

The right resource on the right place decreases the VAT frauds

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DEBATE – by Björn Forssén, Member of the Swedish Bar Association and Doctor of Laws

I follow up my articles in *Dagens Juridik* (Today's Law, abbreviated DJ) 2019-02-19 and 2019-03-11, where I mention the relationship between the defence lawyer's role and the Economic Crime Authority's (Sw., *Ekobrottsmyndigheten*, abbreviated EBM) in cases on tax fraud. This time, I bring up more about the relationship between the tax authority (Sw., *Skatteverket*, abbreviated SKV), when it is a matter of resources to suppress criminality regarding VAT frauds. This is due to an article in DJ 2021-03-03, where information is presented about that the EBM perhaps must lay off staff, which would be counterproductive for taking legal proceedings against VAT frauds.

I do not go into details on the law in cases about VAT frauds, but emphasize partly that the liquid cheating against the State in the field of VAT cannot be taken care of effectively unless the State uses resources for control regarding the registration of VAT itself, partly that the EU law's role in cases on tax fraud about VAT must be handled with regard of the question on conferring of competence between the Swedish parliament (Sw., *Sveriges riksdag*) and the EU's institutions.

The reform The new Skatteverket (The new Tax authority) was introduced in 2004. What was lacking was, in my opinion, that nothing was said about VAT registration. The idea was that one single authority concerning the whole nation, the SKV, would make it possible for the tax auditors to carry out investigations without any respect of it previously having existed independent tax authorities in the various regions. I have in various contexts emphasized the precarious with only putting efforts into the tax auditors being able to move freely across the borders of the regions, whereas the registration control is not prioritized. The VAT investigations within the tax authority is since the beginning of the 1980's ADP-based. This means that the enterprises and the SKV ever since then are communicating for liquid purposes only after the supposed entrepreneur has been VAT registered by the SKV.

Unless there is a gatekeeper at the registration, the VAT register can become containing persons who do not belong there at all. They shall in their words not be reimbursed an excess input tax (Sw., *överskjutande ingående moms*) by after the registration giving a VAT return to the SKV. If there is no gatekeeper, the investigation problems will quickly grow from little brooks to big rivers. Then it will not be helpful with super auditors moving freely between the regions with their investigation of submitted VAT returns. The gatekeeper does not even have to be an executive official. I have during my years within the tax authority experienced the value of competent assistants. It was often they who brought the investigation objects to executive officials. If a newly registered had submitted a VAT return showing a high excess input tax to become from the tax account, it could be sufficient with somebody from the SKV going to a declared address to control whether it at all exists an office or something else there that could indicate if any economic activity is carried out there at all. I have during my years within the tax authority investigated persons who claimed they were carrying out very resolute activities in Stockholm, when they actually were sailing about in the Pacific Ocean.

Nowadays it has also been a matter of frauds in fields like trading with emission rights, but modern phenomena do not alter that the basic element to achieve an effective investigation activity is that the State concentrates on the gatekeeper. No VAT registration and no possibility to unfairly appropriate money from the State via the tax account. However, the State's reaction has been, in a number of fields like trading with investment gold and trading with emission rights, to introduce so-called reverse charge in field after field. This means that the VAT is accounted for as a taxation on acquisition link by link by the entrepreneurs in the field, and it is first in relationship to a consumer that the VAT is charged.

Reverse charge means taken by itself that the flow of liquid between enterprise and state is replaced with accounting of the VAT as a taxation acquisition in the links before the consumer stage, but it also means that in field after field is the regime of exemption introduced instead of the general VAT rules. This development means that the State is losing pace when it is a matter of collection of the VAT totally in an ennobling chain of enterprises producing goods or a service. Over time do most enterprises normally account more output tax than input tax, and then the State loses the VAT's character of a form of financing of the welfare made in real time. I remind of the reunion of Germany being financed in the first place by raising the general VAT rate there.

I may also mention that the State will have problems the day the interest is increasing, by the State not receiving the VAT link by link from the enterprises which are submitting positive VAT returns, if too many fields are comprised by reverse charge.

I may with this article emphasize the precarious with taking measures against shortcomings of investigation purposes by the State with the State in the first place introducing exemptions from the general VAT rules in the form of reverse charge field after field.

My perception and recommendation are that the State at last concentrates properly on the gatekeeper in the VAT system, that is the registration control. I am mentioning this also in my theses as a question that the EU Commission emphasized by green and white papers already over a decade ago. The ambition was to give up an attitude which meant that as many as possible were allowed into the VAT system to make the collection effective, whereby the registration control would have a key role. Where did it go?

The solution is not for the EBM to lay off staff, but they shall not be unnecessarily burdened with investigations which should have stayed on the stage of a brook at the SKV, instead of becoming a river to stop with investigation resources.

If my suggestion is carried out, it leads also to the VAT rules not being unnecessarily complicated, by the existence of too many sectors within *the business community* (Sw., *näringslivet*) where exemptions from the general VAT rules exist. The defence lawyer in a tax fraud case has no special resources to use, for analysing a complicated VAT investigation. A question that should be brought up properly is in that perspective that the competence in the field of VAT has been conferred to the EU's institutions by the Swedish parliament, when it is a matter of the contents of the material VAT rules, whereas the competence remains in principle by the Swedish parliament when it is a matter of the administrative law and the criminal law. The VAT is also regularized by the EU's VAT Directive, where formal rules are concerned, but the administrative law is national law as a main rule and the criminal law also constitutes national law on the whole.

Questions which I consider are set aside in tax fraud cases on VAT in Sweden are therefore: which legislations are the individual in Sweden obliged to know about? Does this apply to the Swedish VAT act and the Taxation Procedure Act as well as the EU's VAT Directive? Is the person in question also obliged to learn about foreign national legislations on VAT and the taxation procedure? Here is the research in the university world a part of the problems, by the procedure rules being set aside in that respect – sometimes is the perspective of the applier missing on the whole in the research within tax law in Sweden.