

Alumnus from Örebro University develops his VAT research with composite transactions in relation to the EU law

Örebro nyheter on 20 September, 2020

[Translation into English by the author of this article, Björn Forssén.]

In *Örebro nyheter* on 8 April, 2013, *Momslagar i behov av reformering* (VAT legislations in need of reforming), it was brought up that the lawyer, doctor of laws Björn Forssén, in the thesis which he defended at his disputation at Örebro University on 26 April, 2013, commented on a need of Sweden reforming its Value-Added Tax (VAT) act, so that it becomes conform with the EU law in the field of VAT. Now suggestions are made in a Government's report, SOU 2020:31, of a structural review of the VAT act, but it is not addressing important questions like the question on the tax object that Björn Forssén brought up in the doctor's thesis, and which concerns so-called composite transactions.

Björn Forssén has developed that question in a number of articles in Sweden and Finland during the years of 2018-20, and he published on his website (www.forssen.com) an e-book on the phenomenon on 23 August, 2020, which constitutes another step in his continuous work about the VAT legislation and its relation to the EU law in the field.

Björn Forssén concludes, in his new book *Vara och tjänst vid sammansatta transaktioner – tolkning och tillämpning enligt mervärdesskattelagen och EU:s mervärdesskattedirektiv* (Goods and services at composite supplies – interpretation and application according to the VAT Act and the EU's VAT Directive), that that for the VAT system within the EU fundamental question whether a non-legal entity, like an *enkelt bolag* in Sweden or a *sammanslutning* in Finland (cp. joint ventures), can constitute a tax subject – a taxable person – according to the main rule in article 9(1) first paragraph of the EU's VAT Directive (2006/112/EC) remains, and that it is not mentioned in SOU 2020:31, *En ny mervärdesskattelag* (A new VAT act), which was supposed to come into force on 1 January, 2022. In articles in periodicals in Sweden and Finland during the years of 2018-20 he has also treated a side issue from his doctor's thesis, *Skatt- och betalningsskyldighet för moms i enkla bolag och partrederier* (Tax and payment liability to VAT in joint ventures and shipping partnerships), available on www.diva-portal.org and on www.forssen.com, namely a question about the determination of the tax object and applicable VAT rate in cases where *enkla bolag* (pl. of *enkelt bolag*) are used in activities on creation of literary and artistic works. That series of articles form, together with what Björn Forssén stated about the question already in his doctor's thesis, the basis for his new book this year, where he treats the concepts goods and services in the VAT act and the phenomenon composite transactions in relation to the EU law in the field of VAT, whereby he is noticing both primary law and first the secondary legislations in the field, i.e. the VAT Directive and the implementing regulation (EU) No 282/2011 with the amendments which came into force in 2015.

Vara och tjänst vid sammansatta transaktioner – tolkning och tillämpning enligt mervärdesskattelagen och EU:s mervärdesskattedirektiv is a book on the concepts goods, service and transaction (*omsättning*) in *mervärdesskattelagen (1994:200)*, ML (the VAT act), and on so-called composite transactions for VAT purposes. The questions in the book concern whether the determination of the concepts goods (*vara* in the singular in Sw.) and service (*tjänst*) according to the ML are EU conform and whether the ML functions in an EU conform way regarding what can be deemed so-called composite transactions.

With regard of the primary law, the ML is conform with the EU law in the field, where the determination of the concepts *vara* and *tjänst* is concerned, but it would go to far to account for that here. Instead, Björn Forssén takes the opportunity to mention some basic things regarding the analysis of whether and how the ML function in an EU conform way concerning what can be deemed constituting so-called composite transactions.

Björn Forssén is emphasizing that there is no definition of composite transactions either in the ML or in the secondary legislations from the EU in the field. The questions on composite transactions concern cases where the tax object contains efforts of various character with regard of whether they are taxable transactions or exempted from taxation or comprised by different tax rates. Then it is a matter of deciding whether the price – the consideration – concerns one single effort or if it shall be divided with regard of different goods and/or services in the mentioned respects.

There are verdicts from the Court of Justice of the EU which can be used to decide for example whether the so-called principle of division or the principle of the principal is applicable to determine whether the consideration that a person receives concerns a single effort (supply) or if it shall be divided with regard of different goods and/or services, which Björn Forssén calls a question of the fixing of a border. However, other questions about the theme of composite transactions are yet whether more than one person shall share the same consideration and in that case if someone of those have to judge a question of the fixing of a border. Björn Forssén names these questions division problems.

Thus, a question of the fixing of a border cannot contain a division problem, but the opposite is possible. If someone is speaking or writing only about composite supplies without making any descriptive distinction between the singular and pluralis of the phenomenon in connection with the chosen method for the analysis, so that relevant delimitations of this gigantic subject can be presented, the researcher has failed already when starting with the aim to analyse composite transactions for VAT purposes, according to Björn Forssén.

Therefore, Björn Forssén recommends in his book that an analysis of composite transaction 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. To make such an examination possible he creates in his book a model – a tool – for the study of composite transactions for VAT purposes. However, the tool is only used as a support for the analysis and shall not be perceived as a jurisprudential method in itself. That would be an equally wrong approach as the above-mentioned with not distinguishing between the singular and pluralis. If the tool would be made the method, the researcher, who also in other respects than concerning composite transactions makes studies on the subject VAT, goes into what Björn Forssén calls the trap of mathematics. A study that gives new knowledge in the subject shall lead to inductive conclusions and not only constitute an exercise in deduction, according to Björn Forssén. He compares his idea about the trap of mathematics with the law known to be mentioned in connection with questions on finance and economy and empirical conclusions thereby, namely Goodhart's Law (named after the economist Charles Goodhart). In an article by Jeff Speakes on 5 December, 2011, Goodhart's Law and Monetary Policy, the following is stated initially: "Goodhart's Law [...] says that once an observed empirical relationship begins to be relied upon, it will no longer work. This law, or a variant, comes up in a lot of fields, but especially finance and economics." (see CERF Blog on 5 December 2011, California Lutheran University, Center for Economic Research & Forecasting). Like a measure should be made the aim, Björn Forssén states with *the trap of mathematics* that a tool must be made the method in itself.

Moreover, Björn Forssén mentions that doctoral candidates in the subject VAT law use to write about for example concepts as money and interest without analysing them thoroughly for the context. In the same way, he deems that it would be ineffective to analyse composite transactions for VAT purposes without descriptively mention what only in general usually is denoted as such transactions. The analysis will become useless to for example the legislator in connection with legislation issues, if it is not shown how the researcher has gone about carrying out the examination of the subject, for example by first stating that the analysis is aiming to treat what

should be considered composite transactions, what is similar to such transactions and what is in general called composite transactions, but should not be comprised by the concept. Björn Forssén is also wondering when those writing theses about the tax object for VAT purposes shall begin to regard the distinction that must be made between law political aims concerning financial policy and monetary policy, so that the thesis becomes useful to resolve the constitutional dilemma that exists between the EU's primary law and the Instrument of Government (Sw., *regeringsformen*) or the constitutions in other EU Member States than Sweden. He raised this in his doctor's thesis about claims of input tax versus subsidy situations, and considers that the dilemma should be the subject of more research especially regarding the tax object. He deems that the questions on method and the primary law perspective are especially important, where the research within the VAT law is concerned, since the tradition there is to make law dogmatic studies, whereby empirical elements are often lacking. Björn Forssén also adds that the latter increases the need to develop supporting models for the problemizing of the subject, as he is also doing in his book on composite transactions for VAT purposes.

Björn Forssén does not claim to have written yet another thesis, but is proving with his new book the importance of usefulness as one of the criteria for theses. The scope of the book is a half of a normal thesis and still it gives the legislator a perception of the measures necessary to make regarding composite transactions for VAT purposes. The book is intended for students and researchers within the field of VAT, but is also addressing participants in proceedings where the subject is mentioned. The book should for a long time be of interest for many, since the new VAT act suggested in SOU 2020:31 also is commented upon in the last chapter of the book, so that the reader gets a conception whether the suggested new VAT act is solving any of the problems mentioned in the book. Björn Forssén e-mailed for that reason the book to ESO, *Expertgruppen för Studier i Offentlig ekonomi hos Finansdepartementet* (the Expert group for studies in public economy by the Treasury), for further distribution within the Treasury's Tax section. In the latter respect may also be mentioned, that Björn Forssén submitted a statement over SOU 2020:31 via e-mail on 17 June, 2020 to the Treasury, and the contents of it will be published this year in *Tidskrift utgiven av Juridiska Föreningen i Finland* [The journal published by the Law Society of Finland (abbreviated JFT)], in booklet 3 or 4. One of the periodicals where Björn Forssén, as mentioned above, with a number of articles during the years of 2018-20, made a preliminary study to his new book is precisely the JFT. In JFT 5/2018 pp. 307-328 he introduced a new element for the research on VA law, namely semiotics, which he emphasizes is completing the tool that he is creating in the book as a support for the analysis of composite transactions – wherein also the idea from his first book on VAT in 1993 about the division of the concept *tjänst* (service) into five categories is included.

Björn Forssén has, as previously mentioned in *Örebro nyheter*, had a hard time gaining a hearing for his research and the mentioned results of it. Anyway, now there is further development of Björn Forssén's continuous work after the doctor's thesis in 2013, i.e. *Vara och tjänst vid sammansatta transaktioner – tolkning och tillämpning enligt mervärdesskattelagen och EU:s mervärdesskattedirektiv*, which since 23 August, 2020 is fully available on Björn Forssén's website www.forssen.com, under *PFS Böcker* under the link 035Blå. [It is translated by him into English (Goods and services at composite supplies – interpretation and application according to the VAT Act and the EU's VAT Directive) and – since 17 November, 2022 – that version is also available on www.forssen.com (under the link 038).]

Björn Forssén is a doctor of laws and active as lawyer in his own law firm in Stockholm.

Regional Örebro nyheter

Source Björn Forssén