New rules on representative liability but the legal certainty question for the individual remains

[Translation of the article *Nya regler om företrädaransvar men rättssäkerhetsfrågan för den enskilde kvarstår*, by Björn Forssén, published in original in Tidningen Balans fördjupning (The Periodical Balans: Advanced articles) on 28 August, 2026. Translation into English by the author of this article, Björn Forssén.]

On 20 June, 2026 new rules were introduced about release and respite concerning the rules on representative liability of the Taxation Procedure Act. Once again, it is a matter of improvement of the legal certainty for representatives of for instance limited companies at the application of the rules. Here, Björn Forssén is going back to his advanced article in Balans 2021, where he commented the Government's report SOU 2020:60 – which now at last has led to a reform. In this advanced article, Björn Forssén questions whether the legislator has been more successful with the final rules.

Overall conclusion regarding the new rules on release and respite

The report SOU 2020:60, *Det skatterättsliga företrädaransvaret – en översyn* (the Tax Law Representative Liability – an Overview), would have led to new rules on release from representative liability and respite with payment of the tax authority's (*Skatteverkets*, SKV) demand due to such liability already on 1 January, 2022, but this did not happen. However, the legislator started the overview again and the Government issued a bill, prop. 2025/26:52 - *Det skatterättsliga företrädaransvaret – nya regler om befrielse och rådrum* (the Tax Law Representative Liability – New Rules on Release and Respite), based on the mentioned report and it led to a reform on 30 June, 2026, concerning precisely these questions regarding the rules on representative liability of *skatteförfarandelagen (2011:1244)*, SFL, i.e. the Taxation Procedure Act, by SFS 2026:561.

I consider that the new rules on release and respite of Ch. 59 sec:s 15 and 15 a–c of the SFL cannot be expected to mean any improved legal certainty for the individual at the application of the rules on representative liability of Ch. 59 sec:s 12–21 of the SFL. I am going back to the questions which were central in my advanced article in Balans of 2021-06-21 [no. 3/2021 pp. 9–16, *Företrädaransvar – kommentarer av ett förslag om regeländringar* (Representative liability – comments of a proposal on altered rules)]. My conclusion is that also the continued legislation work made after the report SOU 2020:60 is lacking the overall view which I am looking for and that would benefit the legal certainty at the application of the rules on representative liability for the individual. This is important, since the rules are so far-reaching for the individual as they are. By virtue of the rules on representative liability, the State can, represented by the SKV, force its way through the company law principle of partners freedom of personal responsibility for a limited company's debts. By the rules in question, the individual can as representative of for instance a limited company be imposed a personal

responsibility of payment (representative liability) for the company's tax debts, if the prerequisites for such a responsibility in Ch. 59 sec:s 12–14 are fulfilled.

Thus, I still consider that an analysis of the rules on representative liability of Ch. 59 sec:s 12–21 of the SFL must be made in a broader law systematic perspective for those to expected to be applied with legal certainty for the individual by the SKV and the administrative courts. The Government's bill 2025/26:52, which led to this year's new rules on release and respite just had the same cosmetic function as I stated concerning the original report.

The reform concerning release and respite does not strengthen the legal certainty

With a cosmetic function I mean that the legislator in principle only has moved around prerequisites in different contexts in the SFL resulting in nothing new that would increase the legal certainty for the individual at the SKV's and the administrative courts' application of the rules on representative liability. The reform of the rule on release and the introduction of the rules on respite only mean that the prerequisite "*särskilda skäl*" (special reasons) has been transferred from the rule on release, Ch. 59 sec. 15, to the new rules on respite of Ch. 59 sec:s 15 a–c. Nowadays, the prerequisite is stated in sec. 15 a, whereof also follows what is to be 'especially regarded' (Sw., "*särskilt beaktas*") at the judgment of whether special reasons speak against respite. At the same time, 'special reasons' for release from liability of payment in sec. 15 has been, with Ch. 51 sec. 1 on release from *särskilda avgifter* (special fees) like *skattetillägg* (tax surcharge) serving as a model, changed to "*oskäligt*" (unreasonable) with an enumeration of what shall be especially regarded when deeming what is unreasonable.

Although a case about representative liability is not a tax case, the trial of what is unreasonable shall also in that respect eventually be made with regard to the principle of proportionality in Ch. 2 sec, 5 of the SFL in the interest of the individual. In this sense, it is no difference between the trial of what is unreasonable concerning release from representative liability for the representative of for instance a limited company compared with the question about release from tax surcharge for the company in the underlying tax case. Hopefully, I will not be proven right in my predictions of this item. However, I state that since the reform in question has not been carried out with a proper analysis of the legal certainty concerning the rules on the occurrence of the representative liability itself according to Ch. 59 sec:s 12–14 there is – as far as my experience goes – nothing indicating that the SKV and the administrative courts will cease to dismiss the release question by and large with empty phrases. Such a phrase is often expressed by describing the circumstances for a whole or partly release from liability of payment as not existing – sometimes with the equally empty precision that the prerequisite of what is unreasonable has been tried by an assembled judgment of the circumstances in the individual case.

A strengthened legal certainty by the application of law can be invoked in a matter of a re-trial

If the application of law would prove a real strengthening of the legal certainty at the application of the rules on representative liability it may in my opinion exist a chance for both a limited company and its representative to apply for a re-trial. In that respect, I may notice that the reform of 30 June, 2026 lacks transitional rules and that the representative for the company has the burden of evidence for grounds for release from representative liability existing, but it is the SKV that shall try ex officio the question on release from tax surcharge in the underlying tax case. Therefore, I consider that a real strengthening of the legal certainty for the individual of the question on grounds for release regarding the representative liability should come through also for a previous negative trial of what is unreasonable concerning the tax surcharge question for the company.

Examples of questions about the institute of respite which remain for the legislator to answer

The new rules on respite of Ch. 59 sec:s 15 a–c mean that a representative who might be liable for payment for a legal person's tax or fee according to the main rule on representative liability of Ch. 59 sec. 13 can apply at the SKV for a respite of two months from the original time of payment for the legal person's debt, which the SKV shall grant by a decision if special reasons do not speak against it. With reference to my advanced article in Balans of 2021-06-21, I consider that the following questions exemplify well what still remain for the legislator to answer on the theme of legal certainty for the individual after the reform of 30 June, 2026.

First, I ask myself how others than the SKV or an administrative court perceives a representative's application for respite with the representative liability. To me, it is rather obvious that a clarification is necessary so that an application for respite will not be perceived as the representative admitting intent or gross negligence according to the rules on the emergence of representative liability of Ch. 59 sec:s 12–14 of the SFL. It would burden the representative if a to the lawsuit submitted by the SKV to the administrative court underlying tax audit is passed on to *Ekobrottsmyndigheten* (the Economic Crime Authority). It would be especially unfair, since the SKV's decision about respite is not possible to appeal according to Ch. 67 sec. 5 of the SFL.

Still, the question is also why respite shall apply for the main rule on representative liability of Ch. 59 sec. 13, but not according to sec:s 12 and 14. It does not benefit a neutral application of the rules that a difference is made between on the one hand the representative's responsibility for instance for a limited company's unpaid output tax or for one of the SKV refused deduction of input tax which the company has not paid back – see sec. 13 – and on the other hand the representative's responsibility for the SKV's demand to the company of paying back a credited excess input tax which is too high – see sec. 14.

The reform should have been co-ordinated with the reform on measures against VAT frauds

In the last-mentioned respect, I may also go back to my criticism of the legislator's work with the investigation *Åtgärder mot mervärdesskattebedrägerier* (Measures against VAT frauds), where the partly report SOU 2023:49 and the final report SOU 2024:32 – also with a considerable delay – led to legislation on 1 April and 1 July, 2026 concerning tax fraud and the taxation procedure, by SFS 2026:109 and 110 and SFS 2026:707. Also that reform was carried out without an overall view by the legislator for the individual and in that respect I may in particular mention the following.

In my advanced article in Balans of 2026-06-25, I mentioned precisely the special rule on representative liability about excess input tax of Ch. 59 sec. 14 of the SFL and stated that the legislative measures of 1 April and 1 July, 2026 should have been co-ordinated. The Government mentioned the concept erroneous information in connection with the measures of 1 April, 2026 regarding tax fraud and tax surcharge. Since sec. 14 – unlike sec:s 12 and 13 – contains the expression *oriktig uppgift* (erroneous information) and not only the subjective prerequisites intent and gross negligence the Government should have regarded sec. 14 too when the new chapter (63 a) of the SFL, about when excess input tax shall not be credited, was introduced on 1 July, 2026. Thus, the measures against for instance VAT frauds of a so-called carrousel type was introduced without an overall view of the individual's right to a fair trial and peaceful enjoyment of his or her possessions. They are not giving a legally certain view of what might hit a serious entrepreneur who has got into carrousel trading. My judgment is that the circumstance of measures regarding tax fraud and taxation procedure being carried out in two steps in 2026 gives an uncertain result for the purpose of counteracting carrousel trading which hits the State, but also from a viewpoint of competition serious enterprises which have got into a chain of transactions with carrousel trading.

Concerning the main rule on representative liability of Ch. 59 sec. 13 of the SFL, a necessity of clarification also exists. It concerns the special liability for payment according to Ch. 16 sec. 23 *mervärdesskattelagen (2023:200)*, the VAT Act, for falsely charged VAT in an invoice. Anyone who issues an invoice and denote an amount therein *mervärdesskatt* (*moms*), value-added tax (VAT), despite it is regarding for instance a fictitious transaction or a real transaction which is not taxable, is liable for payment of the amount as long as a credit invoice is not issued. In no. 3/2026 of *Tidskrift utgiven av Juridiska Föreningen i Finland* (JFT), The journal published by the Law Society of Finland, JFT, will my article *Befrielseinstitutet i det svenska skatteförfarandet och felaktigt debiterad moms* (The institute of release in the Swedish taxation procedure and falsely charged VAT) be published. There, I mention with reference to what I have stated inter alia in my advanced article in Balans of 2025-05-15 that it should be clarified in the SFL whether the SKV by virtue of sec. 13 can enforce a lawsuit on personal liability of payment against a representative of for instance a limited company for its debt regarding falsely charged VAT in the same way as concerning a real output tax. In that article, it was one of the questions of law that I stated remain after SOU

2024:32. I also connected it to the question about the scope of the release institute regarding certain taxes and fees of Ch. 60 sec. 1 of the SFL, and whether the representative of the company by virtue of it can invoke *synnerliga skäl*, extraordinary reasons, for release from personal liability for payment of the amount which the company has denoted VAT. With regard to the review in this article, I consider that it would have strengthened the legal certainty for the individual if the report SOU 2020:60 had mentioned also the release institute.

Thus, the continued legislative work after SOU 2020:60 should have been co-ordinated with that regarding SOU 2023:49 and SOU 2024:32. Then, the reforms of 30 June, 2026 and of 1 April and 1 July, 2026 respectively could have been introduced with an overall view of the legal certainty for the individual.

Sources:

Advanced article in Balans of 2021-06-21 (nr 3/2021 s. 9–16), *Företrädaransvar – kommentarer av ett förslag om regeländringar* (Representative liability – comments of a proposal on altered rules), by Björn Forssén
Advanced article in Balans of 2025-05-15, *Frågor med anledning av slutbetänkandet Åtgärder mot mervärdesskattebedrägerier* (Questions on account of the final report Measures against VAT frauds), by Björn Forssén
Advanced article in Balans of 2026-06-25, *Revisorns roll som vittne när klienten råkat in i karusellhandel* (An auditor's role as witness when a client has got into carrousel trading), by Björn Forssén
JFT 3/2026, *Befrielseinstitutet i det svenska skatteförfarandet och felaktigt debiterad moms* (The institute of release in the Swedish taxation procedure and falsely charged VAT), by Björn Forssén (planned to be published after the summer of 2026)
Prop. 2025/26:52 **–** *Det skatterättsliga företrädaransvaret – nya regler om befrielse och rådrum* (the Tax Law Representative Liability – New Rules on Release and Respite)
SOU 2020:60 – *Det skatterättsliga företrädaransvaret – en översyn* (the Tax Law Representative Liability – an Overview)
SOU 2023:49 – *Skyddet för EU:s finansiella intressen Ändringar och kompletteringar i svensk rätt* (The Protection of the EU's financial interests Alterations and completions in Swedish law)
SOU 2024:32 – *Åtgärder mot mervärdesskattebedrägerier* (Measures against VAT frauds)

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