The Swedish Bar Association

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To the Department of Finance
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The Swedish Bar Association was invited on 31 May, 2024 to give its considerations over the Government's report *Åtgärder mot mervärdesskattebedrägerier* (SOU 2024:32), Measures against VAT frauds (SOU 2024:32).

Summary

The Bar Association, also referring to previous viewpoints on connecting and present questions,[1] is on the whole positive to the ambition to take measures against VAT-frauds. However, set out from the report's various suggestions the Bar Association would like to especially emphasize the following.

Viewpoints

The importance of the expressions VAT fraud and mala fide in the tax authority's proposal of decision for the question about a fair trial for the individual

The Bar Association concludes that the expression "*mervärdesskattebedrägeri*" (VAT fraud) has been used already in proposals of decision where *Skatteverket* (SKV), the tax authority, furthermore state that partners in an *aktiebolag* (a limited company) is in mala fide (*ond tro*) about their company taking part in a chain of transactions that the tax auditors deem being a case of VAT fraud of so-called carrousel type, but that they thereby shall not be considered having made any statement of whether for example the partners of a company have committed tax fraud with their company, despite that it is described by the tax auditors as a crime tool for appropriating money from the Swedish state. The approach is questioned, concerning what issue to treat for one of two administrative authorities, the SKV or *Ekobrottsmyndigheten* (EBM), the Economic Crime Authority. The Bar Association states that it should be clarified in the continuous legislation work that the SKV should avoid to use the expression VAT fraud in proposals of decision, since it states that the SKV by the tax audit of the company in question shall be considered having investigated not only the question about erroneous information (*oriktig uppgift*), but furthermore the two other prerequisites for tax fraud according to sec. 2 of the *skattebrottslagen* (SBL), i.e. the Tax Fraud Act, that is a risk (*fara*) of tax avoidance or evasion regarding output tax, counting in of input tax or reimbursement of excess input tax, as well as for intent (*uppsåt*) by the individual.

[1] See the Bar Association's considerations of 29 December, 2023 over the partly report *Skyddet för EU:s finansiella intressen. Ändringar och kompletteringar i svensk rätt* (SOU 2023:49), [The Protection of the EU's financial interests Alterations and completions in Swedish law (SOU 2023:49)].

That the SKV uses the concept VAT fraud in connection with assertions of mala fide by the partners in a limited company concerning their enterprise taking part i a transaction chain that constitutes carrousel trading for the purpose of appropriating money from the Swedish state means that the SKV is making itself a prosecutor. The intent is not a matter for the SKV to investigate. The only subjectively that the SKV shall investigate concerns the bases of liberation from tax surcharge.

The Swedish tax surcharge is according to the European Court of Human Rights (ECtHR) comparable with *a criminal charge* according to article 6 of the European Convention (see the ECtHR's verdicts of 23 July, 2002: Janosevic v. Sweden, Application no. 34619/97, item 71; and Västberga Taxi Aktiebolag and Vulic v. Sweden, Application no. 36985/97, item 82). This contributed to the nuancing of the tax surcharge institute's application which was introduced already in two of the predecessors to *skatteförfarandelagen (2011:1244)*, SBL (the Taxation Prodecure Act), namely in *taxeringslagen (1990:324)*, the tax assessment act, and *skattebetalningslagen (1997:483)*, the tax payment act respectively, by SFS 2003:211 and SFS 2003:212 respectively. In the preparatory works to that reform the legislator confirmed that tax surcharge is to be regarded as a sanction similar to punishment according to the European Convention (see prop. 2002/03:106 *Administrativa avgifter på skatte- och tullområdet, m.m.*, Administrative fees in the fields of tax and customs, etc., p. 245). The Bar Association establishes in this context that the investigation preceding this report had suggested that to determine an information as erroneous it would be demanded this can be established *beyond reasonable doubt* ("*utom rimligt tvivel*"). However, the legislator noted that the expression was fetched from the criminal law and that the of Swedish law following demand of evidence *shown/proved* ("*visat/styrkt*") is enough to fulfil the demand of the European Convention in that respect, why the reform in the present respect only came to mean a modernization of language, by the term *established* ("*befinns*") being exchanged with that it – according to Ch. 49 sec. 5 first para. of the SFL – shall be *clearly shown* ("*klart framgå*") that a submitted information is erroneous (see prop. 2002/03:106 pp. 119 and 120).

The Bar Association considers that it in the continuing legislation work will be clarified that the SKV should not only avoid using the expression VAT fraud in proposals of decision, but that it also applies to the expression *ond tro* (mala fide). The legislator may in the recently mentioned reform be considered disregarding elements from the criminal law at the trial of the bases for tax surcharge. The same goes for the confusion occurring about what can become treated in an errand and case about tax fraud, by the SKV concluding the tax audit with a proposal of decision where it is stated that he or she carrying out an enterprise under sole proprietorship (*enskild firma*) or partners of for instance a limited company is in mala fide about their company taking part in a chain of transactions where an arrangement means that a VAT fraud by carrousel trading exists. If not a distinction is made between the SKV's and the EBM's respectively tasks in investigations about inter alia that theme, it means that the prohibition against *ne bis in idem* (i.e. that the same cause must not be tried twice), is coming up also in case the activity is carried out by a legal person, for example a limited company. According to the reform thereof on 1 January, 2016 the prohibition against double procedures and punishment means that decisions on tax surcharge and prosecution of tax fraud shall not comprise the same natural person (see sec. 1 of *lag [2015:632] om talan om skattetillägg i vissa fall* (the act on proceedings on tax surcharge in certain cases) and Ch. 49 sec:s 10 a and 10 b of the SFL (introduced by SFS 2015:633, and sec. 13 b of the SBL, introduced by SFS 2015:634). If the activity in question is carried out by a natural person under sole proprietorship, the SKV shall not bring up in a proposal of decision tax surcharge

in a decision against him or her, but first is the tax surcharge question judged by the prosecutor. If the prosecutor does not consider bringing up the question on tax surcharge, it will go back to handling by the SKV according to the procedure rules in the SFL. If the activity is conducted in a legal person, for example a limited company, the SKV can bring up the question on tax surcharge in the proposal of decision and report partners on suspicion of tax fraud. However, the Bar Association considers that the *ne bis in idem*-question is coming up also in such a case, if the SKV is bringing up the question on intent, by stating in the proposal of decision that mala fide lies with the partners.

Clarifying the mentioned boundary between the two administrative authorities in question is especially important in the light of the suggestion in SOU 2023:49 about abolishing the exemption for verbal information from erroneous information in the SBL, regardless of whether the suggestion of the report is carried through. The clarification in question is also decisive in general for a reasonable division of responsibility between the operators in proceedings about tax fraud in general court, i.e. between judge, prosecutor and defence lawyer. Instead of having to take a teacher's role, to compensate eventual lacking competence concerning the material tax rules and what shall be deemed as a basis of the existence of erroneous information, the lawyer shall in his or her capacity of public defender be able to rely on the competence at the SKV or its tax fraud unit working under the guidance of the EBM and by the prosecutors and investigators at the EBM.

The importance for a fair trial for the individual of the description of the tax question in the SKV's proposal of decision and the question whether the SKV shall go back to drawing up the final result of the tax audit in an auditing memo

Erroneous information is the basis for charging the sanction of tax surcharge. That concept has also the same meaning when it is included as one of the prerequisites for tax fraud according to sec. 2 of the SBL (see prop. 2002/03:106 p. 116). In the preparatory works to the reform by SFS 1996:658 of the SBL on 1 July, 1996, which meant that the expression *skattebedrägeri* was altered into *skattebrott* (which both translate into tax fraud) and that it was constructed as a risk crime (*farebrott*) instead of an effect crime (*effektbrott*), the legislator states that what is an erroneous information must be decided with guidance from the rules in the tax act which in the individual case regulate the tax liability and that *this connection between the tax fraud case and the tax question itself must not be disrupted* ("*detta samband mellan skattebrottmålet och själva skattefrågan kan givetvis inte brytas*" (seer prop. 1995/96:170 *Översyn av skattebrottslagen*, Overview of the tax fraud act, p. 91). To get a reasonable division of the rules of the operators in general court represented by defenders and prosecutors the prosecutor must, as being the operator supported by the SKV's and the EBM's investigation resources, present a preliminary investigation report (*förundersökningsprotokoll*) that contains inter alia the result of the tax audit and a deed description which connects the objective circumstances for intent etc. to the tax rules, so that the connection between the tax fraud case and the tax question itself is not disrupted regarding the theme of erroneous information.

The Bar Association would like, above all with reference to the individual's right to a fair trial according to article 6(1) of the European Convention about the Human Rights, to emphasize that uncertainties in the tax fraud case concerning the connection between erroneous information and the material tax question must not be a disadvantage for the person suspected/the defendant. A stringent deed description that connects to a robust tax audit from the SKV shall guarantee that the principles for the proceedings in general court, i.e. orality,

immediacy and concentration are upheld to the promotion of the individual's legitimate demands of a fair trial. This becomes even more important at the judgment of the tax fraud if the suggestion in SOU 2023:49 to abolish the exemption for verbal information from erroneous information according to sec. 2 of the SBL is carried through. The lawyer shall not have to go through the auditing file (with journal and day-book) at the SKV, to examine who has said what and when in connection with the tax audit. It shall be clearly expressed in the SKV's final product regarding the audit, which nowadays is the proposal of decision.

For the mentioned procedural reasons, the Bar Association considers that it in the continuing legislation process regarding measures against VAT frauds must be addressed that the SKV should go back to drawing up auditing memos before proposals of decision are written. In that way, in a document is to be found focused what the SKV consider is the result of the audit and what constitutes evidence and legal facts as a basis for the considered legal consequences in the form of measures of taxation and eventual tax surcharge. Thus, the auditing memo should be reintroduced as a central evidence for what the SKV consider is decisive not only for a proposal of decision and later on taxation decision, but also for a preliminary investigation report to the EBM regarding suspicion of tax fraud and for an application to the administrative court of a payment hedge and application to the administrative court for personal liability of payment for the partner regarding the company's tax debts as a result of the underlying tax case against the company.

The Bar Association considers that a reasonable division of the responsibility for a carrying through of the tax fraud case in pursuance of the principle of fair trial in article 6(1) of the European Convention is that the lawyer in his or her capacity of public defender shall be able to start out from the standpoints in the tax case being clarified in the administrative courts and to plan the defence in the tax fraud case without investigation efforts of his or her own regarding the tax question itself. With a robust investigation from the SKV as basis of a prosecution, the defender shall be able to focus on judging the question of risk for tax avoidance or evasion etc. and on the intent question, when he or she is holding interrogation with parties and witnesses and otherwise in the proceedings. The lawyer himself or herself shall not have to examine the tax question itself in general courts, when the tax case already may have been treated in the various administrative court instances. This is rather often leading to the tax auditors in the capacity of witnesses in the tax fraud case stating that the defendant makes a reconstruction after the event when the defender noticing to the district court that the tax question is not correctly judged in the SKV's proposal of decision and the tax case in the administrative courts.

With regard of his background, the Bar Association would like to emphasize that the lawyer shall be able to rely on the preliminary investigation report containing the result of the SKV's tax audit of the enterprise in question in the form of an auditing memo or a proposal of decision which is robust regarding the underlying VAT question. This applies above all if the lawyer is a public defender, since the SKV and the EBM have all the investigation resources and the lawyer's client often is lacking the possibility to finance an alternative examination. Although the burden of evidence completely lies with the prosecutor in the tax fraud case, it is typically not to the suspect's advantage if he or she is invoking his or her right to passivity in the case that the tax auditors at the final run-through mention that they are considering levying the person's company tax surcharge and he or she can foresee that the SKV probably will make a report to the EBM on suspicion of tax fraud. If the individual is carrying out the activity under sole proprietorship and the SKV leaves the question on tax surcharge to the EBM for a judgement at first by prosecutor, the individual has taken by itself a right to a

public defender even if only the question of tax surcharge is tried by the prosecutor (see sec. 12 § of the act on proceedings on tax surcharge in certain cases).

Thus, it is decisive for a fair trial that the individual as well as the operators in the tax fraud case can rely on the description of the tax question being correct already in the tax audit. According to the administrative practice a normal audit shall be finished with the tax auditors holding a final run-through with the audited, so that he or she, before the auditing memo (nowadays proposal of decision) is finalized, realizes what proposals of taxation that will be considered and the continuing handling of the errand. That follows by *Riksskatteverkets* (the National Tax Board's) – nowadays the SKV – handbook in tax audit, where it also is stated that *in many questions the audited must realize what proposals of taxation that will follow and which bases that the SKM (nowadays the SKV) are going to invoke. This for the sake of being able to give a relevant answer*.[2]

Thus, by the final run-through the risk of misunderstanding between the individual who is carrying out an enterprise under sole proprietorship or partners in for instance a limited company and the SKV's auditors respectively are minimized. In that way the Bar Association considers that final run-through contributes to a fair trial, whereby the following also may be noticed. If a report is submitted by the SKV to the EBM the defender may in principle not argue against the prosecutor, but only point out if the prosecutor and the client are talking at cross-purposes. The layer my argue in for instance the tax question first in the district court, if the prosecutor prosecutes and then shall not ignorance by the prosecutor or the SKV – which the lawyer will how to point out in the court – be met with the client making reconstructions after the event, when it is a matter of a misunderstanding that could have been sorted out between the SKV and the audited already at the final run-through of the tax audit.

The problems with the determination of "skatt" (tax) according to the Tax Fraud Act and the reform of 2008 regarding the liability of payment for falsely charged VAT in an invoice

The last few years, it has been emphasized in the media that VAT fraud of so-called carrousel type is the largest fraud ever against the Swedish state. The Bar Association of course stands behind the measures suggested in the report to prevent VAT frauds being requested and that carrousel trading is a dangerous phenomenon in society. Since a case of so-called *missing trader* is the simplest version of carrousel trading,[3] the Bar Association is focusing on giving specific viewpoints on the legislation in that respect. If not the simplest problems are resolved, it is hardly effective to treat the harder cases of carrousel trading.

In the Court of Justice of the EU's (CJEU) joint cases C-131/13, C-163/13 och C-164/13 (*Schoenimport "Italmoda" Mariano Previti*, ECLI:EU:C:2014:2455) the Advocate General mentioned in the opinion for a judgment (ECLI:EU:C:2014:2217) inter alia that *missing trader* is a case of carrousel trading where the fraud quite simply consists of a trader disappearing, which in English is called *missing trader*. A receiver of an invoice makes a deduction for charged input tax, but any output tax is not accounted for by the vendor, or it is made at a low amount and for example the goods in question are put into circulation again, which is called "carousel fraud" (see items 32–34 of the Advocate General's opinion for a judgment). On 1 January, 2008 a reform was made by SFS 2007:1376 which inter alia meant that liability of payment was introduced in Ch. 1 sec. 1 third para. and sec. 2 e of

[2] See p. 15 in *Rikskatteverkets Handledning i skatterevision Revisionspromemorian* (the National Tax Board's Handbook in tax audit The auditing memo) RSV 626 utgåva – edition – 1, ISBN 91-38-31492-4.
[3] See e.g. SOU 2023:49 pp. 43 and 44.

mervärdesskattelagen (1994:200, the VAT act, for false charging of VAT in an invoice. It was considered necessary to introduce a special liability of payment for falsely charged VAT, since *Högsta förvaltningsdomstolen* (then *Regeringsrätten*), the Supreme Administrative Court, in RÅ 2005 ref. 81 granted the issuer of an invoice reimbursement of an amount which the person in question had falsely denoted as VAT without any demand of issuing a credit note.[4] Thus, the issuer could get back output tax, despite that the receiver had made deduction as for input tax for the corresponding amount, which due to reciprocity not existing was not constituting input tax according to Ch. 8 sec. 2 second para. of the VAT act of 1994 [see nowadays Ch. 13 sec:s 4 and 5 of *mervärdesskattelagen [2023:200],* ML (the VAT act).

The reform should not have been made first in 2008 as a measure against using RÅ 2005 ref. 81 in cases of *missing trader*. The rule on liability of payment of an amount falsely denoted as VAT in an invoice is nowadays to be found in Ch. 16 sec. 23 of the ML and has the following wording: *Any person who falsely charges value-added tax in an invoice or a similar document is liable of payment to the State for the amount* ("*Den som felaktigt debiterar mervärdesskatt på en faktura eller liknande handling är betalningsskyldig till staten för beloppet*"). The wording of the rule corresponds well with the corresponding rule of the EU's VAT Directive (2006/112/EC), that is article 203. However, the directive rule was to be found already in article 21(1)(d) of the Sixth VAT Directive (77/388/EEC), that is in one of the predecessors to the VAT Directive. Since the directive rule in question is mandatory (see prop. 2007/08:25 p. 85), it should have been implemented in the VAT act of 1994 already at Sweden's accession to the European Union (EU) on 1 January, 1995 – not first in 2008 as a measure of crime fighting.

In connection with the reform of 2008 the Bar Association taken by itself raised objections against the introduction of a rule lying on a person who has falsely charged VAT to account for and pay the amount to the State with the motivation of a rule concerning crime fighting not belonging to the tax legislation. The EBM considered that the rule would make more difficult but not preventing the usage of false invoices to get deduction of input tax (see prop. 2007/08:25 p. 86). However, now the rule in question has existed for more than one and a half decade. It is included together with rules on reverse charge in the ML as a tool to take measures against inter alia VAT frauds by carrousel trading. The Bar Association considers that an evaluation should be made of how effective the two categories of rules have been so far to counteract VAT frauds and the rule should remain in the ML until this is done, but that legal certainty demands that the legislator already in connection with the legislation work due to SOU 2024:32 clarifies whether falsely charged VAT is comprised by "*skatt*" (tax) according to the SBL. Concerning the VAT has, in pursuance of the principle of conferred competences, the Swedish Parliament conferred competence to the EU's institutions, in accordance with Ch. 10 sec. 6 of *regeringsformen (1974:152)*, RF (the 1974 Instrument of Government). However, the criminal law is one of the fields which are comprised by an exclusive national competence.[5] Thus, the Bar Association may notice the following to support that the SBL is not covering the therein used word "*skatt*" (tax) regarding such a liability of payment that concerns falsely charged VAT in an invoice.

According to the preparatory works to the reform of 2008, the liability of payment for a fictitious transaction constitutes an example of falsely charged VAT which is not comprised

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[4] See prop. 2007/08:25 *Förlängd redovisningsperiod och vissa andra mervärdesskattefrågor* (Extended accounting period and certain other VAT issues), p. 84.
[5] See prop. 1994/95:19 *Sveriges medlemskap i Europeiska unionen* (Sweden's membership of the European Union), Part 1 s. 472.

ty the VAT principle according to article 1(2) of the VAT Directive but in such cases a liability of payment exists (see prop. 2007/08:25 p. 91). It shall be fulfilled in a special tax return (Ch. 26 sec. 7 of the SFL), and not like concerning real transactions in a VAT return (Ch. 26 sec. 21 of the SFL). Thus, any person who issues an invoice containing an amount falsely denoted as VAT shall account for and pay that amount to the State, if the person is not issuing a credit note to the receiver of the invoice (see Ch. 7 sec:s 49 and 50 of the ML). According to the mentioned preparatory works this is the only consequence for the issuer of the invoice. The legislator emphasized that *a falsely charged VAT shall not lead to anything else than a liability of payment for the person who has falsely charged the tax* (”*en felaktigt debiterad mervärdesskatt inte ska leda till annat än en betalningsskyldighet för den som felaktigt har debiterat skatten*”) – see prop. 2007/08:25 p. 90. Thereby, the receiver of such an invoice that is regarded here can be comprised by the prerequisites for tax fraud in sec. 2 of the SBL, since the invoice is not founding any right of deduction for input tax, whereas the issuer of the invoice cannot be deemed committing tax fraud according to the same rule, since a as VAT falsely denoted amount in an invoice cannot constitute ”*skatt*” (tax) in the SBL. ON the other hand, criminal responsibility for complicity in tax fraud can come up according to Ch. 23 sec. 4 of *brottsbalken (1962:700)*, BrB (the Penal Code) for the issuer of the invoice with the falsely charged VAT, i.e. for complicity in a tax fraud which the receiver of the invoice may be deemed having committed by trying to deduct the amount as if it was input tax.

The problem with it not being expressly stipulated in the SBL that with ”*skatt*” (tax) is also meant a as VAT falsely denoted amount in an invoice is that it sometimes is claimed by prosecutors that where such an amount is not accounted for in a special tax return the issuer of the invoice can be considered committing tax fraud according to sec. 2 of the SBL with support of the preparatory works to the SFL. The Bar Association is raising objections to this standpoint and would like to state the following in this context.

In the procedure rules of the SFL it is stipulated in Ch. 3 sec. 12 that what *is said about value-added tax* (”*som sägs om mervärdesskatt*”) also apply to an amount which is falsely denoted as value-added tax in an invoice and that *what is said about a tax liable according to the VAT act also apply to the person who is liable to pay such an amount* (”*det som sägs om skattskyldig enligt mervärdesskattelagen gäller även den som är skyldig att betala sådant belopp*”). However, according to Ch. 3 sec. first para. first sen. of the SFL is only a matter of the usage of certain terms and expressions in the SFL itself. An amount which constitutes a falsely charged VAT is regarded as ”*skatt*” (tax) only when it is a matter of the procedure of accounting for it, not in a material sense according to the ML.

To decide what is ”*skatt*” (tax) in a material sense, by a procedure rule of the SFL, conflicts with the principle of legality for taxation measures in Ch. 8 sec. 2 first para. no. 2 of the RF. It is also deemed to be in conflict with the principle of legality according to Ch. 1 sec. 1 of the BrB to enforce prosecution against the individual for a crime according to the SBL without the legislator clarifying whether “*skatt*” (tax) according to the SBL is comprising falsely charged VAT in an invoice which is not accounted for in a special tax return. Therefore, a natural person carrying out activity under sole proprietorship or as a representative of a limited company is not deemed committing tax fraud according to sec. 2 of the SBL, before that question is clarified by the legislator. This since, based on the principle of legality according to above all Ch. 1 sec. 1 of the BrB, a clarification is requested of whether erroneous information according to sec. 2 of the SBL regards an amount which shall be accounted for in a special tax return, that is a completion of the SBL with such an amendment

and the omission in question to submit a special tax return to the SKV concerning such an amount now regarded thereby being compared with an accounting crime consisting of VAT in the ordinary sense not being accounted for in a VAT return to the SKV or erroneous information being given in such a return.

Increased control of who are registered to VAT is typically promoting a more focused selection of investigation objects and concentration of errands and cases on tax fraud

In the preparatory works to the tax reform in the beginning of the 1990's it was stated that in a system of handling extensive information (Sw., *masshanteringssystem*) like with the VAT system it is necessary that the rules are simple, general and unequivocal, so that they are not unnecessary complicating the VAT system and bind up the tax authorities control resources and preventing a rational tax control.[6] The entrepreneurs shall neither be burdened by the complexity of the VAT system and the legislator emphasized that *the tax liable function in principle as an agent for the State with respect of collection* ("*den skattskyldige fungerar i princip som uppbördsman för staten*").[7]

To take measures against VAT frauds of all kinds the overall aim for the VAT system should be to make the collection of VAT from the enterprises function without frivolous persons being admitted into the system and only using the registration to *appropriate money from the State*. Thus, in the system of handling extensive information it is typically better that problems concerning who is registered to VAT can be taken care of when the scope of them is to be compared with a brook (Sw., *bäck*), instead of having to handle a river (Sw., *flod*) of cases of cheating. If not the registration function by the SKV is prioritized, it does not matter which measures of legislation that is taken against for example VAT frauds by carrousel trading. It is first by the registration that he or she who is aiming to cheat can get hold of the public treasury in the form of the tax account system (*skattekontosystemet*). Therefore, the EU Commission stated already in a green paper in 2010 that the Commission had given up the standpoint that as many enterprises as possible should be comprised by the VAT system to instead recommend restraint so that priority instead is given to registration control and questions about collection.[8]

That for instance a *missing trader*, who has falsely charged VAT in an invoice, shall account for such an amount in a special tax return and not register to VAT in the ordinary way and submit VAT returns means taken by itself that such a person cannot exercise right of deduction for input tax in a VAT return. However, it does not mean that frivolous enterprises are kept outside the VAT system itself. In many cases of VAT fraud it would not have been necessary with a tax audit but it had been sufficient with a taxation visit (Sw., *skattebesök*) for the SKV being able to establish that an entry of VAT registration to VAT was only an invention from a frivolous person.[9] The person in question would have been refused registration and could not even have had the opportunity to submit a VAT return with a claim on deduction of input tax. That should typically be more effective than the SKV afterwards register off and auditing a number of enterprises on the theme of VAT frauds, for example by

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[6] See prop. 1989/90:111 *Reformerad mervärdeskatt m.m.* (Reformed VAT etc.), pp. 87 and 88.
[7] See prop. 1989/90:111 p. 294.
[8] See section 5.4.1 *Översyn av uppbörden av mervärdesskatt* (Overview of the collection of VAT), in the EU Commission's green paper *KOM(2010) 695 slutlig* [COM(2010) 695 final] and the EU Commission's follow-up to the green paper, COM(2011) 851 final p. 6.
[9] See regarding the SKV's investigations in the form of a taxation visit (Sw., *skattebesök*), SOU 2009:58 *Skatteförfarandet* (the taxation procedure), Part 3 p. 1132.

carrousel trading, first after they have submitted VAT returns with such claims to the SKV. The EBM would not even get reports from the SKV on suspected VAT frauds by carrousel trading in the cases where an effective registration control has been made by the SKV's *gatekeeper* (Sw., *grindvakt*) having sifted the wheat from the chaff.

Thus, the Bar Association considers that an increased control of who are registered to VAT should promote a more focused selection of investigation objects. It should also promote more concentrated errands and cases on tax fraud, when the SKV reports someone to the EBM for suspicion of VAT fraud. Especially when it is a matter of *missing trader* the following statements of the Advocate General in the opinion for a judgement in the joint cases C-131/13, C-163/13 and C-164/13 are of interest for the selection question.

The Advocate General states that diverse types of goods may be used at VAT fraud by carrousel trading but that the fraudsters often prefer goods like computers or mobile phones, since they have a high unit value and are easy to transport. It is not a matter of a 'normal' supply chain but of activities organized solely to commit tax fraud. Since it is a matter of business transactions meaning like that an evasion of VAT the profit made by the fraudsters comes from the fraud itself and not from the profit margin. However, the Advocate General also states that in some cases normal undertakings are used, with or without their knowledge, and that "some traders in the supply chain may not even be aware that they are participating in a fraud and may be acting in good faith. It is only the missing trader who commits fraud per se by failing to pay the tax due to the tax authorities." The Advocate General admits that the VAT system is fairly complex and that the complete neutrality of taxation with the system constitutes benefits, whereas "the other side of the coin is that the complexity of the system makes it easier to perpetrate fraud using its own mechanisms" (see items 31–37 in the Advocate General's opinion for a judgement in the joint cases C-131/13, C-163/13 and C-164/13).

It is based on these aspects of that for the EU common VAT system and its complexity and the lack of a more precise definition of carrousel trading respectively that the Bar Association states that the question of selection of investigation objects must be made more effective by an expansion of the registration control at the SKV. If the SKV actually controls if there is an enterprise at a in the registration entry stated address the registration can be refused and cases of for example *missing trader* be discovered, before the system is sending out VAT returns and open for a person who is not carrying out a real business to be able to appropriate money from the Swedish state. Especially in cases of VAT frauds by carrousel trading a concrete criterion of selection concerning who are frivolous often is as simple as the asserted enterprise not even having a set up warehouse of its own or rented, where for example computers or mobile phones can be kept.

By a simple taxation visit from the SKV in connection with the registration should typically also tendentiously tax audits be avoided, where the investigation is not concerning an enterprise's whole assortment of products, but the focus is set from the start on for instance mobile phones. Instead of the defender having to point out such things when he or she is appearing after the SKV having carried out the tax audit and made a report to the EBM, the possibilities of giving the individual a fair trial in the tax fraud case increase by the prosecutor's deed description thereby typically becoming more concentrated which is in line with the basic principles of the trial, that is orality, immediacy and concentration. In the tax fraud case the question that shall be tried should be governed by the prosecutor's formulation of the deed description, which the legislator emphasized for cases of competing rules

regarding *evasion of tax inspection* (Sw., *försvårande av skattekontroll*) according to sec. 10 of the SBL and book-keeping crime (Sw., *bokföringsbrott*) according to Ch. 11 sec. 5 of the BrB, when evasion of tax inspection like tax fraud was altered from an effect crime (Sw., *effektbrott*) to a risk crime (Sw., *farebrott*).[10] This should in pursuance of what the Bar Association also otherwise states on the theme of fair trial also serve as a model for errands and cases on tax fraud according to sec. 2 of the SBL, i.e. that the individual is best guaranteed such a trial about what constitutes the tax question itself being comprised by a precise determination already in the proposal of a decision from the tax auditors, so that a public defender will not have to investigate and argue in these respects in relation to judges and prosecutors or tax auditors witnessing after they have investigated the individual's enterprise.

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[10] See prop. 1995/96:170 p. 137.