

Alumnus from Örebro University about the VAT research in Sweden

Örebro nyheter on 27 May, 2021

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

In *Örebro nyheter* (Örebro news) has articles been published about Björn Forssén and his continuous work in the field of VAT after his licentiate's dissertation in 2011 and doctor's thesis in 2013 at Örebro University, which concerned VAT and the EU law in that field. During the years of 2015-17 he was an external resource by Research Team Tax Law at Örebro University. Thereafter, he has not been allowed to register something about his continuous work or his translation into English of the doctor's thesis on the data base DiVA (Digitala Vetenskapliga Arkivet – www.diva-portal.org). Örebro University has also rejected to interview Björn Forssén for publishing on its website (www.oru.se) about his continuous work concerning VAT and the EU law. Instead, it has been mentioned in *Örebro nyheter* that Björn Forssén has published articles about this in *Tidskrift utgiven av Juridiska Föreningen i Finland* [The journal published by the Law Society of Finland (abbreviated JFT)] and, in Sweden, above all in *Balans fördjupning (The Periodical Balans Annex with advanced articles)*. Now latest have those periodicals published articles where Björn Forssén gives his view on the VAT research in Sweden. Here, he mentions some of the lacks that he has stated so far in that respect.

I have a lot to bring up regarding lacks in the VAT research in Sweden. Here, I mention shortly what I have stated thereby in my two latest articles in booklet no. 6 of the JFT during the year of 2020 and in *Balans fördjupning 2/2021*. My article in JFT 6/2020 pp. 716-757 has the title *Momsforskningen i Sverige – metodfrågor* (The VAT research in Sweden – method questions). My article in *Balans fördjupning 2/2021* has the title *Momsforskningen i Sverige – vart är den på väg?* (The VAT research in Sweden – where is it going?) It consists of two parts: Part 1 is to be found on pp. 22-28 and Part 2 on pp. 29-36 in *Balans fördjupning 2/2021*. The article in the JFT is available on my website www.forssen.com and the article in *Balans fördjupning* is available on www.tidningenbalans.se and on www.forssen.com.

In JFT 6/2020 and in Part 1 of my article in *Balans Fördjupning 2/2021*, I am reviewing the methods used in the so far eleven Swedish theses in the subject of VAT law during the years of 1994-2020. It has been a matter of application of a comparative method, of law dogmatic method or of a lawdogmatic method completed with a comparative method. In four of the theses has only a law dogmatic method been used for the study. Regarding the latest three of those, I come back here shortly to the following.

In *Financial Activities in European VAT A Theoretical and Legal Research of the European VAT System and the Actual and Preferred Treatment of Financial Activities*, by Oskar Henkow (thesis from 2007 and book from 2008 – below Henkow 2008), "a traditional method of jurisprudence" was applied). Therein, it was stated as a notorious fact that VAT systems adopted in the whole world are alike, why a purely technical comparison would be especially suitable for VAT. Therefore, I denote the method used in Henkow 2008 as a purely law dogmatic method. *Leveranser och unionsinterna förvärv i mervärdesskatterätten* (Deliveries and intra-Union acquisitions in the VAT law), by Mikael Ek (from 2019 – below Ek 2019), and *Composite Supplies in the Common System of VAT*, by Giacomo Lindgren Zucchini (from 2020 – below Lindgren Zucchini 2020, available on www.diva-portal.org), are the latest two Swedish theses in the subject VAT law. In Lindgren Zucchini 2020 the choice of the law dogmatic method is made unconditionally. Therefore, I denote also the law dogmatic method used in Lindgren Zucchini 2020 as purely law dogmatic. In Ek 2019 is taken by itself also a law dogmatic method used, but unlike what is the case in Henkow 2008 and Lindgren Zucchini 2020 it is not stated as the only

suitable method for the study. Therefore, I do not denote the method used 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. The method therein is namely described as *traditional only in the sense that a law dogmatic method or basis is not unusual in VAT law theses*.

That the VAT systems adopted in the whole world would be so similar to each other that a purely technical comparison would be especially suitable for VAT is not correct. I have instead emphasized as something very important from Cross-Border Consumption Taxation of Digital Supplies, by Pernilla Rendahl (thesis from 2008 and book from 2009 – below Rendahl 2009), where the method was only comparative, that risks exist with comparisons with countries outside the EU (third countries) due to fundamentally constitutional differences, since it is only within the EU that freedom of movement of goods and services (on the internal market) exists. I mention this also (on page 282) in my licentiate's dissertation, *Skattskyldighet för mervärdesskatt – en analys av 4 kap. 1 § mervärdesskattelagen* (Tax liability to value-added tax – an analysis of Chapter 4 section 1 Value Added Tax Act) available on www.diva-portal.org and on www.forssen.com). In other words, it is not true that systems with VAT or so-called Goods and Services Tax (GST) all over the world always are comparative, Thus, that a purely technical comparison would make what I call a purely law dogmatic method especially suitable for the VAT law is not correct. In Lindgren Zucchini 2020 are Henkow 2008, Rendahl 2009 and Ek 2019 mentioned, but not that Rendahl 2009 constitutes a direct contradiction of the conception in Henkow 2008 regarding the similarity between the VAT systems in the world or that Ek 2019 is not excluding other methods than the law dogmatic for studies of the subject VAT law. In Lindgren Zucchini 2020 is neither mentioned that a law dogmatic method completed with a comparative method is also used, despite that another Swedish thesis on the subject is mentioned and where precisely this is the case, namely Insurance in European VAT On the Current and Preferred Treatment in the Light of the New Zealand and Australian GST Systems, by Marta Papis-Almansa (from 2016). That methodological approach is also used inter alia in *Mervärdesskatt vid omstruktureringar* (Value-added tax at reconstructions), from 2001, by Eleonor Alhager (nowadays Kristoffersson), that is in the thesis by the main supervisor regarding Lindgren Zucchini 2020, but it (!) is one of the Swedish theses which are not even mentioned therein.

My perception on the method question is also supported by the VAT principle according to article 1(2) of the EU's VAT Directive (2006/112/EC), that is the determination of what is meant by VAT according to the EU law, is neither upheld in all third countries stating that they have VAT or GST. The VAT principle according to the directive rule consists of the following prerequisites: the principle of a general right of deduction, the reciprocity principle and the principle of passing on the tax burden. I have emphasized that third countries stating that they have VAT or GST do not have VAT according to the EU law, if they are not upholding the principle of a general right of deduction. Thus, I have stated that if a purely law dogmatic method in pursuance of Henkow 2008 and Lindgren Zucchini 2020 will serve as guidance for the VAT research in Sweden it will be ineffective from the beginning in a methodological sense. **Then** the VAT law will not even be treated as a jurisprudential subject.

Since the right of deduction is of a decisive importance for what is meant by VAT according to the EU law, I have emphasized as especially problematic with Lindgren Zucchini 2020, which was submitted by Giacomo Lindgren Zucchini at his disputation at Örebro University on 30 September, 2020, that that work has been done not only disregarding the importance for the choice of method of the principle of a general right of deduction for the study of composite supplies for VAT purposes is not regarding the right of deduction. The study has also been carried out under the premise that it would be acceptable in a thesis on the subject of VAT law to completely disregard the right of deduction. In Lindgren Zucchini 2020 the focus is namely set on output tax for the analysis of composite transactions for VAT purposes, whereas the right of deduction of input tax is left to future research.

In Part 2 of my article in *Balans fördjupning 2/2021*, I emphasize regarding the recently mentioned lack in Lindgren Zucchini 2020, that, regardless of the question about choice of

suitable method for the carrying out of the study, both the side of the rights (input tax) and the side of liabilities (output tax) must be regarded, so that the analysis can be made by a problemizing consisting of deeper reasoning on VAT according to the EU law, that is according to the VAT principle in article 1(2) of the VAT Directive. By not mentioning the right of deduction composite transactions are not even treated as a complex of problems regarding VAT according to the EU law, but as if it was a matter of a gross tax, like excise duty. By the limited analysis is not only the usefulness of the thesis for appliers of law lacking. The research result is also lacking news value, since new knowledge about how appliers of law should act to be able to structure a problem about composite transactions for VAT purposes is missing in Lindgren Zucchini 2020. Furthermore, only 4 of 10 of the Swedish theses on the subject VAT law (see above) are mentioned therein, why I consider that the demand on completeness, which is amongst the criteria considered applying for jurisprudential theses in Sweden, is neither fulfilled.

I do not go through all the lacks I am pointing out in the article in Balans fördjupning 2/2021 regarding Lindgren Zucchini 2020, which by the way are not even exhaustive. I will possibly come back in another context to more of the mentioned and other lacks. Here, I come back instead to that what is in the first place missing in Lindgren Zucchini 2020 a chapter on theory and method with a thorough review of which law political aims that can be identified for the study of composite transactions for VAT purposes. Already at the opening seminar (19 October, 2015), I brought up with Giacomo Lindgren Zucchini and his main supervisor, professor Eleonor Kristoffersson, the importance of such a chapter to make possible a deeper problemizing of the subject. At the half-time seminar (16 May, 2017), nothing had happened in that respect. Moreover, I state in the article that the hard to determine subject of composite transactions for VAT purposes should be analysed unbiased 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. By starting out from these questions, I made in my 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), self-published on 23 August, 2020 on www.forssen.com and mentioned in my article in *Örebro nyheter* on 20 September, 2020, a tool for the appliers of law being able to treat a problem on composite transactions for VAT purposes. Such unbiased questions are not raised for the analysis of composite transactions for VAT purposes in Lindgren Zucchini 2020. If that would have been the case, would neither any problems regarding such transactions supplied by more than one person have been possible to delimit as exceptional cases, like what is the case in Lindgren Zucchini 2020. This should not have been done already due to me giving an example of what should be denoted as *joint ventures*, by a side issue in my 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. With that issue, I made way for further research on composite transactions, by it concerning a problemizing regarding both the tax subject and the tax object, when two or more are carrying out artistic work under the enterprise form *enkelt bolag* (pl. enkla bolag). Professor Kristoffersson may be deemed being aware of this, since she was the main supervisor also at the work with both my theses. She should also have remembered that I, about my main question in my doctor's thesis, state that there are hidden statistics regarding the actual number of *enkla bolag* (cp. joint ventures), which also should have been noticed regarding the tax subject question, where the scope of the complex of problems in Lindgren Zucchini 2020 is concerned. An applier of law can structure and problemize an issue on composite transactions for VAT purposes with support of the tool I am presenting in my book *Vara och tjänst vid sammansatta transaktioner – tolkning och tillämpning enligt mervärdesskattelagen och EU:s mervärdesskattedirektiv*. However, that usefulness is lacking in my opinion concerning Lindgren Zucchini 2020, where a number of those for the examination relevant material rules of the VAT Directive are omitted and its formal rules are completely disregarded. In both respects, I emphasize as especially problematic that the rules on the right of deduction have been delimited in the study. The thesis became, which I warned of at the half-time seminar, only a handbook – in form of what in a methodological meaning can be denoted as only a casuistic review of a number of cases from the Court of Justice of the EU. The scope of the complex of problems in question is not even described as regards style in Lindgren Zucchini 2020. An empirical examination should

have been made of the question of scope, for example by such questions that I am suggesting. Then could suggestions *de lege ferenda* have been possible to make, which is not even mentioned in the thesis.

In my book *Vara och tjänst vid sammansatta transaktioner – tolkning och tillämpning enligt mervärdesskattelagen och EU:s mervärdesskattedirektiv*, I am mentioning in section 1.1 five of my articles in the JFT, *Balans fördjupning* and *Svensk Skattetidning* (Swedish Tax paper), from the years of 2018-20, which I, together with sections of my handbook *Momsrullan IV: En handbok för praktiker och forskare* (self-published 2019 on www.forssen.com) and the side issue in my doctor's thesis, used as a preliminary study to the book. Nothing of what could have been observed from these my writings is mentioned in Lindgren Zucchini 2020. However, for those interested all of it is available as open access documents on www.forssen.com. I say 'Thank you' to the JFT and *Tidningen Balans* allowing me space to thoroughly comment on the development of the VAT research in Sweden, and I am also thanking *Örebroyheter*, which has let me inform about my continuous work concerning the VAT and the EU law after my theses and time as an external research resource at Örebro University.

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Source: Björn Forssén

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