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# The institute of release in the Swedish taxation procedure and falsely charged VAT

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## 1 Introduction

With this article, I end my series of articles during the period of 2021–2025 on the theme of VAT frauds of carrousel type (so-called carrousel trading). The series consists of articles which I have written on the problems with the phenomenon of carrousel trading causing the Swedish State major losses of revenues regarding value-added tax (VAT). The longer articles in my series are published in the JFT and *Tidningen Balans fördjupningsbilaga* (The Periodical Balans Advanced articles) and in one case in *Svensk Skattetidning* (Swedish Tax Journal). I listed these articles in my latest article in the JFT.[1] There, I brought up what *Sveriges Advokatsamfund* – the Swedish Bar Association – should do to contribute to cases being given leave to appeal by the Swedish *högsta förvaltningsdomstolen* (HFD), Supreme Administrative Court, and by the Swedish *högsta domstolen* (HD), Supreme Court. This to develop current law in a true sense for the support of the interpretation of law, instead of lower instances establishing as an actual current law what the party *Skatteverket* (SKV), i.e. the Swedish tax authority, is stating in above all its standpoints in the field of VAT. That was a follow-up question from my last but one article in the JFT.[2]

In this article, I develop a question mentioned shortly in Forssén 2025a,[3] namely the institute of release in the Swedish taxation procedure rules – more specifically in Ch. 60 sec. 1 of *skatteförfarandelagen (2011:1244*, here abbreviated SFL), the Taxation Procedure Act – and whether it comprises such an amount which has been falsely denoted as value-added tax (VAT) in an issued invoice. For such an amount – a falsely charged VAT – a special liability for payment was introduced on 1 January, 2008 by SFS 2007:1376 and the implementation of article 203 of the EU's VAT Directive (2006/112/EC)[4] in Ch. 1 sec. 1 third para and sec. 2(e) of *mervärdesskattelagen (1994:200*, here abbreviated GML). The directive rule corresponds with the previous article 21(1)(d) of the Sixth VAT Directive (77/388/EEC) and the rules in

[1] See Björn Forssén, *Karusellhandelsmålen i Sverige kräver en förändring i god advokatsed* (Cases of carrousel trading in Sweden demand an alteration in generally accepted legal practice), JFT 5–6/2025 pp. 355–372 (Forssén 2025a).

[2] See Björn Forssén, *Rättssäkerhet i mål om moms och anknytande frågor i Sverige* (Legal certainty in cases on VAT and connected questions in Sweden), JFT 4/2025 pp. 261–294, section 6. (Forssén 2025b).

[3] See Forssén 2025a, section 3.2.

[4] EU, the European Union or the Union. The VAT Directive, complete title: COUNCIL DIRECTIVE 2006/112/EC of 28 November 2006 on the common system of value added tax.

the GML are nowadays to be found in Ch. 16 sec. 23 of *mervärdesskattelagen (2023:200*, here abbreviated ML).

By the preparatory works to the reform of 2008, it follows that the only consequence for an enterprise which has issued such an invoice is precisely the liability for payment, which remains as long as it has not issued a credit invoice. By the liability for payment for such an amount being determined in a separate rule, GML Ch. 1 sec. 2(e), the legislator emphasized that the measure meaning a falsely charged VAT shall not lead to anything else than a special liability for payment of the amount in question for the enterprise issuing the invoice..[5] In its considerations of 2024-11-15 to the Department of Finance over SOU 2024:32, the Bar Association reminded about its objections in connection with the reform of 2008 meaning that a rule concerning crime fighting does not belong to the tax legislation. Therefore, the Bar Association raised objections against the introduction on criminal law foundations of a rule lying on a person who has falsely charged VAT the liability to account for and pay the amount to the State.[6]

In this article, I do not mention more about the penal law whereas I continue to make my review of the insolvency law perspective from Forssén 2025a on the special liability for payment in question.[7] According to the preparatory works to the reform of 2008 that liability applies for example to the issuer of a fictitious invoice,[8] as long as he or she is not issuing a credit invoice of the amount in question.[9] To save space, I mentioned that perspective only briefly in Forssén 2025a.[10] Here, I mention my view on the question whether the release institute in SFL Ch. 60 sec. 1 could be applicable in case the issuer of an invoice with a falsely charged VAT has been declared bankrupt, provided that it would not come up such a routine that means that the receiver in bankruptcy issues a credit invoice on the amount which has been falsely denoted as VAT or acknowledge that the enterprise in bankruptcy do so, despite having no right of disposition due to the bankruptcy.

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[5] See prop. 2007/08:25, *Förlängd redovisningsperiod och vissa andra mervärdesskattefrågor* (Extended accounting period and certain other VAT issues), p. 90. See also Forssén 2025b, section 3.3.1 and Björn Forssén, *Skenfaktura med momsdebitering – konsekvenser för skatt och redovisning* (Fictitious invoice with charging of VAT – consequences for tax and accounting), *Tidningen Balans fördjupning* (The Periodical Balans Advanced articles) 2023 pp. 1–9 (Publ. 2023-06-13, www.tidningenbalans.se), Forssén 2023. Forssén 2023 is also available on www.forssen.com.

[6] See the Swedish Bar Association's considerations of 2024-11-15 to the Department of Finance over SOU 2024:32 (No. R-2024/1201) and the reference there to prop, 2007/08:25, p. 86.

[7] See Forssén 2025a, section 3.2.

[8] See the example *skentransaktioner* (fictitious transaction), which is the eighth that the legislator states for the liability for payment in question, prop. 2007/08:25, p. 91.

[9] See ML Ch. 7 sec. 50 first para, which corresponds with the previous GML Ch. 13 sec. 28 first para. See also Forssén 2025b, section 3.3.1 and Björn Forssén, *Frågor med anledning av slutbetänkandet Åtgärder mot mervärdesskattebedrägerier* (Questions on account of the final report Measures against VAT frauds), published on www.tidningenbalans.se/Advanced articles 2025-05-15 (Forssén 2025c). Forssén 2025c is also available on www.forssen.com.

[10] See Forssén 2025a, section 3.2.

## 2 Description of the insolvency law problem

I assume that the issuer of an invoice with a falsely charged VAT does not get paid by an enterprise receiving the invoice. By the preparatory works to the reform of 2008, it follows namely that the legislator considered that it followed already by GML Ch. 8 sec. 2 first para that a falsely charged VAT does not constitute input tax. This since the amount falsely denoted as VAT in the received fictitious invoice did not constitute VAT according to the general rules of the GML, but what I call false VAT.[11] If the receiver of the invoice is not counted in the amount as input tax by the SKV, the receiver does not pay the amount to the issuer of the invoice. Since it is not a matter of a liability for payment of real VAT for the issuer, the reciprocity principle according to the articles 1(2) and 167 of the VAT Directive is not fulfilled. Thereby, the receiver has not a right to deduct the amount as an input tax.[12]

That the receiver of the invoice with a falsely charged VAT does not have a right of deduction for the amount as for an input tax can be the decisive reason to the insolvency situation for the issuer. With the knowledge of the amount constituting what I call a false VAT and that it does not entitle to deduction as for an input tax, the receiver does not pay the amount to the issuer, where the issuer has been declared bankrupt. I assume that the issuer is a natural person who carries out activity under sole proprietorship or a legal person, for instance a limited company (Sw., *aktiebolag*). Then, the question is whether the receiver in bankruptcy issues a credit invoice for the debtor (the issuer) or acknowledge that the debtor do so, so that the debt to the SKV can be reduced with the amount in question. In Forssén 2025a, I state that such a liability for payment which is meant now shall not remain in the bankrupt's estate only because the debtor not having the right to issue a credit invoice due to the bankruptcy.[13] In my opinion, a natural person carrying out activity under sole proprietorship or a legal person shall not be declared bankrupt, since the point with the special liability for payment in question is that the issuer of an invoice with a falsely charged VAT shall not be able to reduce output tax which has been accounted for without issuing a credit invoice.

In the preparatory works to the reform of 2008, the legislator gave a problem description to motivate that the special liability for payment in question for falsely charged VAT in an invoice was introduced by the implementation into the GML of article 203 of the VAT Directive. That motivation was based on the consequences for the State of the HFD's decision in the case RÅ 2005 ref. 81. The circumstances in the case were that a limited company had falsely charged VAT for letting of premises despite that tax liability did not exist since the company had not been voluntarily registered to VAT for letting of premises. The company had charged VAT for time before a decision on voluntary registration, why the SKV considered that a reimbursement of falsely charged VAT presupposed that the company issued a credit invoice to the tenant. However, the HFD concluded that the GML had no regulation on procedure at falsely charged VAT and paid tax and therefore the HFD deemed that the VAT would be paid back to the company without demand to issue a credit invoice.[14]

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[11] See prop.2007/08:25, p. 90. GML Ch. 8 sec. 2 first para is corresponded by ML Ch. 13 sec. 4 nos. 1 and 2. See also Forssén 2025b, section 3.3.1 and Forssén 2023, p. 3.

[12] See also Forssén 2025b, section 3.3.1 and Forssén 2023, p. 3.

[13] See Forssén 2025a, section 3.2.

[14] See prop. 2007/08:25, pp. 84 and 85. See also Forssén 2025b, section 3.4.

Thus, I consider that support is lacking for article 203 of the VAT Directive meaning anything else than avoiding that the described situation leads to the State losing money equal to a falsely charged VAT by the issuer first accounting for the amount as output tax but demanding it back from the SKV without obstructing the receiver's possibility to exercise a right of deduction for the amount as for an input tax. That possibility is closed by the demand of issuing a credit invoice so that the receiver of the original invoice cannot miss being refused a deduction of the amount only because a credit invoice is lacking as an element of control in the receiver's book-keeping. In my opinion, there is no support for the issuer being declared bankrupt only due to having issued an invoice with a falsely charged VAT. This is unreasonable with regard to the SKV having the possibility to carry out control, and that the control of the receiver not deducting such an amount as input tax should be upheld by the development of routines for the receivers in bankruptcy concerning such questions about VAT at bankruptcy.

In Forssén 2025a, I state in the last-mentioned respect that such routines which have existed for the receivers in bankruptcy concerning matters of VAT at bankruptcy should be developed again, whereby I refer to a writ by *Riksskatteverket*, the National Tax Board (here abbreviated RSV – nowadays the SKV) from the mid 1980's.[15] I suggest that it can be made in co-operation between the collective of receivers in bankruptcy and the SKV, whereby the Swedish Bar Association should participate in the development of such routines as a support for the lawyer in his or her role as a receiver in bankruptcy.[16]

Thus, I state once again that regarding a falsely charged VAT the receiver in bankruptcy should rather see to it that the debtor issues a credit invoice than letting the amount falsely denoted as VAT being included with the assets in the bankruptcy estate. In my opinion, it should for reasons of legal certainty rest upon the receivers in bankruptcy to assume responsibility for issuing a credit invoice regarding a falsely charge of VAT, so that such a debt is not a liability for the bankrupt's estate.[17]

I have also stated that it should be clarified in the SFL if the SKV by virtue of the rules on personal liability of payment (Sw., *företrädaransvar*) in Ch. 59 sec:s 12–21 can carry through a lawsuit for such an amount against a representative of a legal person which has issued the invoice with the amount.[18] In this article, I do not go any further with that question, since it is a resulting question to the underlying question about the limited company's possibility to issue a credit invoice of the amount. Instead, I treat another question which I as well for the sake of saving space did not mention any more in Forssén 2025a, namely the question about the applicability of the release institute in the SFL regarding amounts which are now in question. If this is a possibility, there will not arise any matter on personal liability of payment

[15] See my reference in Forssén 2025a, section 3.2 to the RSV's *Moms vid konkurs – information om hur man redovisar moms i samband med en konkurs* (VAT at bankruptcy – information on how to account for VAT in connection with bankruptcy), RSV 556 edit 1 (May 1984).

[16] See Forssén 2025a, section 3.2 and Forssén 2025c, the section *Konkursförvaltarna och frågan om kreditfaktura avseende felaktigt debiterad moms* (The receiver in bankruptcy and the question about a credit invoice regarding falsely charged VAT).

[17] See Forssén 2025a, section 3.2.

[18] See Forssén 2025a, section 3.2 and Forssén 2025c, the section *Oäkta moms i skenfaktura och företrädaransvar* (False VAT in a fictitious invoice and personal liability of payment).

according to the SFL against a representative of the limited company, since such a responsibility only comes up regarding the company's – the debtor's – tax debts.

Thus, the alternative to resolve the insolvency situation is that the debtor applies at the SKV's head office for release from liability regarding a falsely charged VAT by virtue of SFL Ch. 60 sec. 1. However, I state that if that alternative is formally possible it should in practice not be emphasized before the receiver in bankruptcy's participation to issue a credit invoice of the amount in question. This with regard to release according to SFL Ch. 60 sec. 1 demanding extraordinary reasons (Sw., *synnerliga skäl*), which is the most severe writing in Swedish legislation and release thus is a hard way to solve the situation for the debtor. Furthermore, it is unclear whether the release institute comprises an amount which is falsely denoted as VAT in an invoice. However, in the further presentation I develop for systematic reasons that question on the theme of legal certainty with the taxation procedure in Sweden.

## 3 Release as a legal certainty alternative solution of the insolvency situation

### *3.1 The rule on release from certain taxes and fees in the Swedish taxation procedure*

The release institute of SFL Ch. 60 sec. 1 comprises according to the headline to Ch. 60: "*Beslut om befrielse från skatteavdrag, arbetsgivaravgifter, mervärdesskatt och punktskatt*." (Decisions on release from withholding tax, social fees, value-added tax and excise duty). The following applies concerning such release according to sec. 1 in Ch. 60 (in my translation):

> *If there are extraordinary reasons, release can be granted by the government or the authority that the government determines (i.e. the SKV) fully or partly from*
> *1. the liability of payment according to Ch. 59 sec. 2 for the person who has not made withholding of tax with the correct amount, and*
> *2. the liability to pay social fees, value-added tax or excise duty.*
>
> *If a decision of release is made according to the first paragraph release may be granted from fee on delay, tax surcharge and interest.*

Thus, if extraordinary reasons (Sw., *synnerliga skäl*) exist release can be granted fully or partly from withholding tax, social fees, value-added tax or excise duty. An application for release shall be submitted to the SKV's head office, which issues its decision according to Ch. 13 sec. 12 of *skatteförfarandeförordningen (2011:1261)*, the Taxation Procedure Regulation. The decision can be appealed to the government, according to Ch. 67 sec. 6 second sen., if the SKV refuse the application for release. By the second para of the rule follows that if release can be granted, it may also be granted for fee on delay, tax surcharge and interest.

In the further presentation, I mention whether value-added tax (Sw., *mervärdesskatt*) in the rule on release can be considered comprising such a falsely charged VAT which has been implemented into the Swedish VAT legislation in accordance with article 203 of the VAT Directive. In the first place, I am laying a systematic perspective on the question in relation to the demand for legal certainty in the taxation procedure.

*3.2 The release institute in relation to law trial*

In an article from 2018, I brought up the release institute in question of the SFL.[19] Inter alia, I mentioned then that the legislator considers that it is the vendor who according to Ch. 60 sec. 1 of the SFL can apply for a release from the obligation to charge and pay output tax on its sales, and that this is clearly established by the preparatory works to the nearest predecessor to the rule, that is the preparatory works to Ch. 13 sec. 1 of *skattebetalningslagen (1997:483)*, the Tax Payment Act. I mentioned that it is stated there (in my translation) that with such an extraordinary reason that might cause *release from payment of VAT cannot be considered cases where the tax liable has charged the tax to his or her customers*.[20] Thus, a purchaser's application for release from paying input tax is dismissed by the SKV and the government.[21]

I came back to Forssén 2018 in an article from 2024,[22] where I inter alia mentioned that concerning VAT the release institute according to SFL Ch. 60 sec. 1 is deemed only regarding the liability to pay (output) VAT, and not the right to deduct input tax. Moreover, I stated that there is in principle a "gap" (Sw., "*lucka*") in that respect in the field of VAT, where accessible legal remedies are concerned, since there is no general right of access to courts in Sweden. This is in conflict with the principle of access to courts according to article 6 of the European Convention on Human Rights (here abbreviated ECHR).[23] I stated that this could have been resolved along with the reform in 2010 of *regeringsformen (1974:152)*, here abbreviated RF, i.e. the 1974 Instrument of Government, but it was not done. A direct connection to the ECHR was dismissed. I mentioned that it had been mentioned by Professor Wiweka Warnling-Nerep (nowadays Warnling Conradsson) in a book of hers from 2015.[24] In Forssén 2024, I stated that if the SKV makes a negative decision in a matter of release according to SFL Ch. 60 sec. 1, and it is confirmed by the government, the individual should be able to turn to the HFD with an application for a law trial according to sec. 1 of *lag (2006:304) om rättsprövning av vissa regeringsbeslut* (the act on law trial of certain government decisions). I also noted that the rule in question refers to precisely ECHR article 6(1).

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[19] See Björn Forssén, *Befrielse från skatt – en nåd att stilla bedja om hos Skatteverkets huvudkontor och Regeringen eller rättspröva hos HFD* (Release from tax – a mercy to peacefully pray for at the SKV's head office and the Government or as a law trial by the HFD), *Tidningen Balans fördjupningsbilaga* (The Periodical Balans Advanced articles) 3/2018 p. 3–5, published on www.tidningenbalans.se/*Fördjupning* 2018-06-12). (Forssén 2018). Forssén 2018 is also available on www.forssen.com.

[20] See prop. 1996/97:100, *Ett nytt system för skattebetalningar, m.m.* (A new system for tax payment etc.) Part 1, p. 596. See also Forssén 2018, p. 4.

[21] See Forssén 2018, p. 4.

[22] See Björn Forssén, *Befrielse från felaktigt debiterad moms* (Release from falsely charged VAT), Dagens Juridik (Today's Law), Publ. 2024-12-13, at 11.57, www.dagensjuridik.se (Forssén 2024). Forssén 2024 is also available on www.forssen.com.

[23] The European Convention's – ECHR – complete title is: European Convention for the Protection of Human Rights and Fundamental Freedoms Rome 4 November 1950.

[24] See Wiweka Warnling-Nerep, *RÄTTSMEDEL: om- & överprövning av förvaltningsbeslut* (LEGAL REMEDIES: review and trial by appeal of administrative decisions), Jure Förlag AB 2015, pp. 31, 42 and 43. (Warnling-Nerep 2015).

Professor Warnling-Nerep criticize the legislator for not having been active enough in the efforts to guarantee the access to court which is presupposed in European Law, but she compares our system taken together with a *normative jungle*.[25] I referred to that statement in a book from 2019,[26] and state the same apprehensions in this article with the focus set on what the mentioned legal certainty ”gap” concerning the right to access to court means for the question on release from liability for payment of what I call false VAT. Therefore, I come back here to Warnling-Nerep 2015 and to Forssén 2024, where I emphasized that the HFD should regard the principle of access to court as support for that the HFD should try an application for law trial of a matter of release according to SFL 60 kap. 1 §, whereby I also noted that sec. 1 of the act on law trial of certain government decisions, which as mentioned, refers to ECHR article 6(1).

Thus, according to sec. 1 of the act on law trial an individual may apply to HFD for a law trial of a decision by the government which includes a trial of the individual's civil rights or obligations regarded in ECHR article 6(1), that is the principles of *access to court* and *fair trial*. Of interest concerning the view on law trial in Sweden is what is mentioned in Warnling-Nerep 2015 about the history behind the first Swedish act on law trial which came up in 1988, that is *lagen (1988:205) om rättsprövning av vissa förvaltningsbeslut* (the act on law trial of certain administrative decisions), which was replaced in 2006 by the present act on law trial. That Sweden proved to have broken against the ECHR, which Sweden ratified already in 1953 but adopted as Swedish law first at the EU-accession in 1995, by SFS 1994:1219, was officially explained with the State at the accession in 1953 wrongly assuming that with *civil rights and obligations* was meant *civil law* and that *public law* fell outside ECHR article 6.[27] However, that was according to what I can recall not mentioned specifically in connection with the referendum on 13 November, 1994 about Sweden's membership of the EU.

Although it is as far as my experience goes rather quiet in Sweden about legal certainty issues on the theme of taxation procedure, I consider that it inter alia for the present question about the possibilities of release from a false VAT by virtue of SFL Ch. 60 sec. 1 entails deteriorated guarantees for the individual to access court as a result of the act on law trial of certain government decisions replacing on 1 July, 2006 the 1988 act on law trial of certain administrative decisions. If the act of 1988 had applied also after the reform of 2008 which meant that article 203 of the VAT Directive was implemented in the Swedish VAT legislation the question about the State's carrying through of demands on false VAT could have been given a law trial regarding whether the SKV's decision or the administrative court's verdict against the will of the individual conflicts with the principle of legality for taxation measures in RF Ch. 8 sec. 2 first para no. 2 (previously RF Ch. 8 sec. 3). At present, that possibility is limited to the situation that the individual has appealed to the HFD a decision by the government refusing an appeal there of a refusal by the SKV's head office of an application for release from the debt regarding falsely charged VAT (false VAT). The basis for release is still that the circumstances are considered such that extraordinary reasons for release exist,

[25] See Warnling-Nerep 2015, pp. 106 and 107.

[26] See Björn Forssén, *Nya förvaltningslagen och skatteförfarandet – studiematerial: Andra upplagan* (the new Administration Act and the tax procedure – study material: Second edition), self-published 2019, p. 44. (Forssén 2019a). Forssén 2019a is available via www.forssen.com, and in printed version at *Kungliga biblioteket i Stockholm* (the National Library of Sweden) and at Lund University Library.

[27] See Warnling-Nerep 2015, p. 31 and also pp. 47 and 52 and also Forssén 2019a, p. 45.

which was not the case according to the act of 1988. Therefore, I may mention something about the history of what has been deemed constituting extraordinary reasons for release.

*3.3 History of extraordinary reasons for release*

Nowadays, the release institute is to be found in SFL Ch. 60 sec. 1. From the beginning it was to be found in sec. 76 of *lag (1968:430) om mervärdeskatt*, the VAT act, and then only applying to VAT. When that act was replaced on 1 July, 1994 by the GML the release institute was transferred to GML Ch. 22 sec. 9, and in connection with the introduction of the tax account system on 1 November, 1997 it was transferred to Ch. 13 sec. 1 of the Tax Payment Act. Then, it came to apply to certain taxes and fees besides VAT. By the SFL being introduced on 1 January, 2012 and replacing inter alia the Tax Payment Act, the release institute was transferred to SFL Ch. 60 sec. 1.[28]

In Forssén 2018, I mentioned that the following was stated in the preparatory works to the Tax Payment Act as examples of extraordinary reasons for release according to Ch. 13 sec. 1: when a foreign entrepreneur who was not registered himself or herself to VAT in Sweden but who had paid "import-VAT" here and thereafter could not be reimbursed for it by his or her Swedish customer due to that person being declared bankrupt, it was deemed constituting a situation comprised by extraordinary reasons.[29] That situation was also one of only a few examples of release from VAT according to section 3.1 of the previous information from the RSV about reduction or release from VAT, RSV Im 1982:3.[30]

Thus, the release institute has been given a very restrictive application, and any further situations than those mentioned in the preparatory works to the Tax Payment Act was neither mentioned by the legislator when that act was replaced by the SFL on 1 January, 2012, either concerning VAT or any other of the present taxes and fees in SFL Ch. 60 sec. 1.[31] Of a particular interest to the question of whether release might apply for false VAT is that the institute was not mentioned in connection with the reform in that respect in 2008. Nor has it been mentioned by the investigation on measures against VAT frauds, that is in the partly report SOU 2023:49 and the final report SOU 2024:32 respectively, or in thereafter following legislation on 1 April and 1 July, 2026 regarding tax fraud and the taxation procedure according to SFS 2026:109 and 110 and SFS 2026:707 respectively. Thus, current law may be deemed meaning that that possibility to release is not given by the taxation procedure and the administrative procedure.

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[28] See also Forssén 2018, s. 3. There it is stated too that I in 1989/90 in my capacity of Senior Administrative Officer at the RSV (nowadays the SKV's head office) handled the matters of release regarding VAT.

[29] See prop. 1996/97:100 Part 1, p. 596.

[30] See Forssén 2018, pp. 4 and 5.

[31] See prop. 2010/11:165, *Skatteförfarandet* (the Taxation Procedure) Part 2, pp. 1011–1012. In prop. 1996/97:100 Part 1, p. 596 there were only two situations mentioned where release was called for. The situation mentioned concerning "import-VAT" which a foreign entrepreneur pay but cannot take out from the customer in Sweden, and a situation regarding social security fees , where the individual has had such strong reasons not to perceive himself or herself as employer that it can appear as *offensive to the general sense of justice* (Sw., *stötande för det allmänna rättsmedvetandet*) to claim payment of social security fee.

*3.4 The release institute in relation to fair trial and excessive taxation*

However, in my opinion the recently described situation conflicts with the individual's right to a fair trial in ECHR article 6(1). An enterprise which is not given the possibility to avoid an insolvency situation as a result of the SKV's demand for payment of a falsely charged VAT (false VAT), by the receiver in bankruptcy's assistance or acknowledgement to issue a credit invoice on the amount in question so that deduction of it will be impossible for the receiver of the original invoice, should be given such a possibility according to SFL Ch. 60 sec. 1. Thus, that situation should be inserted as a special case for release.

In my opinion, this would be right also in a basic tax law perspective, since a carrying through of the demand against the debtor would exceed the purpose of avoiding that the State makes a loss of tax revenues. Prevention would namely exist for the issuer of the invoice with a falsely charged VAT to be reimbursed such an accounted amount without at the same time constituting a hindrance for the receiver to exercise the right of deduction of the amount with the support of the original invoice not being questioned. The motive is not that the State in excess of the purpose mentioned shall carry through a measure of taxation which is not based on transactions comprised by the general rules on value-added taxation of deliveries of goods and supply of services. In my opinion, that would mean such an excessive taxation which means limitations of the right to peaceful enjoyment of possessions for the individual according to the RF and the ECHR. By RF Ch. 2 sec. 15 and article 1 of Protocol no. 1 to the ECHR, the individual has a double possession protection (protection of ownership) and concerning transgression of this by the State in the present respect, he or she – under certain provisions – file a lawsuit at the European Court of Human Rights (ECtHR).[32]

Thus, such an excessive taxation that I am describing above should be avoided. Therefore, the "gap" in the Swedish judiciary meaning that a general right to access to court is lacking must in my opinion be systematically covered especially regarding the present situation about false VAT. This could be achieved by expressing in SFL Ch. 60 sec. 1 that the situation constitutes a special case of release from the SKV's demand for payment. With a solution by that special regulation, it is of no relevance whether the word *mervärdesskatt* (value-added tax) in the rule is comprising false VAT. The solution also entails that it will be proven by legal development whether release from real VAT comprises more situations than the one mentioned in the preparatory works to the Tax Payment Act on avoiding that foreign entrepreneurs would be forced to pay "import-VAT" which they cannot take out from their customers in Sweden.

## 4 Concluding viewpoints

In Forssén 2025c, I brought up that the application of extraordinary reasons according to the release institute in SFL Ch. 60 sec. 1 is one of the issues on the theme of measures against carrousel trading which remains to be addressed after SOU 2024:32, *Åtgärder mot mervärdesskattebedrägerier* (Measures against VAT frauds). In this article, I develop my apprehensions about legal certainty where an insolvency situation could not be handled by application of the release institute regarding false VAT. This is unreasonable, since it is only because the issuer of the invoice (the debtor) cannot issue a credit invoice due to not having a

[32] See Björn Forssén, *Skatteförfarandepraktikan – med straff- och europarättsliga aspekter: Andra upplagan* (the Taxation Procedure handbook – with criminal law and European law aspects: Second edition), self-published 2019, p. 215. (Forssén 2019b). Forssén 2019b is available via www.forssen.com, and in printed version at *Kungliga biblioteket i Stockholm* (the National Library of Sweden) and at Lund University Library.

right of disposition of the activity as a consequence of the SKV's demand for payment with a resulting collection. I consider that the release institute in the SFL should be completed so that the "gap" meaning that there is no general right of access to courts in Sweden will not obstruct that the mentioned insolvency situation can be handled. It should be done by a writing in SFL Ch. 60 sec. 1 that the situation regarding false VAT constitutes a special case for release.

As support to my suggestion, I state my above-mentioned legal certainty aspects and emphasize that the reform in 2010 of the RF, which is also mentioned, does not mean that a direct connection to the ECHR was introduced. The ECHR and its Protocols has only the status of ordinary law in Sweden.[33] The individual cannot take the position of a party before the Court of Justice of the EU (CJEU) but must rely on an administrative court obtaining a preliminary ruling from the CJEU concerning whether the liability for payment of false VAT is given an application in the Swedish taxation procedure which conflicts with the meaning of the article 203 of the VAT Directive. Thus, it is a legal certainty problem for the individual that it takes a leave to appeal to bring up the issue in the HFD. In Forssén 2019b, I also brought up that the Danish government in a case in the CJEU criticized the Swedish system with leave to appeal in the highest instance insofar as it risks leading to a parallel legal practice diverging from the CJEU's case-law.[34]

In Forssén 2025a, I brought up, as mentioned, what the Swedish Bar Association should do to contribute to cases being given leave to appeal by the HFD and by the HD, so that current law in a true sense is developed for the support of the interpretation of law, instead of lower instances establishing as an actual current law what the SKV is stating in above all its standpoints in the field of VAT, which, as also mentioned, was a follow-up question from Forssén 2025b. The fundamental rights according to the ECHR and its Protocols, like the right to peaceful enjoyment of possessions for the individual, are included in the EU law as general principles.[35] However, the problem with the demand of leave to appeal in the HFD means that the possibilities for the individual to accomplish a trial of the insolvency question in relation to article 203 of the VAT Directive is in practice severely limited.

To avoid that an actual current law is developed set out from what the party SKV is stating in its standpoints, it is in my opinion important to open for the possibility to law trial of the insolvency question following by the SKV's demand of payment for false VAT beside the ordinary hierarchy of courts. By my suggestion to insert a writing in SFL Ch. 60 sec. 1 that the present situation concerning false VAT constitutes a special case for release, the individual can – without a demand for leave to appeal – apply at the HFD for law trial of a decision by the government to refuse an application of release from the demand of payment of false VAT. Furthermore, the suggestion is motivated because it has not been established in

[33] By SFS 1994:1219 the ECHR and inter alia its Protocols nos. 1 and 7 was implemented as law – not constitutional law – in Sweden on 1 January, 1995. See also Forssén 2019a, p. 19.

[34] See Forssén 2019b, p. 216 regarding the EU-case C-99/00 (Lyckeskog), ECLI:EU:C:2002:329, where the Danish government's criticism is stated in item 11.

[35] See article 6(3) of the Treaty of European Union. By the way, I am mentioning in Forssén 2019b, p. 215 that the right to peaceful enjoyment of possessions is also stipulated in article 17 of the EU Charter of Fundamental Rights.

Swedish civil law whether a person who has received an invoice with a false VAT is liable to pay it, whereas such liability is considered not existing in Danish law.[36]

A trial of release is made from case to case. To avoid that the same prerequisites apply for the insolvency question described here as for the rest of the cases on release, the separate regulation concerning release regarding demand for payment of false VAT should in my opinion be stipulated with another terminological concept than extraordinary reasons. Thereby, the concept extraordinary reasons should be reserved for other cases of release by virtue of SFL Ch. 60 sec. 1. If the State's demand for the amount only exists due to the issuer of the invoice (the debtor) not having the right to issue a credit invoice due to being declared bankrupt and with such a measure stop the receiver from exercising a right of deduction as for an input tax, a separate regulation in SFL Ch. 60 sec. 1 can be denoted as an unreasonable case of collecting the amount. In that respect, the legislator can regard Finnish law. Thereby, I refer to sec. 47 second para of lagen om skatteuppbörd 12.1.2018/11, i.e. the Finnish Act on Tax Collection, where item 3 stipulates that it can exist a special reason to that it would be considered *oskäligt* (unreasonably) to collect the tax. In the preparatory works to the Tax Payment Act it was stated that release should be granted in case the individual has had such strong reasons not to perceive himself or herself as employer that it can appear as *offensive to the general sense of justice* to claim payment of social security fee.[37] Also that expression constitutes an alternative to extraordinary reasons as an expression to determine such a separate regulation of release which I am suggesting to SFL Ch. 60 sec. 1 concerning an insolvency question caused by a demand for payment of false VAT. It is the most appropriate expression, since the concept *oskäligt* (unreasonably) already is used in the SFL regarding release from *särskilda avgifter* (special fees) in Ch. 51 sec. 1 first para, whereby the demand for release is not set so high that extraordinary reasons shall exist. However, the Finnish model may serve as rule technical model so that the release institute in the SFL is given a special item for the collection question.

By my suggestion can also a negative decision from the HFD faster give the individual possibility to try to bring up the question about excessive taxation in conflict with the right to peaceful enjoyment of possessions at the ECtHR. Professor Joakim Nergelius has mentioned that no State has been convicted by the ECtHR because of excessive tax rates.[38] In my opinion, it is time for a trial in the ECtHR of that principle concerning the question about the State's carrying through of a demand for falsely charged VAT (false VAT), despite that the demand only remains due to the issuer (the debtor) not having the possibility to issue a credit invoice at lack of right of disposition over the activity carried out after a bankruptcy decision and the receiver in bankruptcy is not assisting to such a measure.

In Forssén 2025a, I account in conclusion for the government's continued work to counteract the carrousel trading in the field of VAT after the investigation *Åtgärder mot mervärdesskattebedrägerier* (Measures against VAT frauds). However, I end my efforts by this article, since I deem that the question about the release institute gives a systematically

[36] See commentary of the EU-case 342/87 (Genius Holding), ECLI:EU:C:1989:635, on p. 201 in Henrik Stensgaard, *Fradragsret for merværdiafgift* (Right of deduction of VAT). Jurist- og Økonomforbundets Forlag. Köpenhamn 2004.

[37] See prop.1996/97:100 Part 1, p. 596.

[38] See Joakim Nergelius, *De europeiska domstolarna och det svenska äganderättsskyddet*, Norstedts Juridik 2012, p. 63.

appropriate ending in the JFT of my series of articles during the years of 2021–2025 on the theme of carrousel trading. My effort may hopefully inspire others to write on the subject of carrousel trading, and should give ideas for the legislator's continued work, regardless of whether it is about that topic or other issues concerning VAT.