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On signs of tax crime in an artistic environment

Björn Forssén is introducing something new for the tax law research, namely The Semiotics of Law (or Legal Semiotics). He is aiming to instigate a discourse on Legal Semiotics within the tax law – The Semiotics of Tax Law. He begins with the artistic environment as an example from practice for the sake of reasoning about signs on tax crime in such a context, and uses value added tax (VAT) to exemplify. Björn Forssén thanks Professor Laura Ervo, Örebro University, who inspired him to adopt Legal Semiotics for the purpose of developing the research within the tax law, which otherwise often is law dogmatic where methodological issues are concerned. Additional elements of Semiotics of Tax Law should according to Björn Forssén be used for the purpose of methodological development, so that theses on tax law will become more useful for continuing research efforts and where interpretation and application of tax law issues are concerned in practice.

1. Introduction and background



Before October 1, 1955 there was a so called variety prohibition in Sweden, which had been introduced about six decades earlier. It meant that it was forbidden to serve alcoholic beverages in premises where artistic performances took place. The limits between performances classified in that respect as variety or not variety were supposedly rather blunt. For instance, according to an anecdote, that I – as a lawyer – have picked up from producers with many years of experience in show business, the variety prohibition was considered violated if a person reciting literature wore a red jacket instead of a dark one.

In the picture above *Julius* standing to the left is reciting literature and wearing a dark jacket and to the right his brother is doing the same but wearing a red jacket. Nowadays that difference from the anecdote of above would be of no significance when for example determining whether they are making an artistic performance. The world has become a somewhat more complex place e.g. for such matters, which I will show in this paper.

This paper concerns signs on a tax crime, namely tax fraud (Sw., *skattebrott*), in an artistic environment and I have chosen as the topic of tax fraud in that sense erroneous information in a return on value added tax (VAT) or the failure of filing such a VAT return by an artist. Thereby are immaterial rights of interest and that the preparatory work to the current Swedish copyright act, *upphovsrättslagen* (1960:729), URL, is from the time only a few years after the abolishing of the variety prohibition. The first Swedish VAT act was introduced on January 1, 1969 and the existing one, *mervärdesskattelagen* (1994:200), ML, came into force on July 1,

1994. Both the URL and the predecessor to the ML have been influenced by the EU law and since Sweden's accession to the European Union (EU) on January 1, 1995 the ML shall be interpreted in the light of the EU law in the field of VAT, which today mainly concerns the EU's VAT Directive (2006/112/EC). There you have a short background to the examples of tax fraud presented in this paper, where I am setting the eventual liability to file a VAT return in a context – i.e. an artistic environment – where an artist's attitude to that liability or his or her choice of tax rate when deeming such a liability to exist should be determined by the artist acting in various artistic environments. In that respect it is of relevance that VAT liability rules according to the ML since January 1, 1997 for literary and artistic rights according to the URL, with application of the general VAT rate of 25 per cent or a reduced VAT rate of 6 per cent, and exemption from VAT rules for a performing artist's performance of such a literary or artistic work. The recently mentioned exemption is not in accordance with the EU's VAT Directive. However, it is allowed in the ML by virtue of the accession treaty between Sweden and the EU.

In the examples presented in this paper it is assumed that the artist is a so called taxable person, i.e. a person that can be subject to VAT liability for receiving payment for supplying goods or services and who – for the purpose of those examples – in practice can be described in short as a self-employed artist. I am not considering subjective prerequisites for tax fraud according to the Swedish Tax Penal Act, *skattebrottslagen (1971:69)*, *SBL*. Instead I am restricting the reasoning in the examples to the objective prerequisites for tax fraud by a VAT fraud – the main question in each example is whether the acting by the artist and the actual artistic environment constitute signs of tax fraud, i.e. here a VAT fraud, if the artist's attitude to those signs is – with or without intent – refraining from filing a VAT return or filing one containing a wrong VAT rate. I also give two special examples, where a joint venture constituting the artistic environment and thereby also a literary or artistic work *or* a painter's work being made under different legal forms can indicate objective signs contributing to the determination of VAT fraud made by the partners of the joint venture or by the painter. In addition I reason in the mentioned respects about artists' use of attributes – props – being the decisive objective signs of VAT fraud when acting, i.e. when making a performance. Finally I make a summary and some concluding viewpoints.

2. The artist's acting and the environment can constitute objective signs contributing to the determination of VAT fraud



In a number of examples I am putting an artist, *Elsa* in the picture of above, in various typical artistic environments. She is a singer songwriter and also does some acting or reciting of literature, and I assume as above mentioned that she is a taxable person for VAT purposes and therefore *can* be subject to VAT liability for receiving payment for supplying her artistic services in e.g. some artistic environments which I am headlining as follows:

- Concert hall/Theatre,
- Recording studio,
- TV studio,
- Cinema or
- Web show.

I am not doing a complete trial of whether or not all the VAT legal circumstances that determine if the objective prerequisites for a correct VAT return filed by *Elsa* are fulfilled. I restrain the objective trial to the mere fact that the actual environment in which she is acting or the used technology *can*, by its associative meaning for the classification under the URL of the services she is supplying, make her liable to file a VAT return and therefore she *can* be considered having committed VAT fraud if she has not done so or if she has filed such a return containing erroneous VAT information.

Concert hall/Theatre

As above-mentioned exemption from VAT rules according to the ML (Chapter 3 section 11 item 1) for a performing artist's performance of a literary or artistic work according to the URL. The Swedish tax authority (Sw., *Skatteverket, SKV*) has issued its statement on the scope of this exemption.¹ According to the SKV it only applies to a performance made directly before an audience.²

¹ See SKV 2017-01-27, dnr 131 44322-17/111.

² See section 4.3 of the SKV's statement of 2017-01-27, dnr 131 44322-17/111.

Thus, Elsa *cannot* commit VAT fraud for not filing a VAT return to the SKV due to her receiving a consideration in the form of a fee (Sw., *gage*) from a company running the concert hall or theatre where she e.g. has sung a song or recited literature before an audience, since her services thereby supplied are exempted from VAT according to the ML. Thereby it does not matter whether the preformed song, i.e. the performed literary and artistic work, is written by herself or someone else.

- *Conclusion:* The concert hall or theatre building *can* give performances made therein an associative meaning insofar as they *can* be assumed to be classified as performing artists' performances of literary or artistic work, unless it is apparent that the premises are instead used for e.g. a political meeting (since a politician is not a performing artist although his or her manuscript of a political speech is considered a literary work according to the URL).

However, Elsa could be liable to file a VAT return although her performance is comprised by the above-mentioned exemption from VAT. Such a situation would occur if she is also making taxable supplies in her economic activity. If so she has a so called mixed activity, where she shall account in a VAT return for both taxable supplies and from taxation exempted supplies. The purpose thereby is that it shall be possible to deem the scope of the right to deduct input tax, which is limited due to the existence of exempted supplies in an economic activity otherwise producing supplies for which output tax shall be accounted for entitling her to deduction. Barring a situation with a mixed activity where VAT is concerned Elsa is, as mentioned above, not liable to file a VAT return for her supply of services exempted from VAT.

Recording studio

If Elsa's performance of the literary or artistic work instead would take place in a recording studio, the SKV would according to its above-mentioned statement consider it a supply of a showing right since it is not performed directly before an audience. Thereby Elsa *can* be considered committing VAT fraud for not filing a VAT return due to her receiving a fee from the recording company, since she would be liable to register for VAT at the SKV and to account for output tax in a VAT return filed to the SKV. Her negligence to fulfil the latter could be considered VAT fraud under section 2 of the SBL.

- *Conclusion:* The recording studio *can* give performances made therein an associative meaning insofar as they *cannot* be assumed to be classified as performing artists' performances of literary or artistic work before an audience.

By the way Elsa *can also* be considered committing VAT fraud when filing a VAT return, if she is accounting by using the reduced VAT rate of 6 per cent instead of the general one of 25 per cent when the showing right would not be considered a literary or artistic work under sections 1, 4 or 5 of the URL. According to Chapter 7 section 1 third paragraph item 8 of the ML the reduced VAT rate of 6 per cent applies to *supplies of rights comprised by sections 1, 4 or 5 of the URL*, whereas photographs, advertisement products, systems or programs for automatic data processing or film, video recordings or other comparable recordings of information are comprised by the general VAT rate of 25 per cent in Chapter 7 section 1 first paragraph of the ML, which would also be the case simply by the showing right not being considered a unique and thereby not comprised by sections 1, 4 or 5 of the URL. However, in these situations the correct VAT rate to use would primarily be determined by the contract between the artist and the recording company and an interpretation of that internal sign to establish their perception of whether or not the showing right is to be considered a unique or merely repetition. Then the problem would not be resolved by the perception of any external

objective sign like the premises used for the recording of the performance. Therefore, in this paper I mean by an external objective sign an objectively noticeable circumstance as opposed to internal circumstances which are only noticeable by the involved parties themselves, like what is stated in their contract regarding the supplies to be deemed for VAT purposes. I am aiming with this paper to mention in the first place examples of artists' acting and other external objectively noticeable signs implying whether or not they *can* be considered committing VAT fraud by not filing a VAT return or by filing such a return containing erroneous VAT information.

TV studio

If Elsa is performing the literary or artistic work in a TV studio and gets a fee from the broadcasting company both for performing before a studio audience and for the recording of the performance, her supply could for VAT purposes be deemed one or several supplies. The SKV would in accordance with its above-mentioned statement consider it one single supply, if Elsa is performing at a TV recording with audience. The SKV is reasoning about what is the main part of the supply in such a case:

- If the performance is made when broadcasting the SKV deems the studio audience merely as means to conduct the TV broadcast, and thereby not a performance directly before an audience – rather mainly a supply of the showing right to the performance, where VAT liability would occur for Elsa (at the VAT rates 6 or 25 per cent).
- If Elsa instead gets a fee for performing at rehearsals before the TV broadcast, the SKV would consider her performance one single supply mainly as taking place directly before an audience and therefore exempt from VAT in accordance with Chapter 3 section 11 item 1 of the ML.
- *Conclusion:* In the latter case you have an external objective sign that Elsa *cannot* be considered committing VAT fraud if she is not filing a VAT return to the SKV, namely the circumstance that she has received a fee only for performing at the broadcasting rehearsal, not for her following performance at the TV broadcast. In my opinion this shows the importance of completing e.g. a law dogmatic study of composite supplies in the field of VAT with analyses based on Legal Semiotics. That applies also in the previous case, although the issue of the correct VAT rate would primarily be determined by the agreement between Elsa and the broadcasting company and interpretation of their perception of whether or not the showing right to her performance is to be considered a unique, not by any external objective sign.

Cinema

If Elsa's performance of the literary or artistic work would take place in a film studio, the SKV would according to its above-mentioned statement consider it a supply of a showing right rather than a performance directly before an audience, since the SKV considers the performance subsequent to the showing right of it as the main supply. By the way the SKV considers that supply comprised by the reduced VAT rate of 6 per cent. Thereby Elsa *can* be considered committing VAT fraud for not filing a VAT return due to her receiving a fee from the film company.

- *Conclusion:* The film studio *can* give performances made therein an associative meaning insofar as they *cannot* be assumed to be classified as performing artists' performances of literary or artistic work before an audience. Thus, the external objectively noticeable signs of the use of a film studio for Elsa's performance *can* be considered excluding an application of the exemption from VAT in Chapter 3 section 11 item 1 of the ML.

By the way would in the latter respect a difference also exist for VAT purposes between performances in real time, where a performance before an audience in a concert hall or theatre would be exempted from VAT, whereas a broadcast to a cinema audience would cause liability to account for output tax (VAT). In the latter case would furthermore another difference occur, namely that the artist would be using the reduced VAT rate of 6 per cent on the consideration (fee or royalty), whereas the cinema – due to an alteration of the ML in this respect was introduced by SFS 2015:748 on January 1, 2007 – is liable to use the general VAT rate of 25 per cent on the cinema tickets while the reduced VAT rate of 6 per cent still applies for the sale of tickets to concerts, theatre, opera, ballet or circus and comparable shows, according to Chapter 7 section 1 third paragraph item 5 of the ML.

Web show

If Elsa is performing the literary or artistic work in a Web show, there will not be any difference for VAT purposes in comparison with her performing in a TV studio (see above under *TV studio*) but in comparison with her performance taking place in a film studio (see above under *Cinema*). I make the following reflections in these senses:

- There is a so called implementing regulation, COUNCIL IMPLEMENTING REGULATION (EU) No 282/2011. By this implementation regulation are some concepts in the EU's VAT Directive meant to be clarified, e.g. 'electronically supplied services' as referred to in Directive 2006/112/EC. According to Article 7(1) of the implementation regulation those "shall include services which are delivered over the Internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology". By COUNCIL IMPLEMENTING REGULATION (EU) No 1042/2013 there was an addition to the implementation regulation of inter alia Article 6b(1). Thereby broadcasting services are treated equally for VAT purposes whether one means radio or TV programmes transmitted or retransmitted over radio or TV networks or such programmes distributed via the internet or similar electronic network (IP streaming), if they are broadcast simultaneous to their being transmitted or retransmitted over a radio or television network. In both cases the transmission or distribution concern *broadcasting services* and therefore there was also an amendment made so that it is nowadays stated in Article 7(3)(a) of the implementation regulation that what is mentioned therein about electronically supplied services does not apply to *broadcasting services*.

Thus, there is no difference for VAT purposes between what is mentioned above regarding Elsa's performance in a *TV studio* and her instead performing the literary or artistic work in a Web show. It is in that respect a matter of *broadcasting services* in both cases.

- There *can* be a difference for VAT purposes compared to what is mentioned above about her performing in a film studio (see above under *Cinema*), if Elsa's performance (of a literary or artistic work) would be considered subsequent to the showing right of it as the main supply. This is the SKV's standpoint according to its above-mentioned statement. Then the SKV deems, as mentioned above, the reduced VAT rate of 6 per cent to apply. However, that depends on what means of supplying the showing right to the producer of the Web show – or for that matter to the film studio company – Elsa is using. If she is supplying the showing right to either of them by using the Internet, the supply would for VAT purposes no longer be considered a supply of a right under sections 1, 4 or 5 of the URL but some other kind of service supplied, e.g. an electronically supplied service. Then the general VAT rate of 25 per cent according to Chapter 7 section 1 first paragraph of the ML would apply to that service and not the reduced VAT rate of 6 per cent in Chapter 7 section 1 third paragraph item 8 of the ML.

Thus, Elsa *can* be considered committing VAT fraud for filing a VAT return where she accounts for the reduced VAT rate of 6 per cent instead of the general one of 25 per cent due to the technology used for the supply of the showing right.

- *Conclusion:* The technology used for the supply of the showing right *can* be an external objectively noticeable sign implying whether or not the artist *can* be considered having committed VAT fraud.

3. Special examples – a joint venture constituting the artistic environment and thereby also a literary or artistic work *or* a painter's work being made under different legal forms can indicate objective signs contributing to the determination of VAT fraud made by the partners of the joint venture or by the painter

3.1 A joint venture constituting the artistic environment and thereby also a literary or artistic work can indicate objective signs contributing to the determination of VAT fraud made by the partners of the joint venture

By this example I aim to illustrate a situation where a question of VAT fraud *can* be raised by the way an artistic environment, in which a literary or artistic work is supposed to be performed, is built by the artists. Of course I do not mean thereby how the premises, e.g. the theatre building, is built, but how the setting of a play is created by the artists making a literary or artistic work in the form of a theatre play and perhaps also of a film of that play. In this example Elsa is one of the actors and she is co-operating, in the effort to create the theatre play (a spoken drama), with the following people:

- a scriptwriter,
- a stage designer,
- wardrobe people,
- makers-up,
- a mask maker,
- the sound-control room and
- a light effect operator.

I assume that the other participants are, like Elsa, taxable persons for VAT purposes and therefore, like her, *can* be subject to VAT liability for receiving payment for supplying their

services when creating the theatre play, i.e. for fees they receive for their co-operation with creating the literary and artistic work that is the theatre play to be performed in the theatre. I will not go into the problems with the performance of the play they have created. The focus is instead on the question whether or not each of them, by his or her contribution (supply) to the joint venture resulting in the play (or the film), have created a literary or artistic work comprised by sections 1, 4 or 5 of the URL. If so he or she is liable to account for VAT at the reduced VAT rate of 6 per cent and if not the general VAT rate of 25 per cent applies to his or her supply. To sort out that problem I refer to my doctor's thesis, where a special issue concerned whether Chapter 7 section 1 third paragraph item 8 of the ML applies to a literary or artistic work comprised by the URL, if it is created by partners of an *enkelt bolag*, i.e. by partners of (approximately) a joint venture. In my thesis I focused on VAT matters concerning the tax subject and in that respect the issue about the scope of Chapter 7 section 1 third paragraph item 8 of the ML was independent (from the question about Chapter 6 section 2 of the ML) and I stayed at just pointing out that *enkla bolag*, which are not legal persons, can cause problems regarding the determination of the tax object, i.e. about the question whether the partners of *enkla bolag* (joint ventures) shall apply the reduced VAT rate of 6 per cent or the general VAT rate of 25 per cent. This tax object-problem is in short the following:

As long as Chapter 7 section 1 third paragraph item 8 of the ML only refers to sections 1, 4 and 5 of the URL partners of *enkla bolag* – joint ventures – are liable to apply the general VAT rate of 25 per cent (according to Chapter 7 section 1 first paragraph of the ML). Under this provision each partner, Elsa or anyone of the others above-mentioned participants, is liable to apply the general VAT rate of 25 per cent, if they are not making a literary or artistic work of their own, since section 6 of the URL about joint works (Sw., *gemensamma verk*) is not referred to in Chapter 7 section 1 third paragraph item 8 of the ML. The only participant who can be certain that he or she is correctly accounting for output tax by using the reduced VAT rate of 6 per cent is the scriptwriter, since the manuscript is an external objectively noticeable sign implying that he or she as a natural person is making a supply of a literary work under section 1 of the URL (of course provided that the manuscript is not a plagiarism).

Thus, Elsa and the other partners of the (legal) figure *enkelt bolag* – joint venture – can be considered committing VAT fraud for filing VAT returns where they account for the reduced VAT rate of 6 per cent instead of the general one of 25 per cent for their supplies of services.

- *Conclusion:* The absence of a registered legal person by *Bolagsverket* (Swedish Companies Registration Office) can in fact be an external objectively noticeable sign implying that a participant can be considered having committed VAT fraud, if he or she has applied the reduced VAT rate of 6 per cent instead of the general VAT rate of 25 per cent on his or her supply.

The solution today – for the purpose of being able to use the reduced VAT rate of 6 per cent on the whole of a joint work like the present theatre play (or film) – is that the partners of the joint venture register by *Bolagsverket* a limited company (Sw., *aktiebolag*) or a partnership (Sw., *handelsbolag*), where they instead are employed (and thus not taxable persons themselves according to Article 9(1) first paragraph of the EU's VAT Directive). Then the literary and artistic work in question would be owned by a legal person and it would not be considered a joint work under section 6 of the URL, but rather a work comprised by copyright already under sections 1, 4 or 5 of

the URL, i.e. the limited company or the partnership would make a supply comprised by Chapter 7 section 1 third paragraph item 8 of the ML.³

An *enkelt bolag* cannot register a company name in the Register of Partnerships (Sw., *handelsregister*) at *Bolagsverket*,⁴ but a partner [Sw., *bolagsman* or (with the ML's terminology) *delägare*] in an *enkelt bolag* can on his or her own be liable to register in the Register of Partnerships, namely if he or she is carrying out business activity to the extent that he or she is liable to prepare annual accounts.⁵ However, such a registration would not be of any significance to deem the VAT issue, where the tax object-problem is concerned.

- *Conclusion:* The registration of a legal person by *Bolagsverket* can indicate that the supply of the theatre play (or the film) can be comprised by Chapter 7 section 1 third paragraph item 8 of the ML and that such a registration information is an external objectively noticeable sign implying that a representative of the legal person cannot be considered having committed VAT fraud by applying the reduced VAT rate of 6 per cent on the legal person's supply.

In my opinion this example also shows the importance of completing e.g. a law dogmatic study of composite supplies in the field of VAT with an analysis based on Legal Semiotics. I have in another work mentioned the so called EMA Telstar-verdict by the Supreme Administrative Court (*Högsta Förvaltningsdomstolen, HFD*), RÅ 2002 ref. 9, where that concert production company, EMA Telstar, applied for an advanced ruling for the question of applicable VAT rate but thereby – advised by another lawyer than me – relied solely on a statement from a professor in civil law and thus waived away my advice to also point out in the application the basic VAT prerequisites for a judgement of the scope of Chapter 7 section 1 third paragraph item 8 of the ML. My suggestion was that the application should be drawn up as a drawing of a doll's house, where each step in the production of a concert by a music group would be described with respect of both the immaterial rights and such basic VAT prerequisites as the concept supply and thereby making a trial of the VAT situation step-by-step, i.e. of the VAT situation for each participant (i.e. scriptwriter, stage designer, wardrobe people etc.) who would have been given a room (or step) of his or her own in the imagined doll's house as the complete joint work. Thereby it would have been possible to establish if some of the participants could have created a literary or artistic work of his or her own – i.e. an independent work – on the way to the complete joint work, i.e. the final concert production. By not doing so the HFD had no chance to grasp the complexity of the circumstances under the application for the advanced ruling and I have mentioned that there is still a necessity for a precedent on the proper level of complexity concerning above all the application of the VAT rules on production companies at large in the cultural sector.⁶

3.2 A painter's work being made under different legal forms can indicate objective signs contributing to the determination of VAT fraud made by the painter

³ See section 7.1.3.6 of *Tax and payment liability to VAT in enkla bolag (approx. joint ventures) and partrederier (shipping partnerships) : Third edition*, by Björn Forssén, Melker Förlag, Laholm 2015 (Cited Forssén 2015).

⁴ See section 2 first paragraph item 5 and third paragraph item 1 *handelsregisterlagen (1974:157)*. See also section 1.1.1 of Forssén 2015.

⁵ See section 2 first paragraph item 5, second and third paragraphs of *handelsregisterlagen*. See also section 1.1.1 of Forssén 2015.

⁶ See 12 214 030 of *Momsrullan Andra upplagan*, by Björn Forssén, Melker Förlag, Laholm 2016 (Cited Forssén 2016).



Michael Angelo in the picture of above is a painter and I assume that he is a taxable person for VAT purposes and therefore *can* be subject to VAT liability for receiving payment for selling his paintings, if he has an annual turnover of at least SEK 300,000 or applies for voluntary tax liability by the SKV – see Chapter 1 sections 2 a and 2 b of the ML. He is working in his capacity of natural person and is entitled to apply the reduced VAT rate of 12 per cent, according to Chapter 7 section 1 second paragraph item 2 of the ML. If he instead would choose to work under the legal form of a legal person like a limited company (*aktiebolag*), he would be liable to apply the general VAT rate of 25 per cent in accordance with Chapter 7 section 1 first paragraph of the ML, since the reduced VAT rate of 12 per cent only applies to the visual arts like paintings when sold directly by the artist or by the estate of a deceased artist. If *Michael Angelo's* limited company would sell one of his paintings, it would not be considered sold by himself and the company must apply the general VAT of 25 per cent on that supply.

Thus, *Michael Angelo can* be considered committing VAT fraud for filing a VAT return where he accounts for the reduced VAT rate of 12 per cent instead of the general one of 25 per cent due to the use of a legal person and thereby of another legal form than natural person.

- *Conclusion:* Opposite to what is mentioned above about joint ventures the registration of a legal person by *Bolagsverket* *can* indicate that the supply of the painting *cannot* be comprised by Chapter 7 section 1 second paragraph item 2 of the ML and that such a registration information is an external objectively noticeable sign implying that *Michael Angelo* as the representative of e.g. a limited company *can* be considered having committed VAT fraud by applying the reduced VAT rate of 12 per cent on the company's sale of the painting.

In connection with this example I am coming back – for the sake of comparison – to the case mentioned in the nearest previous section (under *Web show*) about used technology. If *Michael Angelo* is supplying the image (of one of his paintings) via the Internet, that supply would for VAT purposes not be considered a supply of a copy of the painting and neither a supply of a right under sections 1, 4 or 5 of the URL, but some other kind of service supplied, e.g. an electronically supplied service. Then the general VAT rate of 25 per cent according to Chapter 7 section 1 first paragraph of the ML would apply to that supply and not the reduced VAT rate of 6 per cent nor the reduced VAT rate of 12 per cent. Thereby it would not be any difference whether or not *Michael Angelo* is working as a natural person or by a registered limited company (or another legal person). Thus, *Michael Angelo can* be considered committing VAT fraud for filing a VAT return where he himself or he as a representative of a legal person accounts for one of the reduced VAT rates (6 or 12 per cent) instead of the general one of 25 per cent due to the technology used for the supply of the image of his visual arts, e.g. a painting.

- *Conclusion:* The technology used for the supply of the image *can* be an external objectively noticeable sign implying whether or not the artist (e.g. a painter) *can* be considered having committed VAT fraud.

4. Attributes – props – that can be decisive for constituting objective signs contributing to the determination of VAT fraud



Here I am coming back – for the sake of comparison – to both the cases in the nearest previous section. In the first of those two examples the mask maker – whom I am still assuming has the character of a taxable person (and therefore *can* be subject to VAT liability) – could probably not be considered creating an artistic work under section 1 of the URL, if he would only make the masks of a sad or a happy face as illustrated in the picture of above. If he would have made the mask to the leading role of the musical *The Phantom of the Opera*, he would surely be considered having made an independent artistic work according to section 1 of the URL. Thereby he should apply the reduced VAT rate of 12 per cent on the sale of the original copy and he should apply the reduced VAT rate of 6 per cent if he would supply the image of the same mask, regardless of what technology he would use to convey that image.

- *Conclusion:* The history of the environment in which an attribute – prop – has been used *can* be an external objectively noticeable sign implying whether or not the artist *can* be considered having committed VAT fraud by using another VAT rate than the general one of 25 per cent. In the case of the mask to the leading role in *The Phantom of the Opera* the mask maker *cannot* be considered having committed VAT fraud by applying 12 or 6 per cent for the supply of the actual mask or for the supply of the image of it.

Regarding the painter Michael Angelo I am now instead assuming that he is an actor and that the beret that I am still assuming he is wearing, now as an attribute – prop – to a character that he is doing on stage and on film. The beret could as such be enough to determine if he is supplying a right under section 1 of the URL when he for instance is appearing in a theatre play or a film. That could be determined by whether or not he is wearing in such an environment his beret. Thus, the beret could besides its function as a headgear have got a connotation indicating that he is not just acting as the private person Michael Angelo but rather as Michael Angelo the famous artist, like with the once so celebrated comedy movie stars Laurel and Hardy wearing their bowler hats on film. Thus, the actor Michael Angelo *can* be considered performing an artistic work by merely appearing in a theatre play or a film wearing his beret. Thereby he *can*, as being considered a performing artist performing an artistic work, also be deemed making a supply exempted from VAT in accordance with Chapter 3 section 11 item 1 of the ML.

- *Conclusion:* Certain attributes – props – used for the supply of a service in the environments of e.g. theatre or film *can* be an external objectively noticeable sign implying whether or not an artist *can* be considered having committed VAT fraud by not filing a VAT return to the SKV for his or her supply of the acting.

In this context I am also reflecting somewhat about the environment of the TV studio (see under *TV studio* in the second previous section). There I stated that the SKV probably would consider the fee that Elsa would

get for performing (acting) at rehearsals before the TV broadcast as one single supply mainly taking place directly before an audience and therefore exempt from VAT in accordance with Chapter 3 section 11 item 1 of the ML. If she would just appear as one of the participants in a quiz show, game show or talk show on TV, she would – provided that she is still hired as a taxable person – be liable to apply the general VAT rate of 25 per cent on her fee, since she in this instance would not be performing a literary or artistic work, regardless that she is known both as a singer songwriter and an actress or reciter. However, the actor Michael Angelo *can* be deemed performing an artistic work merely by taking part in a quiz show, game show or talk show (or chat show) on TV, if he thereby would wear the beret contributing to the metaphor ‘Michael Angelo’ as a *denomination (term)* for his famous stage or film character (and, although perhaps yet hired as a taxable person, not just appearing in such a TV show under his *name* Michael Angelo). Thereby he *can* also in these cases be regarded making a supply exempted from VAT in accordance with Chapter 3 section 11 item 1 of the ML.

From my experience as a lawyer, I may also mention in this context that artists *can* have some problems in practice with respect of the application of the rules determining whether or not they are VAT liable or about which VAT rate to apply, where negotiations with *Sveriges Television (SVT)* – i.e. the Swedish public service television company – are concerned. In my opinion, it is then a matter of the SVT being exempted from VAT according to Chapter 3 section 20 of the ML (and Article 132(1)(q) of the EU’s VAT Directive), which means that the SVT, as a public service (non-commercial) broadcasting company, is not entitled to deduct input tax (according to Chapter 8 section 3 first paragraph of the ML and Article 168(a) of the EU’s VAT Directive). Thus, it is not only the environment in the case in point where the artist is acting – e.g. a TV studio – that can cause him or her VAT problems. It *can* – at least in practice – also be a matter of taking into consideration the VAT situation by his or her counterpart – which is a rather common phenomenon in the field of VAT law.

5. Summary and concluding viewpoints

5.1 Summary

This paper is supposed to be a contribution to The 19th International Roundtable for the Semiotics of Law (IRSL2018) on May 23-25, 2018 at Örebro University. The aim with the paper is to instigate a discourse on the Semiotics of Law (or Legal Semiotics) on signs of tax crime in an artistic environment. Thereby the chosen subject within the tax law is value added tax (VAT) why the tax crime in the examples given in this paper is about VAT fraud.

In the examples of tax fraud presented in this paper the eventual liability to file a VAT return is set in various artistic environments which I have concluded *can* work as an external objective sign in the case in point to judge whether or not the artist’s attitude to that liability or his or her choice of VAT rate means that he or she has committed VAT fraud (barring whether or not the prerequisite of intent is fulfilled). The reasoning in the examples has been restricted to the objective prerequisites for VAT fraud. The main question in each example has been whether the acting by the artist and the actual artistic environment constitute signs of VAT fraud, if the artist’s attitude to those signs is – with or without intent – to refrain from filing a VAT return or filing one containing a wrong VAT rate.

The artistic environments which have been chosen as examples are headlined as follows: *Concert hall/Theatre, Recording studio, TV studio, Cinema or Web show*. I have also presented two special examples concerning whether a joint venture constituting the artistic environment and thereby also a literary or artistic work *or* a painter’s work being made under different legal forms can indicate objective signs contributing to the determination of VAT fraud made by the partners of the joint venture or by the painter. In addition I have reasoned in the mentioned respects about artists’ use of attributes – props – being possible as decisive objective signs of VAT fraud when they act in environments of e.g. theatre or film.

5.2 Concluding viewpoints

As concluding viewpoints in short I would like to emphasize the importance, for the development of the research within tax law and in particular EU tax law, of completing it with Legal Semiotics, regardless whether the method is law dogmatic or empirical studies. I have mentioned that the current Swedish copyright act is from 1960 and that it – like the Swedish VAT legislation which came into force 1969 – has been already from the beginning influenced by the EU law. However, although the current Swedish VAT act from 1994 shall, due to Sweden's EU accession in 1995, be interpreted in the light of the EU law in the field of VAT, I argue, above all after the review of Legal Semiotics on copyright questions in this paper, for the research on VAT law to adopt such questions.

A historic reflection might prove at least parts of the reasoning behind the current Swedish copyright act obsolete. One Member of the Swedish Parliament proposed a motion meaning that the preparatory work to that act should be dismissed altogether and suggested instead the following solution to issues on copyright: The state should purchase the rights for a small sum of one for all and pay the originators state grants. The majority of the Parliament dismissed the motion but *without any trace of reasoning in principle*.⁷ Like the previously mentioned anecdote from the time about the dark or red jackets, this proves in my opinion that the discourse behind the Swedish copyright act of 1960 on copyrights cannot have been so sophisticated as today's complex reality demands. That act is as above-mentioned still current and I believe that Legal Semiotics would support the search for underpinning reasons to construe it and all the more when construed together with the interpretation of the Swedish VAT act in the light of the EU law.

Thus, I for one suggest research on the Semiotics of Tax Law to be introduced in the research on tax law and I will come back to that when I continue with the Law and Language part of a research project on The Making of Tax Laws (not to be confused with The Making of Tax Law) I started in 2015.⁸ I have introduced The Making of Tax Laws as a new branch of Fiscal Sociology, where I am, regarding the Law and Language part, e.g. aiming to further develop my ideas about models (tools) with logic function trees to build software sophisticating the examination of the process of The Making of Tax Laws. Therefore, I believe that my ideas in this paper should be used to introduce the Semiotics of Tax Law into the tax law research, e.g. as an element in Law and Language on VAT law (or tax law in general). Especially concerning studies of the tax object for VAT purposes, which issue may be endless in variation (regarding questions on the determination of whether a supply of goods or services is emerging or – if so – when or where it is taking place), I am – after having written this paper – convinced that the tradition of strictly law dogmatic studies in the field of tax law should be completed with the Semiotics of Tax Law, e.g. the Semiotics of VAT Law. Otherwise the lack of empirical studies in the field of tax law will, in my opinion, be more or less an exercise in deduction which is not giving new knowledge like with inductive analyses, since the task of law dogmatic studies is merely to interpret and systematize current law. With respect of the ambition of making tax law research usable, I also see a benefit of such a development for practitioners like knowledge managers working at e.g. law firms or auditing

⁷ See pages 169 and 170 in *Rätten till menuetten: Historien om musikens värde*, by Gunnar Petri, Kungl. Musikaliska akademiens skriftserie nr 92, Bokförlaget Atlantis AB, Stockholm 2000. See also 12 213 111 of Forssén 2016.

⁸ See Part D of *The Entrepreneur and the Making of Tax Laws – A Swedish Experience of the EU law: Third edition*, by Björn Forssén, Melker Förlag, Laholm 2017, and *Law and Language on The Making of Tax Laws and Words and context*, by Björn Forssén, Melker Förlag, Laholm 2017.

firms with Law and Informatics software and search engines like Google on the Internet (containing algorithms).

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