-languages – when the EEC was established in 1958. The number of official languages have been enlarged when the EU has got new members, so that the EU now has 24 official languages. All residents or citizens of the EU have the right to choose in which language they want to communicate with the EU's institutions, which must answer in the same language. Among the 24 official languages are also Danish, English, Finnish and Swedish included. Danish and English became official languages within the EEC in 1973, when Denmark, the United and Ireland joined thereto, and Finnish and Swedish became official EU-languages in 1995, when Finland and Sweden accessed to the EU. By the United Kingdom's exit from the EU on 31 January, 2020, with a transitional period ending by turn of the year 2020/2021, the number of Member States of the EU has decreased from 28 to today's 27. English is however also thereafter an

official EU-language, by English being an official language in the Member States Ireland and Malta.

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

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

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

- application of a comparaive 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).[358]

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

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

- Concerning Main track 1 the tendency is positive for the implementation question regarding expected research result, when a comparative method with an internal perspective on the EU law in the field of VAT is applied, that is when the comparison concerns VAT legislations in various EU Member States. That tendency is also positive, when a law dogmatic method completed with a comparative method is used, whereas the tendency is negative, when the EU's legislation in the field of VAT is viewed in an external perspective, by only being compared with third countries that have VAT-systems or GST-systems.

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

[358] In Forssén 2020a, I missed Senyk 2018. I refer Senyk 2018 to Main track 2 (see Part II, section 2.1).

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

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

Main track 1

- Westberg 1994. Applied method: a *comparative method* is used. ”Positive tendency”. The thesis is written in Swedish.

- Alhager 2001. Applied method: a *law dogmatic method completed with a comparative method* is used. ”Positive tendency”. The thesis is written in Swedish.

- 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.

- Sonnerby 2010. Applied method: a *law dogmatic method completed with a comparative method* is used. ”Positive tendency”. The thesis is written in Swedish.

- Forssén 2011 (licentiate’s dissertation) and Forssén 2013. Applied method: a *law dogmatic method completed with a comparative method* is used. ”Positive tendency”. The theses are written in Swedish.

- Papis-Almansa 2016. Applied method: a *law dogmatic method completed with a comparative method* is used. ”Negative tendency”. The thesis is written in English.

Main track 2

- Öberg 2001. Applied method: a *law dogmatic method* is used. ”Negative tendency”. The thesis is written in Swedish.

- Henkow 2008. Applied method: I denote it a *purely law dogmatic method*. ”Negative tendency”. The thesis is written in English.

- Senyk 2018. Applied method: a *law dogmatic method* is used. ”Negative tendency”. The thesis is written in English.

- Ek 2019. Applied method: a *law dogmatic method* is used. ”Negative tendency”. The thesis is written in Swedish.

- Lindgren Zucchini 2020. Applied method: I denote it a *purely law dogmatic method*. ”Negative tendency”. The thesis is written in English.

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

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

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

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

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

Table – Main track 1

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

Table – Main track 2

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

*[In Öberg 2001 it is stated that a customary law dogmatic method is used, and in Senyk 2018 and Ek 2019 I read out that applied law dogmatic method also is to be understood as a – in the tax law research in Sweden – customary one.]
**[I used the term purely law dogmatic method for the first time in Forssén 2020a.]

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

Main track 1 so that the English language is used in the VAT research in Sweden – consciously or not consciously – to compensate a research result that can be expected to become negative for the implementation question due to lacks at the choice of method.

In *Main track 2* it is also obvious regarding the language issue that English is used – consciously or not consciously – to compensate a probable negative research result for the implementation question due to lacks at the choice of method. Concerning the customary law dogmatic theses are Öberg 2001 and Ek 2019 written in Swedish, whereas Senyk 2018 is written in English. I have marked ”negative tendency” for the usefulness of the research result of those, but Öberg 2001 in Swedish and Senyk 2018 in English cancel each other out regarding the language issue. The choice of a law dogmatic method without any completing comparative analysis in Öberg 2001 seems to be based on a misdirected conception therein of the EU law's importance for the subject, and the implementation question is not mentioned in Senyk 2018, but the VAT is mentioned more in a perspective of economics therein. Although Senyk 2018 brings up questions on the placement of supply where deliveries and intra-Union acquisitions are concerned, it is namely in Ek 2019 that deliveries and intra-Union acquisitions in the VAT law are given a study *in* VAT law. It is the limited material therein that makes me consider that a ”negative tendency” arise for the usefulness of Ek 2019 regarding the implementation question. Senyk 2018 is more of a study *about* the VAT law concerning which Member State that has the right of taxation regarding deliveries and intra-Union acquisitions, and has more the character of a handbook than a thesis where the implementation question is treated concerning such transactions or should Senyk 2018 be seen as a thesis about VAT in a perspective of economics. In the latter perspective it could have been more justified to write Senyk 2018 in English than if the thesis shall be perceived as a study *in* VAT law regarding the distribution of the right of taxation.

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

I may also reconnect to Forssén 2021b (pp. 32 and 33), where I mention that I in Forssén 2011 (p. 93) mentioned, with the EU-case C-216/97 (Gregg) as an example, that French should be regarded for exactness at interpretation of EU-verdicts. I referred there in Forssén 2011 (p. 69) to Professor Ulf Bernitz and Leo Mulders.[359] English is, as mentioned, also after the United Kingdom's exit from the EU, one of the official languages within the EU, like for instance Swedish and French. In the ”Gregg”-case the language of the case was actually English, but it

[359] See Bernitz 2010 pp. 78 and 84 and Mulders 2010 pp. 47 and 58.

was, as I mention in Forssén 2011 (p. 93) and come back to in Forssén 2013 (p. 72) and in Forssén 2020a (section 3.5), French that showed that the CJEU emphasizes the collection of VAT, that is the more general meaning of the principle of neutrality and not limited to the specific meaning of charging of VAT that follows by the English language version of the verdict. Thereby, I give evidence of the risk of over-emphasizing the importance of English for a thesis about the subject of VAT, like what has been done in Lindgren Zucchini 2020. I used at the interpretation of the ”Gregg”-case the recommendation from Leo Mulders in the mentioned work (p. 58) concerning the use of language for exactness when interpreting EU-verdicts, which means that I interpreted and accounted for (on the pages 92-94 in Forssén 2011) item 20, which was decisive for the question in the case, in my own language Swedish, in the language of the case English, and in French. Then I could make the judgment that the question of the collection of VAT should be set before the question of the charging of VAT, when it is a matter of upholding the principle of a neutral VAT according to the EU law. It is a great lack that Lindgren Zucchini 2020 does not contain any reading on the Swedish language, and that the thesis is completely dominated by the English language – French or any other foreign language for that matter is neither used therein. Leo Mulders is warning for the risk of only using one language at ”close reading” of EU-verdicts, which I consider is also proven by my example.

The importance of making in the Swedish VAT research interpretations of unclear concepts in verdicts or orders from the CJEU also with regard of Swedish, French and, if possible, other official languages in the EU than English is also shown by Lindgren Zucchini 2020 beginning with an interpretation of two EU.cases,[360] which I in Forssén 2021b (pp. 33 and 34) state leads to the misconception that it would be acceptable to disregard composite transactions supplied by more than one person. A jurisprudential study of the hard to determine subject composite transactions for VAT purposes should instead have been made unbiassed by an examination partly of what should be considered composite transactions, partly of what is similar to such transactions and partly of what sometimes is called composite transactions, but should not be comprised by the concept. Regardless of the language question should however the question of the right of deduction not have been delimited in Lindgren Zucchini 2020. That means namely, as I mention in Forssén 2021b (p. 30), that the study in Lindgren Zucchini 2020 has been made as if it did not even concerned VAT, but gross tax – like excise duty.[361]

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

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

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

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

In the preparatory work to the Act concerning Sweden's accession to the European Union (also called the Accession Act or the EU-Act) it is stated in section 19.4 ("Svenska språkets ställning i EU" – the position of the Swedish language within the EU) that *the Swedish language will in the EU have a stronger position than in any other organization outside the North. It becomes one the Union's official languages, which does not only mean that all legislation and official documents must exist in a Swedish version, but also that official communication in writing and orally may be done in Swedish*. With respect of Swedish as one of the smaller languages being naturally weaker in practice than the languages spoken by a greater number of people, the legislator considered it *anxious that Swedish is actively used in relation to the EU's institutions so that the right to use the own language will be kept alive*.[362] In Forssén 2011 I also mention that it in section 4 of the Language Act, which came into force on 1 July, 2009, is stated that Swedish is the main language in Sweden. Thereby I also noted that it by section 13 second paragraph of the Language Act follows that Swedish shall be defended as an official language within the EU.[363]

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

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

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

[363] See Forssén 2011 p. 69.

Indirect taxes and the research in Sweden – where should it be going? Part 4

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

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

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

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

In *Balans fördjupning* (The Periodical Balans Annex with advanced articles) I have made shorter reviews of in the first place the questions I am bringing up in my articles in the JFT regarding the research in Sweden 1994 – 2020 within the field of indirect taxes. I do so also with this article, and mention in the first place the research on excise duties and leave also at the same time an overview of the research in Sweden on VAT, excise duties and customs. In the title of this article – Forssén 2023b – I do not ask where the research is going, but where it should be going.

1 The VAT research

Regarding the importance of the choice of method for a research result that will be useful for the legislators and appliers of law within the EU[364] I summarize the following concerning the two methodological main tracks that I identify for the VAT research in Sweden.[365]

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[364] EU, the European Union or the Union.

Main track 1

- Regarding the alternative with a choice of method meaning an application of a comparative method with only an external perspective on the EU law in the field of VAT, i.e. with only third countries as material for comparison, I conclude that it gives a negative tendency for the implementation question, i.e. the question on the implementation of the rules in the EU's VAT Directive (2006/112/EC) into *mervärdesskattelagen (1994:200)*, ML (the Swedish VAT act), where an expected research result is concerned.

- Regarding the alternative with application of a comparative with an instead internal perspective on the EU law in the field of VAT, I conclude that it gives a positive tendency for the implementation question, where an expected research result is concerned.

- Regarding the alternative with application of a law dogmatic method completed with a comparative method, I conclude that it gives a positive tendency for the implementation question, where an expected research result is concerned. That alternative comprises five theses, inter alia my licentiate's dissertation and my doctor's thesis from 2011 and 2013.

Main track 2

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

Regarding the twelve theses within the VAT law during the years of 1994 – 2020 I denote applied method in two of the five I am referring to Main track 2 as purely law dogmatic, i.e. the authors start out from the law dogmatic method being the only suitable method for the VAT research.[366] My overall conclusion concerning the choice of method is that the research on the VAT law should become alienated from that approach, since a purely law dogmatic risks entailing that that subject no longer will be treated as a jurisprudential subject.

Thus, I am warning for the researcher within the field of VAT who applies a purely law dogmatic method falling into what I call the trap of mathematics in the research. If tools – models – are used to support for instance the law dogmatic method, the tool may not be made the method in itself for the jurisprudential study. Such an approach is only a matter of deduction, and no induction developing the knowledge on the subject. It would merely be a matter of calculating with law rules, if mathematics and logic would be made the method in itself, and not only used in the study as a supporting tool at to a law dogmatic method.

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[365] See Forssén 2020a, section 5.2. See also Forssén 2021c.

[366] The two theses are: Henkow 2008 and Lindgren Zucchini 2020.

However, I do not dismiss the use of only a law dogmatic method, but state that it should be developed by the addition of legal semiotics.

Concerning the circumstance that five of the twelve theses in the two main tracks are written in English, inter alia Henkow 2008 and Lindgren Zucchini 2020, I state that a development where English is held before the Swedish language in the VAT research in Sweden should be that a development, where English is set before Swedish within the VAT research in Sweden, should be counteracted by the universities (Sw., *universitet* and *högskolor*). I state this as especially urgent if a purely law dogmatic would be proven recurrent within the research in VAT law in Sweden, since a lack in the choice of method never can be compensated by the theses being written in English. Thereby, I also note that it is not in compliance with the work on the EU-project to reduce the Swedish language or the position of other official EU-languages in the VAT research in Sweden, by those being pushed aside by the English language (which I call the language question).[367]

2 The research on excise duties[368]

2.1 Harmonised and non-harmonised excise duties in Sweden and the determination of the tax subject[369]

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

Harmonised excise duties

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

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

Non-harmonised excise duties

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

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[367] See Forssén 2021a, sections 1, 2.6 and 3. See also Forssén 2022a.

[368] See Forssén 2022b.

[369] See Forssén 2022b, sections 2 and 3.2.1.

according to the following acts:

- *lagen (1994:1776) om skatt på energi*, the LSE (the Energy Tax Act), except the excise duty on the fuels comprised by the stay procedure (according to Ch. 1 sec. 3 a of the LSE – *my remark*),
- *lagen (1984:410) om skatt på bekämpningsmedel* (the Act on Tax on Biocides),
- Sections *35–40 a of lagen (1994:1563) om tobaksskatt* (i.e. the excise duty on moist snuff, chewing-tobacco and other tobacco),[370]
- sec. 2 first paragraph no. 5 of *lagen (1990:661) om avkastningsskatt på pensionsmedel* (i.e. the Act on Tax on Return of Pension Means),
- *lagen (1990:1427) om särskild premieskatt för grupplivförsäkring, m.m.* (the Act on Special Premium Tax for Group Life Insurance, etc.),
- *lagen (1995:1667) om skatt på naturgrus* (the Act on Tax on Nature Gravel),
- *lagen (1999:673) om skatt på avfall* (the Act on Tax on Waste Products),
- *lagen (2007:460) om skatt på trafikförsäkringspremie m.m*. (he Act on Tax on Third Party Insurance Premium etc.),
- *lagen (2016:1067) om skatt på kemikalier i viss elektronik* (the Act on Tax on Chemicals in Certain Electronics),
- *lagen (2017:1200) om skatt på flygresor* (the Act on Tax on Air Trips),
- *lagen (2018:696) om skatt på vissa nikotinhaltiga produkter (the Act on Tax on Certain Products with Nicotine Content),*
- *lagen (2018:1139) om skatt på spel, (the Act on Tax on Lotteries)*
- *lagen (2019:1274) om skatt på avfall som förbränns (the Act on Tax on Burn up Waste), and*
- *lagen (2020:32) om skatt på plastbärkassar (the Act on Tax on Plastic Carrier Bags).*[371]

Regarding *the harmonised excise duties*, I state that according to article 1 of Directive 2003/96/EC shall energy products and electricity be taxed in the EU's Member States in accordance with that directive,[372] and that I mention excise duty in the form of energy tax, carbon dioxide tax and sulphur tax in Sweden with regard of certain fuels according to Ch. 1 sec. 3 a of the LSE. I do not make a complete review of who is tax liable according to Ch. 4 sec. 1 of the LSE, but notes that according to Ch. 4 sec. 1 no. 1 is a person tax liable for energy tax, carbon dioxide tax and sulphur tax if the person in the capacity of authorised warehousekeeper is handling certain fuels, namely fuels according to Ch. 1 sec. 3 a for which duty suspension arrangement applies according to the LSE. The problem I bring up concerning the compliance with the EU law the field of excise duties is that it for the determination of the tax subject exists in Ch. 1 sec. 4 no. 1 of the LSE a reference to *the nonharmonised income tax law* and the concept *näringsverksamhet* (business activity) in the whole of Ch. 13 of *inkomstskattelagen (1999:1229)*, IL (the Swedish Income Tax Act), regarding which activities are to be deemed as *yrkesmässiga* (professional). Although the

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

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

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

concept *näringsidkare* (trader) is not used in the Excise Duty Directive, unlike what was the case in the two previous directives in the field, the tax subject is determined independently in article 7(1), why the connection in Ch. 1 sec. 4 no. 1 of the LSE to the concept *näringsverksamhet* in the whole of Ch. 13 of the IL is not EU conform. The connection comprises namely not only the determination of *näringsverksamhet* in a real sense according to Ch. 13 sec. 1 first paragraph second sentence, which stipulates that *with business activity is meant that an activity for obtaining income is carried out professionally and independently*, but also inter alia sec. 2 of Ch. 13 of the IL. This means that a legal person, in opposition to a natural person, is deemed having a business activity regardless whether the prerequisites for a real business activity are fulfilled. I do not mention the other two harmonised excise duties, which in Sweden are comprised by *lagen (1994:1564) om alkoholskatt* (the Swedish Alcohol Tax Act) and *lagen (1994:1563) om tobaksskatt* (the Swedish Tobacco Tax Act) respectively, since the connection to *the non-harmonised income tax law* does not exist therein.[373]

Regarding *the non-harmonised excise duties*, it is only in *lagen (1984:410) om skatt på bekämpningsmedel*, the Act on Tax on Biocides, that the mentioned connection to *the non-harmonised income tax law* exists regarding what is meant by the concept *yrkesmässig verksamhet* (professional activity), namely in sec. 4 third paragraph whose wording corresponds completely with Ch. 1 sec. 4 of the LSE. I mention something about the Act on Tax on Biocides in connection with the LSE, whereas other non-harmonised excise duties are not mentioned at all. However, I mention something about another non-harmonised excise duty in Sweden, namely the recently abolished advertising tax, which was abolished by *lagen (1972:266) om skatt på annonser och reklam* (RSL), i.e. the Swedish Advertising Tax Act, being revoked on 1 January, 2022 according to SFS 2021:1166. For the determination of yrkesmässig verksamhet there was also in first paragraph first sentence in the instructions to sec. 9 of the RSL a connection to the concept *näringsverksamhet* in the whole of Ch. 13 of the IL.[374] However, the problem in question regarding the determination of the tax subject concerning the advertising tax was resolved by chance, simply by the RSL being abolished.[375]

2.2 Regarding the choice of method in the research on excise duties[376]

Regarding the choice of method in the research on excise duties, I state inter alia that it is more open than regarding the VAT to use third countries as material for comparison at the use of a comparative method for jurisprudential studies regarding the implementation of the Excise Duty Directive (EU) 2020/262 into the national legislations for harmonised excise

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

[374] See Forssén 2022b, section 3.2.4.

[375] See Forssén 2022b, section 3.3.

[376] See Forssén 2022b, section 5.1.

duties. It depends on that there is no specific definition of what is meant with excise duties according to the EU law in the Excise Duty Directive (EU) 2020/262. I consider that what is important is to, in the same way as concerning the implementation questions regarding VAT, consider both the tax subject question and the tax object question at a study of the implementation question in the field of excise duties.

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

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

2.3 Comparison with Finnish law in the field of excise duties[377]

I make a comparison with Finnish law in the field of excise duties. Concerning the mentioned connections to *the non-harmonised income tax law*, I note that it is the energy taxation in Finland that is of interest for a comparison with the excise duties in Sweden, since there is not any tax on either biocides or advertising in Finland. Thus, it is of interest that it concerning the energy taxation is stated in the Finnish tax authority's detailed instructions that inter alia authorised warehousekeepers and registered consignees are tax liable, whereby a reference is made to sections 12 and 13 of *punktskattelagen (182/2010)*, FPL (the Finnish Excise Duty

[377] See Forssén 2022b, section 3.2.3.

Act),[378] but without any connection to the income tax law for the determination of the tax subject like regarding the energy tax in Ch. 1 sec. 4 no. 1 of the LSE. Thus, the tax subject is determined independently in the FPL, which is conform with the EU law in the field of excise duties.

2.4 A non-EU conform determination of the tax subject in the field of excise duties may cause non-EU conform consequences for the taxation amount for VAT[379]

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

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

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

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[378] See the Finnish tax authority's detailed instructions regarding energy taxation 19 February, 2021, dnr VH/904/00.01.00/2021, section 1.4, <https://www.vero.fi/sv/Detaljerade_skatteanvisningar/anvisningar/56206/energibeskattning2/> (visited 2023-02-20).

[379] See Forssén 2022b, section 3.3.

3 The research on customs law[380]

Concerning the third of the mentioned indirect taxes, i.e. customs, there is, like with the field of excise duties, only one thesis in customs law (Sw., *tullrätt*), namely Professor Christina Moëll's, i.e. Moëll 1996. Customs does not present any problem in itself regarding the determination of the tax subject. According to the secondary law is in article 5(19) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (the Union Customs Code) a person who is liable to pay a customs debt, the debtor (Sw., *gäldenären*), defined as "any person liable for a customs debt". Thus, the use in the rule of the expression *any person* (Sw., *varje person*) means that the debtor can be an ordinary private person (consumer) as well as an entrepreneur.

Since both entrepremneurs and consumers can be tax subjects regarding customs, the focus at the research within the customs law can be set on the tax object. In opposition to what is stated in Moëll 1996, efforts should in my opinion be made within the field of indirect taxes aiming at simplifications, for example by a common concept on goods being prepared within the EU. Such research would not only lead to simplifications within the EU regarding VAT, excise duties and customs, but also preparing for customs questions at a future introduction of the free trade agreement between the USA and the EU, i.e. regarding the TTIP-agreement,[381] if the work with TTIP will be resumed.

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

4 Concluding viewpoints

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

Regarding the VAT and the twelve theses so far my review of those shows that the research in Sweden should above all become alienated from what I denote a purely law dogmatic method, i.e. that the choice of method should be based on the law dogmatics as especially suitable for the subject like what is stated in Henkow 2008 or as something that can be chosen unconditionally like in Lindgren Zucchini 2020. Such an approach means in the end that the VAT research will not be treated as a jurisprudential subject, but more like research within natural science – as if the VAT Directive contains something similar to a physical object that shall be discovered and analysed. The law dogmatic method should instead be developed, for

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[380] See Forssén 2020a, section 5.3.2 and Forssén 2022b, sections 5.2 and 5.3.

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

instance, as mentioned above, by the addition of legal semiotics, regardless whether the metho is combined with a comparative method or with empirical examinations. I have proven that the choice of method in Lindgren Zucchini 2020 led to delimitations which made a problemizing of the subject, composite transactions for VAT purposes, impossible. The analysis should instead have been made by an examination partly of what should be considered composite transactions, partly of what is similar to such transactions and partly of what sometimes is called composite transactions, but should not be comprised by the concept. According to section 1.3 in Lindgren Zucchini 2020 are the implementation question as well as questions on right of deduction for input tax expressly delimited. By delimiting the right of deduction the author is leaving out one of the criteria that is contained in the VAT principle according to article 1(2) of the VAT Directive. Regardless of the method question, the implementation question and the language question should at least never the right of deduction have been delimited in Lindgren Zucchini 2020, since it means that the study has been carried out as if it did not even concern VAT according to the EU law, but gross tax – like excise duty.[382]

Regarding the research so far on excise duties in Sweden, i.e. Olsson 2001, my criticism concerns, as mentioned above, the lack of analysis on the theme EU conformity of the determination of the tax subject in the national Swedish legislation in the field of excise duties, whereby I from Forssén 2022b (section 3.2.5) especially may mention that neither the legislator nor the research in Sweden treats the non-EU conform determination of the tax subject concerning the energy tax. In Olsson 2001 was not regarded the same that I brought up as the main issue in my licentiate's dissertation, Forssén 2011, that the determination of the tax subject in Ch. 4 sec. 1 no. 1 of the ML was made by an incorporation therein of *the non-harmonised income tax law*, also existed in the field of excise duties. Professor Stefan Olsson participated at the final seminar regarding Forssén 2011. He said he did not understand my comparison with Olsson 2001 regarding the precarious with connections from the indirect taxes to *the non-harmonised income tax law*, where the concept *yrkesmässig* (professional) and thereby the determination of the tax subject is concerned. I stated in Forssén 2011 that Olsson 2001 does not focus on the tax subject like I do in Forssén 2011. To stimulate further research in Sweden in the field of excise duties, I noted the following as a considerable lack in Olsson 2001: [383]

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

I stated in Forssén 2011 that an explanation to Professor Stefan Olsson not bringing up in Olsson 2001, concerning the mentioning therein of the determination of the concept

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[382] See Forssén 2021b pp. 30 and 31. See also: Forssén 2020a, pp. 720, 740, 744, 745 and 750; Forssén 2021c, pp. 26–28; and Forssén 2022a, pp. 2, 7 and 8; and the preface of Forssén 2020d.

[383] See Forssén 2011, p. 76.

professional (Sw., *yrkesmässig*) in the main rule in the ML, that the reference for that determination to Ch. 13 sec. 1 (first paragraph second sentence) of the IL was altered on 1 January, 2001 to apply to the concept business activity in the whole of Ch. 13 of the IL, could be that Olsson 2001 was issued during June 2001, that is after that alteration of the rule. However, in the preface of Olsson 2001 it is stated that new material has been regarded until 31 December, 2000.[384] Thus, it is a considerable lack in Olsson 2001 that the connection in Ch. 1 sec. 4 no. 1 of the LSE and the instructions to sec. 9 of the RSL respectively to the concept business activity in the whole of Ch. 13 of the IL, for the determination of the tax subject regarding energy tax and advertising tax respectively, is not mentioned, since that phenomenon emerged already on 1 January, 2000, by SFS 1999:1289 and SFS 1999:1241 respectively and, concerning tax on biocides, by SFS 1999:1252. By the way, it may be mentioned that there is a proposal according to the Government's bill 2022/23:46 on the ML being replaced on 1 July, 2023 by a new VAT act. I have commented that proposal in the JFT,[385] and mention that article also in Forssén 2022b.[386]

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

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[384] See Olsson 2001, p. 6.

[385] See Forssén 2020b.

[386] See Forssén 2022b, sections 4 and 5.2.

FOLLOW-UPS

Under Indirect taxes and the research in Sweden – where should it be going? Part 4, section 4 (Concluning viewpoints), I mention, with reference to my mentioning in Forssén 2020b and Forssén 2022b, the proposal of a new Swedish VAT act, and can confer that it came into force on 1 July, 2023.[387] The new Swedish VAT act does not affect my criticism of the research efforts in Sweden in the field of indirect taxes, neither concerning VAT nor regarding excise duties or customs.

Under THE PARTS I, II AND III – OVERVIEW, section 3 **(**More from Björn Forssén regarding what is mentioned in the parts I, II and III), I mention that I in section 2.3 of Part II mention, with reference also to Part I, section 5.3.2 and Part III, section 5.3, the EU's free trade agreement with the USA, that is the TTIP-agreement. I state there that the work to introduce the TTIP should be resumed, since a future introduction of a free trade agreement between the USA and the EU is important for the customs questions of the EU-project. I also mention that I had written an article on this which the JFT was going to publish soon, which has been done now, whereby the work title also became the title of the published article: *EU:s frihandelsavtal med USA, TTIP – en motvikt till förflyttningen av världsekonomins tyngdpunkt till Asien och till gagn för världsfred* (The EU's free trade agreement with the USA, TTIP – a counterbalance to the transfer of the main focus of the global economy to Asia and to the advantage of world peace). See my translation into English of the article under ANNEX.

ADDITIONAL INFO

In addition to the info of above regarding the research in Sweden on indirect taxes, I may mention that there is one thesis of a researcher by the name of Cristina Trenta which was submitted at the Jönköping International Business School (JIBS) on 15 May, 2013: VAT in Peer-to-peer Content Distribution: Towards a Tax Proposal for Decentralized Networks.

According to the acknowledgements in the thesis, it was Professor Björn Westberg at the JIBS who brought Cristina Trenta to Sweden. She had, already before submitting her thesis at the JIBS in 2013, received, at a university in Italy (Bologna), the degree of PhD in the year of 2007 on a thesis with the title VAT and Communication Services in the European Tax System and in the Italian and Swedish Experience. In Sweden became Professor Björn Westberg one of her supervisors at the JIBS. For him it was obviously not a problem that a person with a PhD from Italy submitted a doctor's thesis once more in Sweden on – basically – the same subject. The opponent in Sweden, Professor Stefan Olsson at Karlstad University, also presents criticism against Cristina Trenta's dissertation at the JIBS, by his Review of Cristina Trenta 'VAT in Peer-to-peer Content distribution' in *Skattenytt* (Tax news) 2013 pp. 870-878. However, I quote only the following from section 3, Method and material, of his review: "In my opinion, Trenta has not conducted 'research' in its real sense regarding the non-legal disciplines, In her

[387] See *mervärdesskattelagen (2023:200)*, i.e. the Swedish VAT act.

own words, she has integrated contributions of different disciplines. It would therefore be incorrect to label the study as 'multidisciplinary' in the true sense."

Thus, already for lack of using a proper method in her thesis, I denote Cristina Trenta's 'Swedish' thesis at the JIBS as an anomaly for Swedish academic conditions and criteria. Moreover, I note that it is not mentioned in Cejie 2020 and the review therein of Swedish theses on tax law with regard of the method issue. I did not even mention Cristina Trenta's thesis at the JIBS in my review of the research in Sweden during 1994 – 2020 within the field of indirect taxes that I wrote about in the articles during 2020 – 2022 in the JFT.[388] In my opinion already the large number of pages in Cristina Trenta's thesis at the JIBS, i.e. 651 pages, proves that it should have been disqualified.

That Cristina Trenta is criticized on the theme of method and material regarding her thesis at the JIBS is in my opinion the resposibility of Professor Björn Westberg, where I in short may mention the following reason for my judgment:[389]

- In Part II, section 2.5.1.1, I refer to the seminar at Lund University on 17 September, 2008, where I stated in the introduction of the then presented manuscript that less than a fourth of the world's countries have VAT in the meaning of VAT according to the EU law, which meant that Professor Westberg's uncritical reference at the seminar to the OECD's conception about the number of countries in the world claiming to have VAT would amount to three quarters of the world's countries is false. Therefore, a comparative method with an external perspective on the EU law must instead be weighted, so that comparisons are made with material for comparison from third countries that have VAT or GST corresponding to the basic principles determining what is meant by VAT according to the EU law. This error on Professor Westberg's behalf also led to a poor use of a comparative method in Rendahl 2009, where Professor Westberg was supervising Professor Pernilla Rendahl at her work with that book and which I criticized in Forssén 2020a with reference to Forssén 2011 and also mention under Part II, section 2.5.2.1 of this book.

- Another flaw in the reasoning of Professor Westberg, regarding the EU law in the present respect, concerns the importance of examining rules on the determination of the tax subjct to be able to problemize questions on the tax object. This is for methodical purposes a main thread in all my projects in the field of VAT and excise duties. However, I learned that Professor Westberg neither knew that Finland in its VAT act considers non-legal entities as tax subjects, which is analysed thoroughly in Forssén 2013. See in that respect my commentary in Forssén 2021a (section 2.5.1.1) of Westberg 1997. It is precisely the tax subject that must be regarded, to be able to problemize questions on the tax object concerning the subject of VAT law. In my opinion, Professor Westberg has a large responsibility for the phenomenon that, in the

[388] I submitted my doctor's thesis, Forssén 2013, at Örebro University on 26 April, 2013, i.e. before Cristina Trenta submitted her thesis at the JIBS on 15 May, 2013, why it of course is not mentioned in Forssén 2013.

[389] By the way, Professor Westberg was for a short while during the year of 2009 supposed to supervise, together with Doctor of Laws Pernilla Rendahl, at my academical work.

> research on VAT and excise duties in Sweden, questions regarding the tax subject has only been treated in Forssén 2011, Forssén 2013 and Öberg 2001, regarding VAT, and – although rather limited – in Olsson 2001, regarding excise duties.[390]

By the way, Professor Westberg also attended my opening seminar at Lund University (Department of Law) on 26 November, 2002, and then dismissed my idea that it should be examined whether a reversed order would be possible, where the VAT is governing the income tax regarding who is an entrepreneur for tax purposes. His remark was that 'it is no axiom that income tax and VAT should have a common tax frame'. I stated that a common tax frame for the two taxes improves the legal certainty for the entreprenerur. When I later on continued my research project at Örebro University (JPS), I concluded that it would be possible to have a common tax frame for the determination of the tax subject regarding the two taxes. See Forssén 2011, p. 325, and the summary in Forssén 2013, p. 299.

The above-mentioned proves to me that Professor Westberg has a far too rigid approach to research to be able to properly supervise at an academic work, at least concerning the field of indirect taxes with respect of the EU law. Since he had been supervisor at the work by Eleonor Kristoffersson (previously Alhager) with Alhager 2001,[391] I thought of him in 2009 as supposedly very well qualified to supervise, but I am glad that I instead got the opportunity – from 8 April, 2011 – to get constructive supervising by Professor Eleonor Kristoffersson at Örebro University (JPS), which led to my theses, i.e. Forssén 2011, submitted already on 15 December, 2011,[392] and Forssén 2013. Since 2020, I have also been a mentor for students in law or economy in the Mentor Match-programme, which is governed by Tim Stubbings at Alumni Relations of Örebro University. During my doctoral studies at the JPS, I also got to know some highly qualified teachers, for instance Docent Bo H. Lindberg who introduced me at Södertörn University, where I for instance have given lectures and seminars on the EU Master programme each year since 2015. Docent Patricia Jonason is leading that programme and from the beginning I only based the study material on case-law from the CJEU, but from 2021 I have based it step by step on my review of the research in Sweden during 1994 – 2020 within the field of indirect taxes, made by my articles during 2020 – 2022 in the JFT and during 2021 – 2023 in The Periodical Balans Annex with advanced articles, which means that the material in question became rather complete in 2023, i.e. on the whole corresponding with the contents of this book.

Under THE PARTS I, II AND III – OVERVIEW, section 3, I mention Forssén 2019c as a pre study to carry on with a project on FS and empirical studies of the use of tax revenues. There I also mention that Forssén 2019d and Forssén 2019g are of interest in that context from a law and language-perspective, and that AI can be used as a tool for studies in FS. Thereby, I would like to add – from this project – Forssén 2023a as being of interest for the language question.

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[390] See under THE PARTS I, II AND III – OVERVIEW, section 1.2.3 of this book, where I also refer to Part I, section 4.4 and Part III, section 3.2.5.

[391] See also PART II, section 2.5.1.1.

[392] By the way, it was mentioned in the annual report on research in legal science during the year of 2011 at Örebro University that I – with Forssén 2011 – was the university's first Licentiate of Laws.

ANNEX

Björn Forssén, Doctor of Laws, Member of the Swedish Bar Association, Former Senior Administrative Officer, Stockholm

The EU's free trade agreement with the USA, TTIP – a counterbalance to the transfer of the main focus of the global economy to Asia and to the advantage of world peace

[Translation of the article *EU:s frihandelsavtal med USA, TTIP – en motvikt till förflyttningen av världsekonomins tyngdpunkt till Asien och till gagn för världsfred*, by Björn Forssén, published in original in Swedish in Tidskrift utgiven av Juridiska Föreningen i Finland – Eng., The journal published by the Law Society of Finland (abbreviated JFT), JFT 4/2022 pp. 425–436. (Forssén 2022c).]

1 Introduction

The European Union or the Union (EU) is according to the Treaty on the Functioning of the European Union (TFEU) a customs union with common customs tariffs towards third countries (i.e. places outside the EU), whereas customs on imports and exports between the Member States shall be forbidden.[393] The EU is according to article 3(3) first paragraph first sentence of the Treaty of European Union (TEU) an internal market.[394] The EU's Member States,[395] and the EEA-countries that are not member states of the EU form an internal market for free trade between 30 European countries.[396] In this article I compare the EEA with other international free trade- and co-operation agreements. I describe how the main focus of the global economy is transferred towards the east, to Asia, by various free trade- and co-

[393] See article 28(1) TFEU.

[394] The TEU and the TFEU are the treaties on which the Union is founded, and both treaties, which have the same legal value, are together mentioned *the Treaties*, which follows by article 1 third paragraph first and second sentences TEU and article 1(2) TFEU.

[395] The EU has 27 member states: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden. See <https://european-union.europa.eu/principles-countries-history/country-profiles_sv> (visited 2023-01-22).

[396] The EEA, European Economic Area, consists of the EU's 27 member states and Iceland, Liechtenstein and Norway, which is evident from the EFTA's website (<https://www.efta.int/eea>), where it is stated that "The European Economic Area (EEA) unites the EU Member States and the three EEA EFTA States (Iceland, Liechtenstein, and Norway) into an Internal Market governed by the same basic rules" (visited 2023-01-22). The EFTA (European Free Trade Association) consists of Iceland, Liechtenstein and Norway and Switzerland. Since Switzerland is not included in the EEA that EFTA-country has, unlike Iceland, Liechtenstein and Norway, not access to the EU's internal market. Switzerland has however a customs union with Liechtenstein, which has raised the question whether Switzerland thereby has a back door to the freedom for movement within the EU – see written question 2013//14:491 in the Swedish parliament on 13 March, 2014 by the member of parliament Hans Olsson to the then Swedish minister of finance Anders Borg (M). The then cabinet minister Ewa Björling (M) gave an answer on 24 March, 2014, but without an interpretation of the question in principle – which I disregard in this article. (M), *Moderata samlingspartiet* (Eng., the Moderate party); (S), *Sveriges socialdemokratiska arbetareparti* (Eng., the Swedish Social Democratic Party).

operation agreements, how that process is strengthened by the UK[397] not only having made its exit from the EU, but also approaching one of the trade policy-formations in Asia and that the work with the EU's free trade agreement with the USA,[398] that is the TTIP-agreement,[399] therefore should be resumed promptly. An introduction of the TTIP-agreement can be a counterbalance to the main focus of the global economy, so that the internal market EEA will not weigh too light compared to the extensive trade policy-formation piling up eastwards.

The EU is founded on the treaty law of international law, which follows by the Vienna Convention of 1969.[400] The EU law (the Union law) has also an expressed connection to international law, by article 6(3) TEU stating that the fundamental rights, as they are guaranteed in the European Convention,[401] and as they follow by the Member States' constitutional traditions, shall be part of the Union law as general principles.

The EEA as internal market is distinguished by the EU law from free trade- and co-operation agreements based on internal law in general, above all according to the following:

- The EU is according to article 47 TEU a legal person.

- The EU is also a legal system of its own (*sui generis*): "By contrast with ordinary international treaties, the EEC Treaty has created its own legal system which, on the entry into force of the treaty, became an integral part of the legal systems of the Member States and which their courts are bound to apply".[402]

The EU is on the one hand an international interstate organization, but has also to a large extent a supranational character. The latter means that the Member States have conferred extensive decision competence to the EU in pursuance of the principle on transferred competences (the principle of legality) according to articles 4(1) and 5(2) TEU.[403] The Member States are sovereign states, and they form the Union which has a legal system with a

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[397] The UK: the United Kingdom.

[398] The USA: the United States of America.

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

[400] See <https://sv.wikipedia.org/wiki/Wienkonventionen_om_traktaträtten> (visited 2023-01-22).

[401] The European Convention was drawn up within the frame of the Council of Europe. It was signed in Rome on 4 November, 1950 and came into force on 3 September, 1953. See the preface (pp. 3 and 4) of the Swedish translation of the European Convention (Sw., *Den Europeiska Konventionen om de mänskliga rättigheterna*, 3. Edition. Professor Jacob W.F. Sundberg – Stockholm 1997.

[402] Citation of the first paragraph of item 3 of the summary of the EU-case 6-64 (Costa). See also *prop. 1994/95:19* (*Sveriges medlemskap i Europeiska unionen*) Part 1, p. 475 (*prop.*, abbreviation of *regeringens proposition* – Eng., government bill).

[403] See articles 4(1) and 5(2) TEU and Ch. 10 sec. 6 first paragraph first sentence of the 1974 Instrument of Government, RF, which reads (in translation): Within the frame of the co-operation in the European Union the Parliament can confer rights of decision which will not affect the principles of the forms of government". By SFS 2010:1408 transferred from Ch. 10 sec. 5 first paragraph first sentence RF.

constitutional dimension. The EU law does not by itself contain any common constitution for the Member States, but their constitutional traditions are, as above-mentioned, a part of the EU law as general principles. The Lisbon Treaty of 2007 contains the two treaties TEU and TFEU and the EU's Charter of Fundamental Rights (the Charter), which according to article 6(1) first paragraph TEU shall have the same legal value as the Treaties.[404] When the Lisbon Treaty came into force on 1 December 2009, the EC Treaty (the Rome Treaty) of 1957 was reformed and became the TFEU, but the TEU remained from the Maastricht Treaty of 1993.[405] The Lisbon Treaty is a non-constitutional reform treaty which on the whole has the same content as the constitution for the EU of 2004 that never came into force.[406] The Treaties and the Charter forms the EU's primary law, which brings a constitutional dimension to the EU law. The EU's legal system also contains a secondary law, which according to article 288 first paragraph TFEU consists of regulations, directives, decisions, recommendations and opinions. One of the EU's institutions is the Court of Justice of the European Union (CJEU),[407] which is the highest interpreter of the EU law assists and able to make preliminary rulings to the Member States' courts at their request.[408]

By the EU having a legal system of its own as I have described the free trade area EEA has a strength in a legal respect that is lacking by the free trade- and co-operation agreements which I am comparing the EEA with below. By the EU's constitutional dimension and following by article 10(1) TEU that the EU's way of functioning shall be built on representative democracy the internal market is based on principles of legal certainty. Thus, it exists for the internal market EEA a legal framework with the CJEU as a guarantee of free trade being carried out there in such a way that not only decisions for individuals being foreseeable, but also that they in advance can count on such decisions by authorities and courts in the EEA-countries are made with respect of western democratic principles. However, the EEA may come to weigh light compared to the extensive trade policy-formation piling up eastwards already due to the main focus of the global economy moving in that direction. I bring up that phenomenon below, by reviewing a number of international free trade- and co-operation agreements in Asia, and I argue for the EU to resume the work with the free trade agreement with the USA (TTIP) so that it will come into force strengthening the western democratic principles, with above all the principle of rule of law, in the global economy.

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[404] According to article 6(1) second paragraph TEU shall however not affect the Union's competences as defined in the Treaties, which also follows by article 51(2) of the Charter.

[405] See article 1 third paragraph third sentence TEU.

[406] The EU-constitution – the European Parliament's resolution on the Draft treaty establishing a Constitution for Europe (2004/2129(INI) – was actually adopted by the European Council on 18 June, 2004 at the summit meeting in Brussels and signed on 29 October 2004, but was not ratified by all Member States. Instead the Lisbon Treaty was made in 2007 and came into force on 1 December, 2009, which however is not any constitution for the EU.

[407] See article 13(1) second paragraph TEU.

[408] This follows by article 267 TFEU. See also *prop. 1994/95:19* Part 1, p. 475.

2 Free trade- and co-operation agreements transferring the main focus of the global economy towards the east

I mention firstly what the abbreviations stand for regarding the free trade- and co-operation agreements that in my opinion forms a worldwide trade policy-formation, and comment then those agreements in an order illustrating how they connect and thus confirming that the main focus of the global economy is transferred eastwards, to above all Asia.

- AFTA – ASEAN Free Trade Area.
- APEC – Asia-Pacific Economic Cooperation.
- APT – ASEAN Plus Three.
- ASEAN – Association of Southeast Asian Nations.
- BRICS – Brazil, Russia (Russian Federation), India, China (People's Republic of China) and South Africa.
- CPTPP – the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.
- USMCA – the United States-Mexico-Canada Agreement.

The CPTPP comprises eleven countries: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. Brunei, Chile and Malaysia have when this is written not yet completed their respective ratification processes.[409]

The ASEAN consists of ten countries in Southeast Asia, and function as a geopolitical and economic organization for the following countries: Brunei, Burma, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand and Vietnam. Thus, in the ASEAN are four members of the CPTPP included: Brunei, Malaysia, Singapore and Vietnam.[410]

The AFTA is an instrument for economic integration with regional and international allies of the ASEAN. By the AFTA the ASEAN forms a trade bloc for support of trading and manufacturing in all ASEAN-countries.[411]

The APT consists of the CPTPP-member Japan and China and South Korea. The APT co-ordinates the economical co-operation between the ASEAN and east Asia, and the APT's current Work Plan applies to 2018-2022.[412]

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[409] See <https://www.dfat.gov.au/Trade and Investment>.

[410] See <https://asean.org>.

[411] See <https://asean.org>.

[412] See <https://aseanplusthree.asean.org>.

The BRICS is an organized co-operation between Brazil, Russia, India, China and South Africa.[413] The BRIC was established in 2009 and in 2010 South Africa joined, whereby BRICS was formed.

The APEC has 21 member countries, and is an economical forum for the Asia-Pacific region, where that forum, since it was formed by the initiative of Australia in 1989, is acting for co-operation between the economies within the region.[414] The APEC shall strengthen the member countries mutual dependence there. The APEC is aiming to increase the prosperity for the peoples of that region, by a strengthened economic integration there. The APEC consists of the following countries from the APT, the ASEAN, the BRICS and the CPTPP: Australia, Brunei, Canada, Chile, China, Indonesia, Japan, Malaysia, Mexico, New Zealand, Peru, the Philippines, Russia, Singapore, South Korea, Thailand and Vietnam. In the APEC are also the following included: Hong Kong, Papua New Guinea, Taiwan and the USA.

The USMCA is a free trade agreement between Canada, Mexico and the USA.[415] The USA entered by the way a free trade agreement with Australia in 2005, the Australia-United States Free Trade Agreement (AUSFTA). The countries are according to the above-mentioned members of the APEC, and Australia is also a member of the CPTPP.

Thus, *the APEC, the APT, the ASEAN, the BRICS, the CPTPP and the USMCA* form a trade policy-formation comprising the Asia-Pacific region, certain countries by the Indian Ocean and Brazil by the Atlantic:

- Thus, the APEC comprises seven countries of the ASEAN, two countries of the BRICS and all the countries of the APT, the CPTPP and the USMCA and also Hong Kong, Papua New Guinea and Taiwan.

- Concerning the ASEAN and the BRICS respectively it is Burma, Cambodia and Laos and Brazil, India and South Africa which are not part of the APEC.

Thus, an overview shows in my opinion that it by the APEC and near by co-operations, that is the APT, the ASEAN, the BRICS, the CPTPP and the USMCA, exists a trade policy-formation comprising the countries in the Asia-Pacific region and certain countries by the Indian Ocean and Brazil by the Atlantic. Thereby the main focus of the global economy is transferred eastwards – above all to Asia and away from the EU and the West. Although the EEA with the EU and the legal system of its own guarantees operators on the internal market a developed legal certainty so that they can count on being subject to principles of legal certainty when doing business there, the EEA can come to weigh light economically compared to the described trade policy-formation in the east. In the next section I come back

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[413] See <https://infobrics.org>.

[414] See <https://www.apec.org>.

[415] See <https://ustr.gov>.

to this being strengthened by the UK's exit from the EU and the UK moving eastwards, to Asia, where trade policy is concerned.

3 The United Kingdom's exit from the EU for the CPTPP – an advantage for the trade policy-formation in the Asia-Pacific region etc. and a disadvantage for the EU and western democracy

The trade policy-formation I describe above shows in my opinion that the main focus of the global economy is transferred from the West to Asia or more precisely to the countries in the Asia-Pacific region and certain countries by the Indian Ocean and Brazil. By the way, that formation dominates the whole of North America, by the USMCA, and holds a strong position in South America, by Brazil being included in the formation in question through the BRICS and Chile and Peru also being included therein through the CPTPP. That the main focus of the global economy is transfered from the West is strengthened, as mentioned, by the United Kingdom not only having left the EU, but also approaching one of the trade policy-formations of Asia, namely the CPTPP.

Thus, in my opinion resuming the work with the free trade agreement TTIP between the EU and the USA is especially important for the EU due to the United Kingdom shortly after the expiration of the transitional period for its exit from the EU (Brexit) at the turn of the year 2020/21 applying (on 1 February, 2021) for accessin to the CPTPP, and the CPTPP-commission accepting on 2 June, 2021 to formally entering into negotiations about that with the United Kingdom.[416] Thereby the United Kingdom and the USA would be part of the worldwide trade policy-formation piling up eastwards, where the CPTPP and other international free trade- and co-operation agreements are included.

If the United Kingdom makes its accession to the CPTPP, it will have access to an extensive area for free trade or co-operation without being a member state of the EU. Thereby the United Kingdom can also get the benefits which would have come with a future TTIP between the EU and the USA if the United Kingdom would not have made the Brexit, and also get the advantages that the United Kingdom refrained from by the Brexit, where the existing trade agreement between the EU and Canada, the EU-Canada Comprehensive Economic and Trade Agreement (CETA), is concerned, since Canada is part of the CPTPP. If the United Kingdom makes its accession to the CPTPP, it will reinforce the trade policy-formation I see consisting of the countries of the Asia-Pacific region etc., and mean a further getting closer to that formation for parts of the West. This above all considering that Australia, Canada, New Zealand and the USA are included in the APEC, that Australia and the USA having the AUSFTA and that Canada is part of the CPTPP. Furthermore, the United Kingdom and Australia signed a free trade agreement on 17 December, 2021 (which has not come into force when this is written) – The Australia-United Kingdom Free Trade Agreement (Australia-UK FTA).[417] The customs union of the EU, with the EEA as internal market, weighs light compared to the mentioned trade policy-formation. The CETA is insufficient to

[416] See <https://www.dfat.gov.au/Trade and Investment>.

[417] See <https://www.dfat.gov.au/Trade and Investment> (visited 2023-01-22).

match it, why I consider that the EU should promptly resume the negotiations with the USA about TTIP.

Before the Brexit-referendum I wrote a question to the EU's then Commissioner for Trade Cecilia Malmström regarding whether the United Kingdom would get a special solution, so that it could join the TIP even if the result of the referendum meant that the UK would leave the EU (i.e. Brexit). On 28 April, 2016 I received an answer by e-mail from Catrine Norrgård, political adviser for Cecilia Malmström's cabinet in the EU-Commission, where the answer was (in translation) that *Great Britain has no special solution to join the TTIP if they leave the EU*. Moreover it was stated that *it will take years before a TTIP-agreement would come into force. For the moment the TTIP is negotiated by the EU-Commission. Thereafter it will be examined by jurists, translated by translators to all EU-languages and then the Member States and the European Parliament will have the opportunity to introduce it*. I state once again that the United Kingdom's application after the Brexit to become a member of the CPTPP entails that the EU promptly should resume the negotiations with the USA about the TTIP to accomplish a counterbalance to the transfer of the main focus of the global economy eastwards, so that western democracy with the principle of rule of law etc. is protected by the EU-project – above all against an aggressive Russia and an imperialistic China.

4 The former and present Swedish government's attitude to the TTIP and to a resuming of the ratification process regarding the EU's investment agreement with China and Russias war against Ukraine are also disadvantages for the EU's legal system

4.1 The former and present Swedish government's attitude to the TTIP – far too vague

In the Swedish parliament the member of parliament Hans Rothenberg (M) asked – by interpellation 2020/21:193 – on 27 November, 2020 the following question to the then member of the cabinet, the minister for foreign trade Anna Hallberg (S): *What measures is the minister taking to resume the negotiations about the free trade agreement TTIP?* The minister answered (according to the parliament's protocol 2020/21:52) on 11 December, 2020, that she does not exclude that conversations will be carried on the TTIP and the shaping of a future free trade agreement between the EU and the USA. However, she also considered that it was important to be realistic, and stated that the then president elect of the USA, Joe Biden, *had been clear about negotiations on broad free trade agreements not coming up on top of the administration's political agenda*. The minister stated that a proposal from the EU about an *eventual resuming of the TTIP-negotiations at this stage therefore would not be likely to be well received by the new administration*. Thus, the answer was given by the minister for foreign trade after that she on 9 November, 2020, after a video meeting with her EU-colleagues regarding the final result of the presidential election in the USA, stated that they were looking forward to *deepen and get a new lease of life into* the trading relations between the EU and the USA.[418]

I consider that the former Swedish government's attitude to the TTIP was far too vague. Sweden should, for the reasons above-mentioned, act for the resuming of the negotiations about the TTIP between the EU and the USA. I mention in an article in *Dagens Juridik* (Eng.,

[418] See www.regeringen.se, 2020-11-09.

Today's Law) on 20 April, 2022, that I have noticed that the USA's president Joe Biden, due to Russia's since 24 February, 2022 open war against Ukraine, has expressed that the USA and the EU shall have a closer co-operation, but then with a signature of defence and without mentioning trade policy.[419] Instead, I note that Sweden's prime minister, Ulf Kristersson (M), at his – by the SVT telecasted – report in the Swedish parliament on 20 December, 2022 from the meeting five days earlier on inter alia the climate issue in the European Council, had apprehensions about protectionism on the part of the USA, by the Inflation Reduction Act – IRA – of 2022 being unfair to competing enterprises within the EU. Thus, the initiative to resume the work with the TTIP must come from the EU. However, the TTIP was not mentioned by the EU Commission's President Ursula von der Leyen, when she barely a month later (2023-01-17) announced at the World Economic Forum Annual Meeting, held 16 – 20 January, 2023 in Davos (Switzerland), that the EU intends to carry out an IRA of its own, *a Green Deal Industrial Plan*.[420] The present Swedish government's attitude to the TTIP is such that I conceive it as the government is regarding the TTIP as a non-issue. Instead of using the Swedish Presidency of the Council of the EU during the first six months of 2023 to press on about the TTIP-question, the government has sent the minister for development assistance and foreign trade Johan Forssell (M) to Australia and New Zealand to negotiate about bilateral free trade agreements between Sweden and the two countries.[421]

4.2 A resuming of the ratification process regarding the EU's investment agreement with China – a resuming of the work with the TTIP-agreement can be an incentive for this

Another motive for a prompt resuming of the work with the free trade agreement TTIP is that it also can be an incentive to resume the ratification process regarding the EU's investment agreement with China. In December 2020 negotiators from the EU and China agreed on an investment agreement, but on 20 May, 2021 the European Parliament voted against a ratification as long as China retains its sanctions against European interests.[422]

It is a matter of avoiding such protectionism that in 2018, under the then president of the USA Donald Trump, led to a trade war with China, but at the same time strengthen western democratic principles – above all the principle of rule of law – that is that everybody shall live by the laws and not under a totalitarian regime. To me that is the meaning of the EU-project, whereby above all free trade shall guaratee the Union and its citizens development, prosperity and peace. The EU also was awarded the Nobel Peace Prize in 2012 for having contributed to *change the major part of Europe*, *from a war-torn continent to a continent characterized by peace*.[423] A solition of the described problems between the EU and China should contribute to

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[419] See Björn Forssén, "En linje 3 i Natofrågan?" (Eng., 'A Line 3 in the Nato-question?'), *Dagens Juridik* (Today's law) 2022-04-20 (Forssén 2022d).

[420] See "Special Address by President von der Leyen at the World Economic Forum", <https://ec.europa.eu/commission/presscorner/detail/en/speech_23_232> (visited 2023-01-22).

[421] See the government's press release 2023-02-08: <https://www.regeringen.se/pressmeddelanden/2023/02/frihandelsavtal-i-fokus-nar-bistands--och-utrikeshandelsminister-johan-forssell-besoker-australien-och-nya-zeeland/> (visited 2023-02-16).

[422] See SVT Nyheter 2021-05-21, www.svt.se. SVT, *Sveriges television* (Eng., Swedish television).

[423] See the European Parliament's website, www.europarl.europa.eu/news/sv/.

Russia realizing that it will not be profitable to make Europe a theatre of war again, like what at the time of writing this is the case with the mentioned assault war made by Russia against Ukraine. Thus, that the EU would resume the work with the free trade agreement TTIP with the USA should also open for a resuming of the ratification process regarding the EU's investment agreement with China, which in its turn show an aggressive Russia that the EU-project is a peace project – not a threat. That such a development is urgent is in my opinion confirmed especially by Russia and China's foreign ministers at a meeting on 30 March, 2022, that is after Russia's open invasion of Ukraine, having expressed that the co-operation between the two countries continues unchanged.[424]

4.3 Russia's war against Ukraine is also an attack on the EU's legal system – questions about its relationship to the European Convention and about Russia's relationship to the UN, the G20 and the WTO

In the latter respect may be mentioned that Russia left the Council of Europe on 15 March, 2022. That was made because Russia did not want to be excluded from the Council of Europe as a consequence of the war against Ukraine. Thereby Russian citizens cannot sue the Russian state for violation of the European Convention.[425] However, in my opinion the decision of 24 February, 2022 by the Russian president Vladimir Putin to launch an all out assault war against Ukraine does not only mean that he has caused the Ukrainian people a great suffering, but he has also harmed the Russian people economicallly for a long time to come.

Despite that the EU is not a state and Ukraine is not a member state of the EU, I consider that Russia's war against Ukraine also is an attack on the EU's legal system. Ukraine is a member of the Council of Europe, precisely like inter alia the EEA-countries.[426] According to the Lisbon Treaty shall the EU access to the European Convention, but since article 6(2) TEU, which states this, has not yet been ratified, the fundamental rights of the European Convention are for the time being only comprised by the EU law as general principles.[427] It is in my opinion first by Russia – after having started its open war against Ukraine – having left the Council of Europe that a ratification of article 6(2) TEU is possible, why I consider that Russia by the war against Ukraine also attacked the legal system which the legal person EU has created and developed for the Member States.

Thus, it is, despite that Russia – which besides the North Asia part comprises large parts of Eastern Europe – fullfils the geographical demand to be accepted as a member state of the EU, hardly possible within a foreseeable time, considering the democracy demand on countries applying, that Russia would become a member state of the EU. President Putin has by the war against Ukraine harmed the possibilities for developing opulence for the Russian people for a long time to come. The war against Ukraine is economically like scoring an own

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[424] See <https://sverigesradio.se/artikel/kina-och-ryssland-ska-tala-med-en-rost>. See also Forssén 2022d.

[425] See <https://www.dn.se/varlden/ryssland-vantas-bli-utesluten-ur-europaradet> (visited 2023-01-22).

[426] See <https://www.coe.int/sv/web/about-us/our-member-states> (visited 2023-01-22).

[427] See article 6(3) TEU, which is also mentioned above.

goal for Russia, since the EU's 27 Member States initiate economical sanctions against Russia, but it is also cutting short future prospects for Russians who want move their country closer to the EU when questions decisive to form a genuine state governed by law are concerned. It follows by article 3(1) TEU that the EU's aim is to promote peace, its values and the well-being of its peoples, and Russia's war against Ukraine is quite the opposite to this. Russia's assault on Ukraine shall in that respect of course also be seen in relation to Russia, as one of the permanent members of the UN's Security Council, having commited itself to uphold international law in form of the UN Charter – not to start war against sovereign states such as Ukraine.[428] The UN Charter begins with the words "WE THE PEOPLES OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind",[429] which words Russia thus no longer fullfil in action.

Thus, it is in my opinion not only the possibility for individual Russian citizens to sue their government that has been lost, by Russia leaving the Council of Europe. Furthermore, president Putin has as well caused the Russians in general the consequences of economical sanctions from the EU against Russia which have deprived Russians inclined for democracy the possibilities for a development of a state governed by law for a long time to come – merely by the EU, which they should see as a model in that respect, not being able to co-operate with an aggressive Russian regime. Thereby, Russia has created another problem in retaltion to the EU, by Russia as one of the G20-countries and the EU also shall be represented at the meetings of the G20. The USA and the EU participate at both the meetings at the G7 and the G20, and should in my opinion be able to influence Russia in a peaceful way inter alia by resuming the work with the TTIP.[430] Another circumstance that thereby should influence Russia in a peaceful direction is that the country shall be able to meet inter alia the USA or anyone of the EU's Member States, represented by the EU-Commission, in negotiations within the WTO.[431] The WTO has furthermore a *dispute settlement mechanism* to decide trade policy-conflicts, which function as a court,[432] and the question is how the WTO-member Russia shall be able to make complaints there against for example the EU in such a respect and invoke democratic principles based on legal certainty arguments, if the country at

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[428] The UN Security Council consists of 15 members, and the five permanent members are: Russia, China, the USA, France and the United Kingdom. The UN's General Assembly can take up any global issue at all, whereas the Security Council only address questions concerning peace and security. The Secirity Council's responsibility is to work for maintaining world peace and averting threats to the international security. That Russia is making war against Ukraine is blocking the Security Council's work, since a decision in the council can be stopped by anyone of the five permanent members, which each has a right of veto there. See <https://fn.se/vi-gor/vi-utbildar-och-informerar/fn-info/fn-som-organisation/fn-systemet/huvudorgan/sakerhetsradet> (visited 2023-01-22).

[429] See <https://unric.org/sv/forenta-nationernas-stadga> (visited 2023-01-22).

[430] The G7- and G20-countries are two informal groups of rich countries that meet on a regular basis to discuss economical and other questions. Russia is inclied in the G20, whereas the USA and the EU participate in meetings both at the G7 and the G20. See <https://www.europaportalen.se/tema/g20>.

[431] The WTO: the World Trade Organization. See <https://www.wto.org>.

[432] See, regarding Dispute settlement, <https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm>.

the same time disregards those by carrying out an assault war against the WTO-member Ukraine.

5 The connection of the TTIP-question to my article in the JFT about the method questions in the Value Added Tax-research in Sweden

Finally, I connect the TTIP-question to my article in the JFT regarding the method questions in the Value Added Tax (VAT)-research in Sweden.[433] There I finish by stating, regarding the field of indirect taxes, which in the first place consists of VAT, excise duties and customs, that research efforts should be made to examine the possibility to introduce a uniform concept goods for those three taxes. Such a simplification would contribute to efficiency of collection in the field of indirect taxes overall.[434] To such a development of the EU law should priority be given to strengthen not only the internal market, but also the customs union, which – together with an introduction of the TTIP-agreement between the EU and the USA – would be a trade policy reinforcement of the EEA in relation to the mentioned international free trade- and co-operation agreements in Asia.

[433] Forssén 2020a.

[434] See Forssén 2020a, section 5.3.2.

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