Indirect taxes – an introduction to the research in Sweden and the EU law

Björn Forssén

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PREFACE

Indirect taxes – an introduction to the research in Sweden and the EU law is my translation into English of my book *Indirekta skatter – en introduktion till forskningen i Sverige och EU-rätten*, which is, in accordance with the title, an introduction to my book *Indirekta skatter – forskningen i Sverige och EU-rätten* (Indirect taxes – the research in Sweden and the EU law).

Indirect taxes – the research in Sweden and the EU law contains my review of questions on applied methods for the research in Sweden regarding the field of indirect taxes, that is value-added tax (VAT), excise duties and customs, and about the position of the Swedish language in that research. That book corresponds to three of my articles during the years of 2020, 2021 and 2022 in *Tidskrift utgiven av Juridiska Föreningen i Finland* [The journal published by the Law Society of Finland (abbreviated JFT)]:

- *Momsforskningen i Sverige – metodfrågor* (The VAT research in Sweden – method questions), JFT 6/2020 pp. 716-757;
- *Momsforskningen i Sverige – svenska språkets ställning* (The VAT research in Sweden – the position of the Swedish language), JFT 6/2021 pp. 412-447; and
- *Punktskatteforskningen i Sverige – skattesubjektsfrågan* (The research on excise duties in Sweden – the tax subject question), JFT 3/2022 pp. 242-276.

Thus, these articles comprise 113 pages, and the present book is aiming at being an introduction to the mentioned questions and the book *Indirekta skatter – forskningen i Sverige och EU-rätten* (Indirect taxes – the research in Sweden and the EU law). This introduction book on the subject corresponds to four of my articles published in the authorized public accountants' periodical, *Balans*, during the years of 2021 – 2023:

- *Momsforskningen i Sverige – vart är den på väg? Del 1* (The VAT research in Sweden – where is it going? Part 1), *Balans fördjupningsbilaga* (The Periodical Balans Annex with advanced articles) 2/2021 pp. 22-28;
- *Momsforskningen i Sverige – vart är den på väg? Del 2* (The VAT research in Sweden – where is it going? Part 2), *Balans fördjupningsbilaga* (The Periodical Balans Annex with advanced articles) 2/2021 pp. 29-36;
- *Momsforskningen i Sverige – vart är den på väg? Del 3* (The VAT research in Sweden – where is it going? Part 3), *Balans fördjupning* (The Periodical Balans Annex with advanced articles) 2/2022 pp. 1-8; and
- *Indirekta skatter och forskningen i Sverige – vart borde den vara på väg? Del 4* (Indirect taxes and the research in Sweden – where should it be going? Part 4), *Balans fördjupning* (The Periodical Balans Annex with advanced articles) 2023 pp. 1-8.

In the first two articles in the JFT on the research in Sweden about indirect taxes I made an overview of the method questions and of the position of the Swedish language in the research regarding VAT. In the third article in the JFT I also bring up the research on excise duties. A main thread is that I regarding the research on VAT and excise duties consider that the tax subject question has not been sufficiently treated in most of the Swedish theses in those two fields.

In the first and the third article in the JFT I also mention customs, and point out that the question which should be treated more concerns the tax object and to establish a uniform concept goods for the indirect taxes (which in the first place consist of VAT, excise duties and customs). Regarding research on customs law should the focus be set on the tax object, since both entrepreneurs and consumers can be tax subjects, unlike with VAT and excise duty, where the main aim is to distinguish the tax subjects from the consumers, whereby the tax subjects in principle are natural or legal persons with activities constituting what is normally denoted enterprises.

In *Balans fördjupning* (The Periodical Balans Annex with advanced articles) I have made shorter reviews of the questions I am bringing up in my articles in the JFT regarding the research in Sweden during the years of 1994 – 2020 within the field of indirect taxes. The four articles in *Balans fördjupning* comprise 31 pages, and shall in the first place be seen as an introduction to my articles in the JFT regarding the research in Sweden on indirect taxes and thus also to the book *Indirekta skatter – forskningen i Sverige och EU-rätten* (Indirect taxes – the research in Sweden and the EU law): in *Balans fördjupning* Part 1 and 2 constitute the introduction to my first article in the series in the JFT, Part 3 constitutes the introduction to my second article in the series in the JFT and Part 4 ties together the whole series of my three articles in the JFT, so that I with the present introduction book and *Indirekta skatter – forskningen i Sverige och EU-rätten* (Indirect taxes – the research in Sweden and the EU law) cover the research situation in Sweden during the period of 1994 – 2020 regarding the whole of the field of indirect taxes.

This book is intended for students and researchers within the field of indirect taxes, and shall function as a guidance to avoid pitfalls in studies or research within the field and in proceedings where VAT, excise duties and customs are concerned.

Stockholm in July 2023
Björn Forssén

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The VAT research in Sweden – where is it going?
Part 1

Björn Forssén gets back in this article, of two parts, to the research on value-added tax (VAT) in Sweden. He refers to inter alia a couple of his previous articles in Balans fördjuping (The Periodical Balans Annex with advanced articles), and starts out concerning method questions from his overview in Tidskrift utgiven av Juridiska Föreningen i Finland [The journal published by the Law Society of Finland (abbreviated JFT)], where the conclusion is that the VAT research might be going in a direction where it is no longer treated as a jurisprudential subject. Then the Swedish research results within the field of VAT law cannot be expected to be useful for the legislators in the various Member States of the European Union (EU) or for other appliers of law. Björn Forssén considers that it would totally have an injurious effect on the realization of the EU project, above all in Sweden.

In Part 1 I summarize my conclusions from my article *Momsforskningen i Sverige – metodfrågor* (The VAT research in Sweden – method questions), which was published in JFT 6/2020 pp. 716-757 (cit. Forssén 2020a).[1] The overall conclusion is about the choice of method for various research efforts about the subject of VAT law in Sweden. When to choose between using a law dogmatic method, a comparative method or a law dogmatic method completed with a comparative method, it is decisive for the research result to be expected to be useful for the legislators within the various Member States, for courts and tax authorities within the EU or for other appliers of law that the researcher is aware of what is meant with VAT according to the EU law. The material rules on VAT consist of rules on obligations and rights respectively according to the common VAT system of the EU, and it is the right of deduction for input tax on acquisitions and imports to the taxable person's economic activity (the right of deduction) which in the first place is decisive in the mentioned respect.

If the researcher does not take into consideration the importance of the right of deduction for the determination of what is meant by VAT according to the EU law, such a typical lack emerges at the choice of method for the research effort that the probability for a useful research result in the mentioned respects decreases. Such a research effort can even become totally useless for the appliers of law, where the judgment of the implementation question is concerned, that is the question whether the implementation into for instance *mervärdesskattelagen (1994:200)*, ML (i.e. the Swedish VAT act), of the rules in the EU's VAT Directive (2006/112/EC) is EU conform. With respect of the importance, in pursuance of the primary law article 113 of the Treaty on the Functioning of the European Union (the Functional Treaty), on harmonisation of the legislations in the Member States regarding turnover taxes, excise duties and other forms of indirect taxation, that is inter alia regarding VAT, to secure the internal market being established and functioningnd and to avoid competition distortion, it has an injurious effect on the realization of the EU project, above all in Sweden, if the VAT research in Sweden is going in a direction where the research results will be useless for the judgment of the implemenation question. In accordance with article 288 third paragraph of the Functional Treaty, it is namely binding for each Member State to carry out (implement) directives like the VAT Directive as to the result to be ahieved with the directive.

[1] Forssén 2020a is available in full text on www.forssen.com.

Value-added is a concept not defined in the VAT Directive and neither in the ML. Instead the VAT principle according to the EU law is defined, and thereby what is meant by VAT according to the EU law, in article 1(2) of the VAT Directive: the principle of a general right of deduction is, together with the reciprocity principle and the principle of passing on the tax burden, a part of the VAT principle. Thereby, the right of deduction is not only a decisive criterion to determine what is meant by VAT according to the EU law, but also central for at all being able to make deeper reasoning on VAT according to the EU law (see Forssén 2020a, sections 2.1 and 4.6.1).

The Swedish doctor's theses and one licentiate's dissertation on the subject VAT law are so far the following:

- Björn Westberg, *Nordisk mervärdesskatterätt – behandlingen av utländska företag, varor eller tjänster inom ramen för nationella lagar* (Nordic VAT law – the treatment of foreign entrepreneurs, goods or services within the frame of national laws), Juristförlaget JF AB 1994 (cit. Westberg 1994).

- Jesper Öberg, *Mervärdesbeskattning vid obestånd Andra upplagan* (Value-added taxation at insolvency Second edition), Norstedts Juridik AB 2001 (cit. Öberg 2001).[2]

- Eleonor Alhager (nowadays Kristoffersson), *Mervärdesskatt vid omstruktureringar* (Value-added tax at reconstructions), Iustus förlag 2001 (cit. Alhager 2001).

- Oskar Henkow, Financial Activities in European VAT A Theoretical and Legal Research of the European VAT System and the Actual and Preferred Treatment of Financial Activities, Kluwer Law International 2008 (cit. Henkow 2008).[3]

- Pernilla Rendahl, Cross-Border Consumption Taxation of Digital Supplies, IBFD 2009 (cit. Rendahl 2009).[4]

- Mikaela Sonnerby, *Neutral uttagsbeskattning på mervärdesskatteområdet* (Neutral withdrawal taxation in the field of VAT), Norstedts Juridik AB 2010. (cit. Sonnerby 2010).

- Björn Forssén, *Skattskyldighet för mervärdesskatt – en analys av 4 kap. 1 § mervärdesskattelagen* (Tax liability for VAT – an analysis of Ch. 4 sec. 1 of the ML), Jure Förlag AB 2011 (licentiate's dissertation, cit. Forssén 2011).[5]

- Björn Forssén, *Skatt- och betalningsskyldighet för moms i enkla bolag och partrederier* [Tax and payment liability to VAT in (approximately) joint ventures and shipping partnerships], Örebro Studies in Law 4/2013 (cit. Forssén 2013).[6]

- Marta Papis-Almansa, Insurance in European VAT On the Current and Preferred Treatment in the Light of the New Zealand and Australian GST Systems, Lund University 2016 (cit. Papis-Almansa 2016).

[2] The thesis is from 2000. In this book I refer to the published book: Öberg 2001.
[3] The thesis s from 2007. In this book I refer to the published book: Henkow 2008.
[4] The thesis is from 2008. In this book I refer to the published book: Rendahl 2009.
[5] The thesis is available in full text in the database DiVA (www.diva-portal.org) and on www.forssen.com.
[6] The thesis is available in full text in the database DiVA (www.diva-portal.org) and on www.forssen.com.

- Mikael Ek, *Leveranser och unionsinterna förvärv i mervärdesskatterätten* (Deliveries and intra-Union acquisitions in the VAT law), Iustus Förlag AB 2019 (cit. Ek 2019).

- Giacomo Lindgren Zucchini, Composite Supplies in the Common System of VAT, Örebro Studies in Law 14/2020 (cit. Lindgren Zucchini 2020).[7]

In Forssén 2020a I divided the review of the theses into two main tracks with respect of the question of the choice of method for the study of the VAT law issue: 1) application of only a comparative method or of a law dogmatic method completed with a comparative method as support and 2) application of only a law dogmatic method.

About Westberg 1994, Öberg 2001 and Sonnerby 2010

In both of the first two theses on the subject of VAT law in Sweden, Westberg 1994 and Öberg 2001 respectively, a comparative method and a law dogmatic was used respectively. I deem Öberg 2001 to be of a less importance in the present respect, since the analysis therein is limited regarding the EU law. However, Westberg 1994 is of great importance for the VAT research. There was current law in the field of VAT in all Nordic countries reviewed, whereby also the EC law rules were regarded, despite that thesis is from April 1994 and thus from the time before the ML replaced on the 1 July, 1994 *lagen (1968:430) om mervärdeskatt* (GML) and the time before Sweden's EU-accession in 1995. The method applied for the study was the comparative, and it was emphasized that with that method the essential with the study will be the placement of the rules in their legal context. This is meaningful not least for the researcher's suggestions *de lege ferenda* to the legislator, that is about changing a certain rule in the ML based on an analysis of the nearest corresponding rule of the VAT Directive (the implementation question). The EC law in the field influenced the Swedish VAT legislation already at the introduction of the GML in 1969. Westberg 1994 should in my opinion be regarded as a basis for other Swedish research efforts in the field of VAT to be expected to give useful research results on the theme EU conformity for the legislator concerning the implementation question, regardless whether the concepts and expressions concerned are used or defined by the EU law in the field, that is in the first place by the VAT Directive (see Forssén 2020a, section 4.4). In this context, I may also mention from Sonnerby 2010 (p. 30), where the analysis of the question of a neutral withdrawal taxation in the field of VAT was made by application of a law dogmatic method, that also a comparative method was used to get a further perspective of the question on implementation of the VAT Directive into the ML, and that it thereby is stated in Sonnerby 2010 that *a comparative method is conducive to the understanding of the own legal system and to see new possibilities* (see Forssén 2020a, section 4.5.2).

From Forssén 2020a, I may, about the theses of the two main tracks etc., mention the following.

About main track 1 with Alhager 2001, Rendahl 2009, Sonnerby 2010 and Papis-Almansa 2016 and about Westberg 1994, Forssén 2011 and Forssén 2013

In the third Swedish thesis about the subject VAT, Alhager 2001, it is stated (on page 26) that it is disposed in the same way as Westberg 1994. In Alhager 2001 a comparison is made

[7] Lindgren Zucchini 2020 is available in full text in the database DiVA (www.diva-portal.org).

between Swedish law and German law regarding the implementation question. Such a comparative analysis from an internal EU-perspective for the study of that question increases in my opinion the probability for the research result to become useful for the appliers of law, since the thesis is aiming at trying precisely how the implementation of the VAT Directive's rules on reconstruction has been made in the national VAT legislations in question (see Forssén 2020a, section 4.5.2). Professor Eleonor Kristoffersson (previously Alhager)[8] was the main supervisor at my work with Forssén 2011 and Forssén 2013, and thereby Alhager 2001 served as a model for my work, precisely like Westberg 1994 served as a model for how the work with Alhager 2001. The method in Westberg 1994 was, as mentioned above, comparative, and a comparative method was also used in Rendahl 2009. In Alhager 2001 and Papis-Almansa 2016 was, like in Sonnerby 2010, a law dogmatic method completed with a comparative method applied. In Rendahl 2009 and Papis-Almansa 2016 the comparative method with only an external perspective on the EU law in the field of VAT was used.

In Forssén 2011, I reasoned about the relevance of completing the law dogmatic method with a comparative method. The international outlook and my inquiry to tax authorities and treasuries in a number of countries, which I made in that work, showed, concerning the main question on the EU conformity with the determination of the tax subject, that the connection to the non-harmonised income tax law for the determination of the tax subject in Ch. 4 sec. 1 no. 1 of the ML was unique for Sweden [see Forssén 2011 pp. 71, 72, 279-297 [*Bilaga 2 – Internationell utblick* (Appendix 2 – International outlook)] and 349 and also Forssén 2020a, section 4.3]. Therefore, I deemed that for the question on the EU conformity with that connection it was sufficient to make a law dogmatic analysis. That led to my suggestion in Forssén 2011 meaning that the concept *yrkesmässig verksamhet* (professional activity) regarding the determination of the tax subject in Ch. 4 sec. 1 no. 1 of the ML should be adapted to the concept *beskattningsbar person* (taxable person) according to article 9(1) first paragraph of the VAT Directive. By SFS 2013:368 was thereafter also a revision of the law made, so that the determination of the tax subject according to Ch. 4 sec. 1 of the ML no longer connects to Ch. 13 of *inkomstskattelagen (1999:1229)*, i.e. to the Swedish income tax act. Thereby was instead the determination of who is taxable person according to the main rule in article 9(1) first paragraph of the VAT Directive literally implemented into Ch. 4 sec. 1 first paragraph first sentence of the ML.

In Forssén 2013, I did, regarding the representative rule concerning VAT in *enkla bolag* (joint ventures) and *partrederier* (shipping partnerships), as a support to the law dogmatic method, a comparative analysis from an internal EU-perspective of the implementation question and thus with Alhager 2001 serving as a model, whereby I compared that rule in the ML with the treatment of *sammanslutningar* and *partrederier* according to *finska mervärdesskattelagen (1501/1993)*, i.e. the Finnish VAT act. Since non-legal entities are treated differently in Sweden and Finland concerning the determination of who is a tax subject for VAT purposes, I suggested in Forssén 2013 (pp. 225 and 226) that Sweden should bring up the question on EU level in consultation with Finland. In Forssén 2020a, section 4.3, I also state that I have iterated the problem and my suggestion in an article in the JFT during the year of 2019 and in a commentary to a proposition of legislation in JFT 2020.[9]

[8] Professor Eleonor Kristoffersson: professor of tax law at Örebro University (JPS) and guest professor at Linköping University.

[9] See Björn Forssén, *Om rättsliga figurer som inte utgör rättssubjekt – den finska och svenska mervärdesskattelagen i förhållande till EU-rätten* (On legal figures not constituting legal entities – the Finnish and Swedish VAT acts in relation to the EÙ law), JFT 1/2019, pp. 61–70, 69 and 70, (cit. Forssén 2019) and Björn Forssén, *Synpunkter på vissa regler i förslaget till en ny mervärdesskattelag i Sverige – SOU 2020:31*

Since the right of deduction is a decisive criterion to determine what is meant by VAT according to the EU law, and thereby also central for at all being able to make deeper reasoning on VAT in this meaning, I state in Forssén 2020a, regarding Rendahl 2009 and Papis-Almansa 2016, that only an external perspective on the EU law in the field of VAT should not be made when applying a comparative method, but some Member State ought to be included too, so that an internal perspective makes it more likely that the research result will be useful for the appliers of law concerning the implementation question. If also an external perspective shall exist, it should be carefully investigated, like I do in Appendix 2 (pp. 279-297) of Forssén 2011, whether the third country in question has VAT according to what is meant by VAT according to the EU law, whereby absence of the principle of a general right of deduction disqualifies the country in question as material for a comparative study of the implementation question. If a third country is lacking a general right of deduction in the system described as a VAT system or a system of Goods and Services Tax (GST), it is namely not a matter of VAT according to the EU law, but of some gross tax like excise duty. Otherwise, I emphasize in the present context as something very important from Rendahl 2009 that it is stated therein (pp. 50 and 51) that risks exist with comparisons with third countries due to fundamentally constitutional differences, whereby it is emphasized that it is only within the EU that freedom of movement for inter alia goods and services exists (on the internal market), which I also mention on page 282 of Forssén 2011 (see Forssén 2020a, sections 4.5.1, 4.5.2 and 5.2).

By the way, I hold Papis-Almansa 2016 before Rendahl 2009, since the GST systems of New Zealand and Australia have been chosen for the comparison in the first mentioned thesis, whereas the GST systems of Australia and Canada have been chosen in Rendahl 2009 and Canada, unlike Australia – and New Zealand – is way apart from the EU law in the field of VAT as a third country lacking a uniform VAT, that is a common VAT system for the countries various parts. That a cohesive VAT system, a uniform VAT is a law political aim with the VAT according to the EU law follows already by the VAT Directive's complete title, that is that it is a directive *on a common system of value added tax*.

About main track 2 with Henkow 2008, Ek 2019 and Lindgren Zucchini 2020 and about the other mentioned Swedish theses on the subject of VAT law

In Henkow 2008, Ek 2019 and Lindgren Zucchini 2020 a law dogmatic method is applied. I denote the methods in Henkow 2008 and Lindgren Zucchini 2020 and as purely law dogmatic, since it is stated therein that a purely technical comparison would be especially suitable for VAT and the choice of the law dogmatic method is made unconditionally. In Ek 2019 a law dogmatic method is also used, but, in opposition to Henkow 2008 and Lindgren Zucchini 2020, it is not stated as the only suitable for the study, why I do not denote the method in Ek 2019 as purely law dogmatic. In Ek 2019 can namely an awareness of that the law dogmatic method is not the only suitable for jurisprudential studies in VAT law be read out, by the law dogmatic method therein being described as *traditional* only *in the sense that a law dogmatic method or basis is not unusual in VAT law theses* (see Forssén 2020a, sections 4.6.1 and 4.6.2).

(Viewpoints on certain rules in the proposal to a new VAT Act in Sweden – SOU 2020:31), JFT 3/2020, pp. 388–399, 392 and 393 (cit. Forssén 2020b). Both Forssén 2019 and Forssén 2020b are available in full text on www.forssen.com.

In Henkow 2008 *a traditional method of jurisprudence* was applied for the analysis of financial activities in relation to the EU's common VAT system, and there it was stated, as a notorius fact, that the VAT systems which have been adopted all over the world are similar to each other, which means that a purely technical comparison would be especially suitable for VAT. Thus, I denote the method in Henkow 2008 as a purely law dogmatic method. In Lindgren Zucchini 2020 was also only a law dogmatic method ("legal dogmatics") used for the analysis of composite transactions ("composite supplies") for VAT purposes, but therein was not any such motive as in Henkow 2008 presented for the choice of the law dogmatic method. Since a comparative method to support the law dogmatic is neither used in Lindgren Zucchini 2020, and the choice of the law dogmatic method is made unconditionally, I denote also the law dogmatic method used in Lindgren Zucchini 2020 as purely law dogmatic (see Forssén 2020a, section 4.6.1).

The choice of method in Lindgren Zucchini 2020 is in line with the choice of method in Henkow 2008, but in Lindgren Zucchini 2020 it should have been noted that already Rendahl 2009 may be considered to have dismissed the motive in Henkow 2008 to choose a purely law dogmatic method. What is stated thereby in Henkow 2008 is actually not correct, that is that the VAT systems adopted all over the world would be so similar to each other that a purely technical comparison would be especially suitable for VAT. In Forssén 2020a, I reminded of what I am mentioning above from Rendahl 2009, namely that it concerning third countries exist fundamentally constitutional differences, insofar that it is only within the EU that freedom of movement inter alia for goods and services exists. The freedom of movement is fundamental for a neutral VAT to function on the EU's internal market and secure that the internal market is established and functioning. Therefore, the differences constitutionally, that is with respect of competition distortion being avoided on the internal market according to article 113 of the Functional Treaty, may not be neglected for methodological purposes. Rendahl 2009 should have been a strong incentive to complete the law dogmatic method with a comparative method in Lindgren Zucchini 2020 (see Forssén 2020a, section 4.6.1). Furthermore, I note that it in Lindgren Zucchini 2020 – without any explanation – is disregarded not only from Forssén 2011 and Forssén 2013, but also from Westberg 1994, Öberg 2001, Alhager 2001 and Sonnerby 2010. References to Swedish theses about the subject of VAT are made in Lindgren Zucchini 2020 only to Henkow 2008, Rendahl 2009, Papis-Almansa 2016 and Ek 2019. Professor Eleonor Kristoffersson was the main supervisor at the work with both my theses, at the work with Sonnerby 2010 and at the work with Lindgren Zucchini 2020.

I state that if what I describe as a purely law dogmatic method becomes a track for further application and influence of the VAT research, the risk is obvious that this entails a development of the research that in the end means that the VAT law no longer will be treated as a jurisprudential subject. With such a development the reserach in the field of VAT will become more like research within natural science – as if the VAT Directive contains something similar to a physical object that shall be discovered and analysed. Then it is no longer a matter of jurisprudential studies being carried out within the VAT law. If Henkow 2008 and Lindgren Zucchini 2020 will serve as models for the VAT research, it leads to a regressive development of the VAT research in Sweden (see Forssén 2020a, section 5.2). In Forssén 2020a (section 5.2), I also mention that I have brought up the risk of an application of a purely law dogmatic method, which thus is not completed with neither a comparative method nor empiric surveys in form of inquiries (which can seize what is not to be found in the literature in the field of tax etc.), leading the researcher into what I call the trap of mathematics (see my article *Matematikfällan i forskningen – avseende mervärdesskatterätten*,

The Trap of Mathematics in the Research – regarding the VAT law, *Tidningen Balans fördjupningsbilaga* (The Periodical Balans Annex with advanced articles) 2/2020, pp. 17–27 (cit. Forssén 2020c). To *find a legal rule within the legal rule*, and similar methodical deduction, is only expressions of law genetics, that is in the meaning of *counting with legal rules*, whereby the researcher in the subject of VAT goes into *the trap of mathematics*. Although I do not denote Ek 2019 as purely law dogmatic, it is in the present respect disquieting for the development of the VAT research in Sweden that Mikael Ek in an article in *Skattenytt* (Tax news) 1-2/2021 refers to Lindgren Zucchini 2020 as a thesis that would *contain a thorough review and analysis* of *how* composite transactions should be treated *within the frame of the VAT system*.[10]

What is especially problematic with Lindgren Zucchini 2020 is that the work has been done not only by disregarding the importance for the choice of method of the principle of a general right of deduction, but by being carried out under the premise that it would be acceptable in a thesis on the subject of VAT law to delimit the right of deduction for the study. In Lindgren Zucchini 2020 it is namely stated that the focus for the analysis of composite transactions for VAT purposes is set on output tax, whereby the right of deduction for input tax is left to future research on the subject.

The delimitation, and thereby the limitation of the subject, is made despite that it at the same time is expressed an awareness in sections 1.3 and 8.5 in Lindgren Zucchini 2020, with the headlines *Delimitations* and *Future Research Opportunities*, of the connection between the right of deduction of input tax on the acquisitions that a taxable person makes and the taxable transactions that the person is making, and for which the taxable person shall account for and pay output tax, that is for which the person in question is tax liable. To consider the right of deduction should in Lindgren Zucchini 2020 have been deemed as central regardless of the choice of method, since the principle of a general right of deduction is, as mentioned above, one of the parts of the VAT principle according to article 1(2), and the right of deduction thus is central for at all being able to make deeper reasoning on VAT according to the EU law. This should have been considered as especially important, since Lindgren Zucchini 2020 furthermore concerns an expression, composite supplies (Sw., *sammansatta transaktioner*), which neither is defined in nor used in the VAT Directive, and nor is defined in the so-called implementing regulation (EU) No 282/2011, where implementing measures for certain rules in the VAT Directive are established,[11] nor in a primary law rule. With respect of the right of deduction's decisive importance for the determination of what is meant by VAT according to the EU law, I may emphasize as especially problematic, that Lindgren Zucchini 2020 for the study of composite supplies for VAT purposes is not regarding the right of deduction (see Forssén 2020a, section 4.6.1). Therefore, as a Part 2, I will come back next, in The Periodical Balans Annex with advanced articles, to Lindgren Zucchini 2020 and lacks in that work inherent to the research effort of the subject VAT inter alia as a result of the right of deduction being totally disregarded therein. In this context, it may also be mentioned that the implementing regulation, as precisely a regulation from the EU, is directly applicable in each Member State according to article 288 second paragraph of the Functional Treaty, and thus, unlike the VAT Directive, does not need to be implemented into for instance the ML.

[10] See p. 14 in *Skattenytt* 1-2/2021 (pp. 4-17), *Förhållandet mellan användning av vara och vederlagsfritt tillhandahållande av tjänst i mervärdesskatterätten* (The relationship between the usage of goods and supply of service free of charge in the VAT law), by Mikael Ek.

[11] The implementing regulation's complete title is: Council implementing regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax.

The VAT research in Sweden – where is it going?
Part 2

In this second part, of an article series of two, Björn Forssén continues with giving his point of view on the research about value-added tax (VAT) in Sweden. He is still starting out from his overview in Tidskrift utgiven av Juridiska Föreningen i Finland [The journal published by the Law Society of Finland (abbreviated JFT)], the article Momsforskningen i Sverige – metodfrågor (The VAT research in Sweden – method questions),[12] and is emphasizing here what he deems is lacking in the VAT research, if it is carried out by disregarding the right of deduction etcetera.

By Lindgren Zucchini 2020 disregarding the right of deduction of input tax the analysis in the thesis cannot correctly concern the EU's common VAT system, since the material rules on VAT according to the EU's VAT Directive (2006/112/EC) consist of rules on obligations and rights. By delimiting questions on the right of deduction of input tax in Lindgren Zucchini 2020, it has been from the beginning impossible to make a deeper reasoning on VAT according to the EU law. The thesis cannot keep what it is promising by its title, an analysis of *Composite Supplies in the Common System of VAT*. Any problemizing is not possible regarding composite transactions for VAT purposes based on what is meant by VAT according to the EU law, that is based on the VAT Directive, which acording to its title is a directive *on a common system of value added tax* and where article 1(2) is defining the VAT principle based on three principles: an in principle general right of deduction, the reciprocity principle and the principle of passing on the tax burden. By disregarding the right of deduction can neither a chapter on theory and method be made for the purpose of problemizing questions on output tax. Then the analysis is made as if it was a matter of a gross tax, like excise duty.

Below, I come back – as mentioned in my previous article *in Balans fördjupingsbilaga* (The Periodical Balans Annex with advanced articles) – to Lindgren Zucchini 2020 and certain further aspects on that work, where the fulfillment of the demands for an acceptable academical level of a thesis is regarded, whereby I divide the comments into material rules, formal rules and source material.

Material rules

The implementation question, the right of deduction and the scope of the complex of problems

In section 1.3 about the delimitations in Lindgren Zucchini 2020 it is motivated that the implementation question is omitted by the argument that the EU's common VAT system in practice would already be realized and that a study of the implementaion of the rules of the VAT Directive into the EU Member States' national VAT legislations therefore principally give knowledge about those than about the EU's common system for VAT. This seems to be an attempt to moivate the choice of method rather than to carry out the study by recognizing recital 7 of the preamble to the VAT Directive, where it is inter alia stated, in opposition to recently mentioned section 1.3, that the tax rates and exemptions from taxation are not fully harmonised. The main supervisor of Lindgren Zucchini 2020, professor Eleonor

[12] See JFT 6/2020 pp. 716-757. Cit. Forssén 2020a (available in full text on www.forssen.com).

Kristoffersson (previously Alhager), has in effect also noted precisely this in her own thesis, Alhager 2001. In section 4.5.2 of Forssén 2020a I mention that it is staed in Alhager 2001 (p. 26) that a comparative method should complete the law dogmatic inter alia for the reason that the tax rates constitute the substantial field which remains to be harmonised.

Thus, professor Kristoffersson has in her own thesis presented a conception about the scope of the problems which nowadays are described in recital 7 of the preamble to the VAT Directive on the theme of harmonisation, but has not succeeded to convey this to Giacomo Lindgren Zucchini. In section 4.6.1 of Forssén 2020aI avsnitt 4.6.1 I note that recital 7 of the preamble to the VAT Directive is not mentioned in Lindgren Zucchini 2020. This despite that I at the opening seminar (19 October, 2015) brought up for the choice of subject in question the importance of regarding recital 7 of the preamble to the VAT Directive. Then I also pointed out the importance of thoroughly set up a chapter on theory and method, which would have made it possible to make a deeper analysis of the subject.

Thus, professor Kristoffersson and Giacomo Lindgren Zucchini have not only let themselves be guided in the choice of method in Lindgren Zucchini 2020 by the same false assumption as in Henkow 2008 about law dogmatics being the only suitable method for the analysis of VAT questions. They have also treated the complex of problems regarding composite transactions for VAT purposes as if it in a rule would exist something to dig out to be presented like such a transaction concerns the tax object as a single supply. Thereby they have also disregarded that the thesis should have contained a problemizing meaning that composite transactions for VAT purposes also can concern transactions supplied by more than one person. Despite that professor Kristoffersson was the main supervisor at the work with my theses it is not mentioned that I in Forssén 2013 have brought up a side issue concerning this. Neither has any effort been made in Lindgren Zucchini 2020 to make a stylistic description of the scope of the complex of problems. Figures for a theoretical description of what questions on composite transactions can comprise is lacking. *Composite supplies* (Sw., *sammansatta transaktioner*) is a concept not defined in or used in the VAT Directive, and it is neither defined in the so-called implementing regulation (EU) No 282/2011 or in any primary law rule. In my book *Vara och tjänst vid sammansatta transaktioner – tolkning och tillämpning enligt mervärdesskattelagen och EU:s mervärdesskattedirektiv* (Goods and services at composite supplies – interpretation and application according to the VAT Act and the EU's VAT Directive), from 2020 – self-published, I state that an analysis of composite transactions for VAT purposes should be made by an examination partly of what should be considered composite transactions, partly of what is similar to such transactions and partly of what sometimes is called composite transactions, but should not be comprised by the concept.

One of the members of the grading committee of Giacomo Lindgren Zucchini's disputation at Örebro University on 30 September, 2020, professor Robert Påhlsson,[13] has written a notification of Lindgren Zucchini 2020 in *Skattenytt* (Tax news) 12/2020 (pp. 856-859) – with the title *Ett eller flera tillhandahållanden? Anmälan av Giacomo Lindgren Zucchini,* Composite Supplies in the Common System of VAT (One or more supplies? Notification of Giacomo Lindgren Zucchini, Composite Supplies in the Common System of VAT). He seems to accept the idea from Henkow 2008 and in Lindgren Zucchini 2020 meaning that a law dogmatic method would be the only suitable for studies in the subject VAT law. Jag followed the disputation via Zoom, and noted that the opponent, professor Edoardo Traversa,[14] inter

[13] Professor Robert Påhlsson: professor at the Department of Law, School of Business, Economics and Law, University of Gothenburg.
[14] Professor Edoardo Traversa: professor at Université catholique de Louvain Louvain-la-Neuve, Belgium.

alia criticized that Lindgren Zucchini 2020 is lacking an analysis of the question of composite transactions supplied by more than one person and that the examination in the thesis in a methodological meaning only consists of a casuistic review of EU-verdicts. This was not mentioned by professor Påhlsson in his notification, but he is instead trying to motivate the absence of verdicts from *Högsta förvaltningsdomstolen*, i.e. the Supreme Administrative Court of Sweden, with the argument that *the Swedish implementation* is not mentioned due to *the purpose with the thesis being an examination of how composite supplies are treated in the VAT system according to the EU law*. Thus, professor Påhlsson has not understood professor Traversa's criticism and the scope of the complex of problems on composite transactions for VAT purposes, which is considerable since it is an undefined concept. That the case-law of the Court of Justice of the EU (CJEU) would be sufficient to give the complex of problems a serious analysis is a far too narrow perspective. Professor Traversa presented further criticism, which inter alia consisted of Lindgren Zucchini 2020 lacking reasoning on abusive practice. Regarding the question on the importance of the right of deduction to examine composite transactions for VAT purposes, professor Påhlsson expressed by the way in his notification of Lindgren Zucchini 2020 – and without any other commentary thereby – only that the *right of deduction is neither comprised by the thesis*.

Lindgren Zucchini 2020 is written in English, and an observant reader notes that the expression *joint ventures* is lacking therein, that is a consideration is lacking of the important example of problems regarding composite transactions supplied by more than one person who are not constituting a legal entity together. Concering joint ventures (Sw., cp. *enkla bolag*) can guidance instead be found in Forssén 2013 with regard of the above-mentioned side issue therein. With that question I opened up for further research on composite transactions, by it concerning a problem regarding both the tax subject and the tax object, about artistic work carried out under the enterprise form *enkelt bolag* (pl. enkla bolag).[15] Compare *enkla bolag* with *joint ventures*, which expression I use in the title of my translation into English of Forssén 2013: *Tax and payment liability to VAT in joint ventures and shipping partnerships*.

That professor Påhlsson does not realize that the analysis of composite transactions for VAT purposes has been made a mere introvert study in Lindgren Zucchini 2020 is clearly demonstrated by his notification, by him emphasizing the example in the beginning of the thesis with an arrangement of a film festival as especially interesting to describe the problems with composite transactions. There the question is whether the determination of applicable VAT rate for the film, a meal and a glass of wine means that a transaction and a VAT rate shall be determined or if it exists three different transaction for which various VAT rates may apply. The question that should have been put is also the one I am raising by the side issue in Forssén 2013, namely what applies concerning the actual film making and the questions whether exemption from taxation applies or what or which VAT rates apply, if the film is created by two or more persons. Lindgren Zucchini 2020 does not get there, by Giacomo Lindgren Zucchini delimiting such cases from the study, to instead treating the complex of problems as if a composite transaction concerns the tax object as one single supply. It is first by the delimited question that civil law in the form of intellectual property law comes into the context, which professor Traversa also wanted.

[15] See Forssén 2013, sections 1.1.2, 2.8, 6.5, 6.6 and 7.1.3.6.

Legal semiotics, certain law political aims, language questions and abusive practice

By the way, I went further with the side issue in Forssén 2013, and have emphasized that there is not only a need of clarifying whether non-legal entities, like *enkla bolag* (joint ventures) and *partrederier* (shipping partnerships) in Sweden and *sammanslutningar* and *partrederier* in Finland, are comprised by the main rule in article 9(1) first paragraph o the VAT Directive on who is a taxable person, which I have iterated,[16] and especially come back to below. In my article *Juridisk semiotik och tecken på skattebrott i den artistiska miljön* (Legal semiotics and signs of tax fraud in the artistic environment), JFT 5/2018, pp. 307–328 (cit. Forssén 2018), I have also pointed out *the importance of completing a law dogmatic study of composite transaction in the field of VAT with an analyis based on legal semiotics*.[17]

No identification or review of law political aims is made in Lindgren Zucchini 2020. A cohesive VAT system, a uniform VAT is a law political aim with the VAT according to the EU law that should have been mentioned in the thesis. I may also mention two more examples of important law political aims in that respect which are missing in the thesis: an efficient collection of VAT and the principle of a neutral VAT, which I somewhat mention below.

Professor Påhlsson states in his notification of Lindgren Zucchini 2020 that *the strictly union law perspective* motivates that the thesis is written in English. I disagree about it. Instead, the circumstance that English is the only language used in the thesis means that the possibility of a deeper interpretation of the EU-cases has been limited. In that respect I may exemplify with the EU-case C-216/97 (Gregg),[18] which I also mention in section 3.5 in Forssén 2020a on the theme of efficient collection. Since no identification or review of law political aims is made in Lindgren Zucchini 2020, any reasoning about an efficient collection as a law political aim with the VAT Directive is also totally lacking therein. In Forssén 2011 (p. 93) I referred to the ”Gregg”-case as an example of that French ought to be regarded for exactness when interpreting EU-cases. I referred thereby in Forssén 2011 (p. 69) to professor Ulf Bernitz and Leo Mulders.[19] English is, also after the Brexit, like for instance Swedish and French one of the official languages within the EU. In the EU-case C-216/97 (Gregg) the language of the case was actually English, but it was, as I mention in Forssén 2011 (p. 93) and come back to in Forssén 2013 (p. 72) and in Forssén 2020a (section 3.5), French that showed that the CJEU emphasizes the collection of VAT, that is the more general meaning of the principle of neutrality and not limited to the specific meaning of charging of VAT that follows by the English language version of the verdict. This proves in my opinion the risk of over-emphasizing the importance of English for a thesis about the subject of VAT, like what has been done in Lindgren Zucchini 2020. I used at the interpretation of the ”Gregg”-case the recommendation from Leo Mulders in the mentioned work (p. 58) concerning the use of language for exactness when interpreting EU-verdicts, that is I interpreted and accounted for (on the pages 92-94 in Forssén 2011) item 20, which was decisive for the question in the case, in my own language Swedish, in the language of the case English, and in French. Then I

[16] See Forssén 2013, sections 7.1.3.2 and 7.1.3.6 and also Forssén 2019 pp. 69 and 70 and Forssén 2020b pp. 393 and 394. The titles of Forssén 2019 och Forssén 2020b: see Part 1.
[17] See Forssén 2018 p. 320.
[18] EU-case C-216/97(Gregg), ECLI:EU:C:1999:390.
[19] See pp. 78 and 84 in Ulf Bernitz, *Kapitlet EUROPARÄTTEN* (the Chapter European Law), pp. 59–89, in *Finna rätt Juristens källmaterial och arbetsmetoder (elfte upplagan)*, Finding law The lawyer’s source material and work methods (eleventh edition), by Ulf Bernitz – Lars Heuman – Madeleine Leijonhufvud – Peter Seipel – Wiweka Warnling-Nerep – Hans-Heinrich Vogel, Norstedts Juridik 2010 and pp. 47 and 58 in Leo Mulders, the Chapter Translation at the Court of Justice of the European Communities in The Coherence of EU Law, by Sacha Prechal and Bert van Roermund, Bert (editors, Oxford University Press, Oxford 2008 (reprinted 2010).

could make the judgment that the question of the collection of VAT should be set before the question of the charging of VAT, when it is a matter of upholding the principle of a neutral VAT according to the EU law. Lindgren Zucchini 2020 is a Swedish thesis about VAT, and it is a great lack that it does not contain any reading on the Swedish language. The thesis is completely dominated by English – French or any other foreign language for that matter is neither used therein. There is a warning from Leo Mulders on the recently mentioned page for the risk of only using one language at ”close reading” of EU-verdicts, which I consider is also proven by my example.

The importance of making in the Swedish VAT research interpretations of unclear concepts in verdicts or orders from the CJEU also with regard of Swedish, French and, if possible, other official languages in the EU than English is also shown by Lindgren Zucchini 2020 beginning in section 1.1, with the headline *Background*, with an interpretation of two EU-cases according to footnote 1 therein,[20] and that the result of the interpretaion of those meaning that the analysis of composite transactions for VAT purposes thereafter is made by deduction and a casuistic review only in the English language of EU-cases. Any induction that would develop the knowledge of the subect is thereby not achieved in Lindgren Zucchini 2020. In section 3.4.4 in the thesis, with the headline *The Directionality of, and Participants in, a Single Supply*, it is stated that it would only exist as an exception that *a composite supply* – a composite transaction – also comprises that a consideration is corresponded by some efforts in return from various persons, and not only a supply from one person. Giacomo Lindgren Zucchini interprets the two EU-cases so that ”a composite supply” shall be deemed considering the tax object as ”a single supply”, one single transaction. He states that a definition can be interpreted of what is a composite transaction meaning that ”A composite supply is a single supply that consists of various distinguishable parts that are combined to form a cohesive unit assessed as such for VAT purposes, even though at least some of those parts might constitute their own single supplies in other circumstances.” Based on that definition of ”composite supplies” are in section 1.2, with the headline *Aim and Research Questions*, by deduction, five questions drawn up for the study of the concept, but law political aims with the EU law in the field are never identified for the analysis in Lindgren Zucchini 2020.

I consider that the two EU-cases are not giving any support to formulate the definition mentioned of what is meant with a composite transaction – *a composite supply* – for VAT purposes, and that problems regarding composite transactions consisting of efforts by more than one person could be delimited as exceptional cases. In that in footnote 1 in section 1.1 of the thesis referred item 27 in the case C-208/15, where the language of the case by the way is Hungarian, the CJEU is only giving two examples of which situations constitute *a single supply*. A reading of that item in the verdict’s English, French and Swedish language versions, does not show that the expression only in exceptional cases would comprise that a consideration is corresponded by efforts from various persons. By the way, it is stated in that section, that it, at supplies made by more than one person, would be unclear to what extent those must be taxable persons, for such a supply to be taxable. The question is however incomplete put. In the first place that problem concerns whether legal figures which are not constituting legal entities are comprised by the main rule on who is a taxable person according to article 9(1) first paragraph of the VAT Directive. I have shown already in Forssén 2013 that the implementation of the directive rule is made in different ways in the national VAT legislations in Sweden and Finland respectively, where non-legal entities are concerned,

[20] The CJEU’s verdict in the case C-208/15 (Stock ‘94), ECLI:EU:C:2016:936, and the CJEU’s *order* in the case C-117/11 (Purple Parking and Airparks Services), ECLI:EU:C:2012:29.

which of course can consist of constellations where not only taxable persons are included, but also ordinary private persons can be included together with them. See more about this in Forssén 2013, inter alia in sections 7.1.3.2, 7.1.3.3 and 7.2 therein.

In the other EU-case invoked in footnote 1 in section 1.1 of the thesis, C-117/11, where the language of the case is English, it is only stated, in that in the footnote referred item 39 in the CJEU's *order*, that it follows by the CJEU's case-law that the treatment of several services as "a single supply" with necessity entails that the treatment for tax purposes becomes different compared to the one that the services would have been given if they had been supplied separately, whereby the CJEU also states that a complex supply of services consisting of several parts not automatically resembles separate supplies of those parts. Thus, that aim is neither showing that it would only exist as an exception that the expression *a composite supply* also comprises that a consideration is corresponded by efforts from more than one person.

By his interpretation of the two mentioned EU-cases, Giacomo Lindgren Zucchini has taken the introvert approach to delimit such cases that I am describing above with the example of a film work which is created by more than one person. By treating the complex of problems as if a composite transaction concerns the tax object as one single transaction, whereby problems regarding composite transactions supplied by more than one person would be possible to disregard, the thesis does not reach so far. Since such cases are likely to be very extensive, and should have led to an empirical examination thereby, I deem that Giacomo Lindgren Zucchini has limited his study in an unacceptable way, by treating them as exceptional situations. He should have made the study of the present subject, which is hard to determine, unbiassed by an examination partly of what should be considered composite transactions, partly of what is similar to such transactions and partly of what sometimes is called composite transactions, but should not be comprised by the concept.

An efficient collection of VAT is counteracted by abusive practice and pure fraud – tax fraud – in the field of VAT. Professor Traversa's criticism regarding questions on abusive practice not being mentioned in Lindgren Zucchini 2020 is of a particular importance precisely for questions about an effective collection of VAT.

In my article *Konkurrensfördelar med varuomsättningar efter momsfria omsättningar av varor i vissa lager och av finansiella tjänster* (Competition advantages with supplies of goods after VAT free supplies of goods in certain warehouses and of financial services), in *Balans fördjupingsbilaga* (The Periodical Balans Annex with advanced articles) 1/2018 pp. 3-10, I show how special rules in the VAT Directive on goods in certain warehouses can be used to reduce the taxable amount compared with according to the general rules after acquisitions of goods which have been placed in such warehouses, if a set-off has been made during the time the goods were placed there of transactions regarding the acquisition which can be denoted as composite and which are comprised by exemption from taxation accoding to the special rules. I state that repeated suchlike transactions can be disqualified as cases of abusive practice. Of a particular interest is then how private law options are treated. I had expected that those would be treated in Henkow 2008 based on the exemption from taxation of financial services in article 135(1) b-f of the VAT Directive, but this never happened.

After Henkow 2008 came during the year of 2011 the so-called implementing regulation (EU) No 282/2011 with rules laying down implementing measures for certain rules in the VAT Directive, like chapter IV on taxable transactions in the form of supply of services according

to articles 24-29 of the directive, where article 9 of the implementing regulation means that the sale of an option constitutes a supply of a service according to the main rule in article 24 of the directive, if the sale is a transaction within the scope of application for article 135(1) f of the directive. Such a supply of services is considered as separate from the underlying transactions to which the services are pertaining. This should have been mentioned in Lindgren Zucchini 2020, but there is no interpretation made of the VAT Directive in relation to the implementing regulation, but it is only stated (on page 35) that the implementing regulation exists.

Regarding the principle of a neutral VAT as a law political aim with the VAT ccording to the EU law, I may also mention that I in section 3.3 in Forssén 2020a is stating that it in recital 7 of the preamble to the VAT Directive is mentioned that the tax rates and the exemptions from taxation are not fully harmonised, but that the principle of a neutral VAT yet applies so that similar goods and services are burdened with an equally large taxation within each Member State's territory. This also proves that it is not only precarious with regard of the choice of method that Lindgren Zucchini 2020 does not contain any reference to Sonnerby 2010, since the analysis there concerned precisely the principle of a neutral VAT and that principle is considered following by inter alia article 1(2) of the VAT Directive by the parts of the VAT priciple, which is expressing what is meant with VAT according to the EU law.

Formal rules

Lindgren Zucchini 2020 does not contain anything about the formal rules of the VAT Directive. Since the right of deduction, with the main rule thereof in article 168 a), is not mentioned in a material sense, the reader of the thesis may also assume that it also explains why the formal rules in the articles 178 a) and 226 of the VAT Directive are lacking, that is about the exercise of right of deduction – article 178 a) – and the importance thereby of the taxable person receiving an invoice fulfilling the demand of content of an invoice according to article 226. There are no explanations in section 1.3 about the delimitations in Lindgren Zucchini 2020 as to why the formal rules of the VAT Directive are left out. Although the right of deduction has been disregard in the material and formal meaning, it was possible to problemize the directive's obligation side starting from its formal rules, by mentioning the articles 220 and 226 about a taxable person's obligation to secure that an invoice is issued which fulfills the main rule on the content of an invoice regading a taxable transaction and certain exempted tansactions and article 213 about the liability for a taxable person to register for VAT. Such a problemizing of the directive's obligation side would have made the thesis useful for the appliers of law at least in these respects.

Source material

The only Swedish theses on the subject VAT which are mentioned in Lindgren Zucchini 2020 are, as mentioned in Part 1, Henkow 2008, Rendahl 2009, Papis-Almansa 2016 and Ek 2019. That is only 4 of 10 of the Swedish theses on the subject preceding Lindgren Zucchini 2020, why it is not only the usefulness of the research result that is lacking in the thesis, but also that completeness is lacking which is amongst the criteria that always should apply for jurisprudential theses in Sweden. Already a review of the list of references, which is named *References* in Lindgren Zucchini 2020 and to be found on the pages 259-278 therein, shows there are lacks in the source material, and I stay here by mentioning something about public printing in that respect.

The question is why public printing as well in Sweden as in any other Member State is totally lacking in the source material of Lindgren Zucchini 2020. Regarding Swedish public printing, I am missing that about the EU law in the field of VAT so informative SOU 2002:74, *Mervärdesskatt i ett EG-rättsligt perspektiv* (Value added tax in an EC law perspective) and also for example SOU 1989:35, *Reformerad mervärdeskatt m.m.* (Reformed value added tax etc.), and SOU 2006:90, *På väg mot en enhetlig mervärdesskatt* (On the way towards a uniform value added tax). Especially with respect of recital 7 of the preamble to the VAT Directive, as I mention above, not being mentioned in Lindgren Zucchini 2020, I may state that both the latterly mentioned of the Government's official reports should have induced Giacomo Lindgren Zucchini to do so in his thesis. SOU 1989:35, which meant a closer association of *lagen (1968:430) om mervärdeskatt* (GML) to the EC's Sixth VAT Directive (77/388/EEC), that is to the most important of the directives preceding the VAT Directive, led to alterations in the GML by SFS 1990:576, inter alia meaning that a uniform VAT rate applied in Sweden during the year of 1991. Thereafter were reduced VAT rates gradually introduced again beside the general one, but the question of an reintroduction of a uniform VAT rate was brought up again in SOU 2006:90, which however has not led to legislation. Since the problem of harmonising the VAT rates – and the exemptions – remains to be resolved in the EU's common VAT system according to recital 7 of the preamble of the VAT Directive, which I also mention above, should SOU 1989:35 and SOU 2006:90 have been mentioned in the thesis.

SOU 2002:74 should also have been mentioned in the thesis. The report concerned the terminology of *mervärdesskattelagen (1994:200)*, ML compared with the EC's Sixth VAT Directive. To resolve the problem with obscurities in the Swedish translation of the directive's text or when the terms differ from what has been used in other language versions the report weighs them together (cp. page 49 in SOU 2002:74 Part 1), and then using the directive's term in Swedish, English and French. On the pages 51-53 in SOU 2002:74 Part 1 there is a table over the fundamental terms in those languages in the directive. I had use of SOU 2002:74 in the work with my theses, and may especially emphasize that the report regards French to resolve the mentioned problem with the terminology. The report SOU 2002:74 constitutes another evidence of the precarious with only using English in Lindgren Zucchini 2020.

Giacomo Lindgren Zucchini has gone into what I in The Periodical Balans Annex with advanced articles has called the trap of mathematics for the (see in Part 1: Forssén 2020c), when he is making the analysis of composite transactions for VAT purposes based on questions set up by deduction of his definition of the expression *a composite supply* – a composite transaction – in the beginning of Lindgren Zucchini 2020, and only on a casuistic review of EU-vedicts. He should have made the analysis based on a considerably broader source material and unbiassed, by an examination partly of what should be considered composite transactions, partly of what is similar to such transactions and partly of what sometimes is called composite transactions, but should not be comprised by the concept. A study giving new knowledge of the subject shall in that way be able to lead to inductive conclusions.

The VAT research in Sweden – where is it going?
Part 3

In a series of two articles in Balans fördjupingsbilaga (The Periodical Balans Annex with advanced articles) during the year of 2021 Björn Forssén has presented his view of the research on value-added tax in Sweden. In this article he develops his reasoning about that the VAT research in Sweden might be heading for no longer being treated as a jurisprudential subject and what consequences that entails and sets his focus on the position of the language within the research.

In *Balans Fördjupningsbilaga 2/2021* I have, in a series of two articles with the title *Momsforskningen i Sverige – vart är den på väg?* (The VAT research in Sweden – where is it going?), gone through method questions in that research, where Part 1 is to be found on pp. 22-28 (cit. Forssén 2021a) and Part 2 on pp. 29-36 (cit. Forssén 2021b). The two articles are based on my overview in a longer article in *Tidskrift utgiven av Juridiska Föreningen i Finland* [The journal published by the Law Society of Finland (abbreviated JFT)] 6/2020 (pp. 716-757). In that article, *Momsforskningen i Sverige – metodfrågor* (The VAT research in Sweden – method questions), cit. Forssén 2020, is my overall conclusion that the VAT research can be heading for no longer being treated as a jurisprudential subject. It is a matter of breaking that development of the research on the subject VAT law. Otherwise, the Swedish research results within the VAT law will not be useful for the legislators within the various EU Member States, for courts and tax authorities within the EU or for other appliers of law. It will altogether have an injurious effect on the realization of the EU project, above all in Sweden.

I followed up Forssén 2020 with an article in the JFT on the position of the Swedish language in relation to the English language in the VAT research in Sweden. That article by me, *Momsforskningen i Sverige – svenska språkets ställning* (The VAT research in Sweden – the position of the Swedish language), was published in JFT 6/2021 pp. 412-447 (cit. Forssén 2021c). With the present article I am building out my series of articles in *Balans fördjupning* (The Periodical Balans Annex with advanced articles) with a Part 3 regarding the question on where the VAT research in Sweden is going, by summarizing my conclusions from Forssén 2021c about the position of the Swedish language compared with English in the VAT research in Sweden, and how this relates to the method questions.

The languages in a European law perspective

In Forssén 2021c I have followed up my viewpoints regarding various choices of method in the theses on the subject VAT law in Sweden by presenting the perception I then also formed regarding the over-emphasizing of the English language which is made partly about the theses tendency to be written in English rather than in Swedish, partly regarding that other official languages within the EU also being pushed aside by the English in the research.

French, Italian, Netherlands and German became EU-languages – EEC-languages – when the EEC was established in 1958. The number of official languages have been enlarged when the EU has got new members, so that the EU now has 24 official languages. All residents or citizens of the EU have the right to choose in which language they want to communicate with the EU's institutions, which must answer in the same language. Among the 24 official

languages are also Danish, English, Finnish and Swedish included. Danish and English became official languages within the EEC in 1973, when Denmark, the United and Ireland joined thereto, and Finnish and Swedish became official EU-languages in 1995, when Finland and Sweden accessed to the EU. By the United Kingdom's exit from the EU on 31 January, 2020, with a transitional period ending by turn of the year 2020/2021, the number of Member States of the EU has decreased from 28 to today's 27. English is however also thereafter an official EU-language, by English being an official language in the Member States Ireland and Malta.

The EU's legislations comprise in certain cases the whole of the EEA (European Economic Area), that is not only the EU's Member States, but also the other countries included in the EEA, three of the EFTA-countries: Norway, Iceland and Liechtenstein. In this broader European law perspective should not only Sweden, Finland and Denmark be interested of Swedish and Danish being promoted as official languages within the EU, since Swedish and Danish are included in the group of Scandinavian languages, whereto also Norwegian, Icelandic and Faeroese belong. Thereby should the Nordic Council act for the Finnish also being strengthened as an official EU-language.

The division of the VAT research in Sweden into two methodological main tracks

In Forssén 2020 I wrote, as mentioned above, about the VAT research in Sweden regarding the method questions, whereby I reviewed eleven theses from 1994 to 2020 (see Forssén 2020 pp. 732 and 733). I divided into two main tracks, namely:

- application of a comparaive method or a law dogmatic method completed with a comparative method (Main track 1); and

- application of only a law dogmatic method (Main track 2).[21]

Tendencies for a positive or a negative research result depending on the choice of method

Regarding the importance of the choice of method for a research result that will be useful for the legislators and the appliers of law within the EU, concerning a successful implementation of the EU law in the field of VAT and in the first place of the EU's VAT Directive (2006/112/EC), I mention in section 2.2 in Forssén 2021c that I in Forssén 2020 concluded that the following tendencies exist for the implementation question:

- Concerning Main track 1 the tendency is positive for the implementation question regarding expected research result, when a comparative method with an internal perspective on the EU law in the field of VAT is applied, that is when the comparison concerns VAT legislations in various EU Member States. That tendency is also positive, when a law dogmatic method completed with a comparative method is used, whereas the tendency is negative, when the EU's legislation in the field of VAT is

[21] In Forssén 2020, I missed one doctor's thesis in Sweden regarding VAT: Mariya Senyk, Territorial Allocation of VAT in the European Union: Alternative approaches towards VAT allocation and their application in the internal market, Department of Business Law, School of Economics and Management, Lund University 2018 (cit. Senyk 2018). Thus, the number of theses on the subject VAT law in Sweden was twelve.in 2020. I refer Senyk 2018 to Main track 2 (see Forssén 2021c, section 2.1).

viewed in an external perspective, by only being compared with third countries that have VAT-systems or GST-systems.

- Concerning Main track 2 the tendency is negative for the implementation question regarding expected research result, when only a law dogmatic method that is or is not what I call a purely law dogmatic method is used.

Positive or negative tendencies for the research result regarding the implementation question at different choices of method and information on choice of language in the theses

In section 2.3 in Forssén 2021c I come back to which theses have been written yet on the subject of VAT law in Sweden, and whether they have been written in the Swedish language or in the English language. In my opinion the attitude by the universities (Sw., *universitet* and *högskolor*) seem to be that what is lacking regarding method shall be considered compensated by the thesis being written in the English language. Thus, I state my view on whether the choice of method in the present theses can be expected to lead to positive or negative tendencies for the research result regarding the implementation question, which I mark with ”Positive tendency” and ”Negative tendency” respectively in footnotes to the division below of the theses into the two main tracks concerning the choice of method, and states in the footnote for each theis also if it has been written in Swedish or English:

Main track 1

- Björn Westberg, *Nordisk mervärdesskatterätt – behandlingen av utländska företag, varor eller tjänster inom ramen för nationella lagar* (Nordic VAT law – the treatment of foreign entrepreneurs, goods or services within the frame of national laws), Juristförlaget JF AB 1994 (cit. Westberg 1994).[22]

- Eleonor Alhager (nowadays Kristoffersson), *Mervärdesskatt vid omstruktureringar* (Value-added tax at reconstructions), Iustus förlag 2001 (cit. Alhager 2001).[23]

- Pernilla Rendahl, Cross-Border Consumption Taxation of Digital Supplies, IBFD, Amsterdam 2009 (cit. Rendahl 2009).[24]

- Mikaela Sonnerby, *Neutral uttagsbeskattning på mervärdesskatteområdet* (Neutral withdrawal taxation in the field of VAT), Norstedts Juridik AB 2010. (cit. Sonnerby 2010).[25]

- Björn Forssén, *Skattskyldighet för mervärdesskatt – en analys av 4 kap. 1 § mervärdesskattelagen* (Tax liability for VAT – an analysis of Ch. 4 sec. 1 of the ML),

[22] Applied method: a *comparative method* is used. ”Positive tendency”. The thesis is written in Swedish and was submitted at the Stockholm University, Faculty of Law.
[23] Applied method: a *law dogmatic method completed with a comparative method* is used. ”Positive tendency”. The thesis is written in Swedish and submitted at Jönköping International Business School, Department of Law.
[24] Applied method: a *comparative method* is used, but the EU’s legislation in the field of VAT is given an external perspective, by only being compared with third countries. ”Negative tendency”. The thesis is written in English and was submitted at Jönköping International Business School, Department of Law. The thesis is from 2008. I refer to the published book: Rendahl 2009.
[25] Applied method: a *law dogmatic method completed with a comparative method* is used. ”Positive tendency”. The thesis is written in Swedish and was submitted at Uppsala University, Department of Law.

Jure Förlag AB 2011 (licentiate's dissertation), cit. Forssén 2011, and *Skatt- och betalningsskyldighet för moms i enkla bolag och partrederier* [Tax and payment liability to VAT in (approximately) joint ventures and shipping partnerships], Örebro Studies in Law 4/2013 (doctor's thesis), cit. Forssén 2013.[26]

- Marta Papis-Almansa, Insurance in European VAT On the Current and Preferred Treatment in the Light of the New Zealand and Australian GST Systems, Lund University, Lund 2016 (cit. Papis-Almansa 2016).[27]

Main track 2

- Jesper Öberg, *Mervärdesbeskattning vid obestånd Andra upplagan* (Value-added taxation at insolvency Second edition), Norstedts Juridik AB 2001 (cit. Öberg 2001).[28]

- Oskar Henkow (deceased), Financial Activities in European VAT A Theoretical and Legal Research of the European VAT System and the Actual and Preferred Treatment of Financial Activities, Kluwer Law International 2008 (cit. Henkow 2008)..[29]

- (Senyk 2018) Mariya Senyk, Territorial Allocation of VAT in the European Union: Alternative approaches towards VAT allocation and their application in the internal market, Department of Business Law, School of Economics and Management, Lund University 2018.[30]

- Mikael Ek, *Leveranser och unionsinterna förvärv i mervärdesskatterätten* (Deliveries and intra-Union acquisitions in the VAT law), Iustus Förlag AB 2019 (cit. Ek 2019).[31]

- Giacomo Lindgren Zucchini, Composite Supplies in the Common System of VAT. Örebro Studies in Law 14/2020 (cit. Lindgren Zucchini 2020).[32]

The question whether the choice to write certain Swedish theses in English instead of in Swedish is used to compensate for lacks in the choice of method

The implementation question is about identifying and resolving a rule competition

[26] Applied method: a *law dogmatic method completed with a comparative method* is used. "Positive tendency". The theses are written in Swedish and were submitted at Örebro University, School of Law, Psychology and Social work.
[27] Applied method: a *law dogmatic method completed with a comparative method* is used. "Negative tendency". The thesis is written in English and was submitted at Lund University, Department of Business Law, School of Economics and Management.
[28] Applied method: a *law dogmatic method* is used. "Negative tendency". The thesis is written in Swedish and was submitted at Stockholm University, Department of Law. The thesis is from 2000. I refer to the published book: Öberg 2001
[29] Applied method: I denote it a *purely law dogmatic method*. "Negative tendency". The thesis is written in English and was submitted at Lund University, Department of Business Law. The thesis s from 2007. I refer to the published book: Henkow 2008.
[30] Applied method: a *law dogmatic method* is used. "Negative tendency". The thesis is written in English and was submitted at Lund University, Department of Business Law.
[31] Applied method: a *law dogmatic method* is used. "Negative tendency". The thesis is written in Swedish and was submitted at Uppsala University, Department of Law.
[32] Applied method: I denote it a *purely law dogmatic method*. "Negative tendency". The thesis is written in English and was submitted at Örebro University, School of Law, Psychology and Social work.

between the national VAT legislation and the VAT Directive. In sections 2.5.1-2.5.4.2 in Forssén 2021c I make in overview a commentary of my perception of the tendencies in the present theses for the research result regarding the implementation question at various choices of method according to the two main tracks. Thereby I set the language question in relation to the choice of method. Thus, I describe how the over-emphasizing of the English language which I deem exists in the VAT research in Sweden means that the theses tend to be written in English rather than in Swedish and that other official language in the EU also are pushed aside by the English language. For my overview of my review of the implementation question the mentioned issue raises the question whether the choice of the English language instead of Swedish when writing some of the theses so far in Sweden about the subject of VAT law – consciously or not consciously – have been used to compensate lacks in the choice of method (see Forssén 2021c, section 2.4).

Conclusions from the review of the theses according to the two main tracks regarding applied method and the language question

In section 2.6 in Forssén 2021c I conclude that the review in sections 2.5.1–2.5.4.2 of the choice between the Swedish language and the English language for the writing of the theses in relation to a ”positive tendency” or a ”negative tendency” for the research result at various choice of method supports my conception that English is used – consciously or not consciously – in the VAT research in Sweden to compensate a research result that could be negative for the implementation question due to the choice of method. This is having an injurious effect on the realization of the EU-project in Sweden, since the approach in the VAT research in Sweden entails that the research result will not be useful for the legislators and the appliers of law within the EU, where the question of a successful implementation of the EU law in the field of VAT and in the first place of the EU’s VAT Directive is concerned. The relationship also gives negative repercussions in relation to other Member States.

Below I express from my conclusions the two tables where I give a schematic account for the two methodological main tracks in relation to whether the thesis is written in Swedish or in English, and if a ”positive tendency” or a ”negative tendency” can be deemed to exist for the expected research result regarding the implementation question.

Table – Main track 1

Thesis	**Method**	**Tendency**	**Language**
Westberg 1994	Comparative	Positive	Swedish
Alhager 2001	Law dogmatic completed with comparative	Positive	Swedish
Rendahl 2009	Comparative	Negative	English
Sonnerby 2010	Law dogmatic completed with comparative	Positive	Swedish
Forssén 2011	Law dogmatic completed with comparative	Positive	Swedish
Forssén 2013	Law dogmatic completed with comparative	Positive	Swedish
Papis-Almansa 2016	Law dogmatic completed with comparative	Negative	English

Table – Main track 2

Thesis	Method	Tendency	Language
Öberg 2001	Customary law dogmatic*	Negative	Swedish
Henkow 2008	Purely law dogmatic**	Negative	English
Senyk 2018	Customary law dogmatic*	Negative	English
Ek 2019	Customary law dogmatic*	Negative	Swedish
Lindgren Zucchini 2020	Purely law dogmatic**	Negative	English

*[In Öberg 2001 it is stated that a customary law dogmatic method is used, and in Senyk 2018 and Ek 2019 I read out that applied law dogmatic method also is to be understood as a – in the tax law research in Sweden – customary one.]
**[I used the term purely law dogmatic method for the first time in Forssén 2020.]

In *Main track 1* all theses written in Swedish show a ”positive tendency”, and the method in those cases is comparative or law dogmatic completed with a comparative method. Rendahl 2009 is written in English and the method is comparative, but the shows a ”negative tendency” due to it lacking an internal perspective on the EU law in the field of VAT regarding the comparative analysis, unlike the theses written in Swedish. In Papis-Almansa 2016 that is written in English the method is law dogmatic completed with a comparative method, but it is also showing a ”negative tendency” where the probability of the research result becoming useful for the legislators and the appliers of law within the EU regarding the implementation question is concerned. I base that on the EU’s legislation in the filed of VAT being given an external – and not an internal – perspective also in Papis-Almansa 2016 regarding the comparative component of the method used. Papis-Almansa 2016 should not have been limited to solely regard the theses in Sweden written in English at the time, that is Henkow 2008 and Rendahl 2009. Any approach using more than one official language within the EU, for clarification when interpreting unclear EU-verdicts, is neither used in Rendahl 2009 or Papis-Almansa 2016, and I denote the openness to other languages than English in both the theses as weak. Thus, I deem the language question in connection with the theses of Main track 1 so that the English language is used in the VAT research in Sweden – consciously or not consciously – to compensate a research result that can be expected to become negative for the implementation question due to lacks at the choice of method.

In *Main track 2* it is also obvious regarding the language issue that English is used – consciously or not consciously – to compensate a probable negative research result for the implementation question due to lacks at the choice of method. Concerning the customary law dogmatic theses are Öberg 2001 and Ek 2019 written in Swedish, whereas Senyk 2018 is written in English. I have marked ”negative tendency” for the usefulness of the research result of those, but Öberg 2001 in Swedish and Senyk 2018 in English cancel each other out regarding the language issue. The choice of a law dogmatic method without any completing comparative analysis in Öberg 2001 seems to be based on a misdirected conception therein of the EU law’s importance for the subject, and the implementation question is not mentioned in Senyk 2018, but the VAT is mentioned more in a perspective of economics therein. Although

Senyk 2018 brings up questions on the placement of supply where deliveries and intra-Union acquisitions are concerned, it is namely in Ek 2019 that deliveries and intra-Union acquisitions in the VAT law are given a study *in* VAT law. It is the limited material therein that makes me consider that a ”negative tendency” arise for the usefulness of Ek 2019 regarding the implementation question. Senyk 2018 is more of a study *about* the VAT law concerning which Member State that has the right of taxation regarding deliveries and intra-Union acquisitions, and has more the character of a handbook than a thesis where the implementation question is treated concerning such transactions or should Senyk 2018 be seen as a thesis about VAT in a perspective of economics. In the latter perspective it could have been more justified to write Senyk 2018 in English than if the thesis shall be perceived as a study *in* VAT law regarding the distribution of the right of taxation.

However, it is concerning the application of what I denote as a purely law dogmatic method in Henkow 2008 and Lindgren Zucchini 2020 that it becomes the most clear in Main track 2 that English is used – consciously or not consciously – to compensate a research result for the implementation question that can be expected to become negative due to lacks at the choice of method. In sections 2.5.1–2.5.4.2 in Forssén 2021c, I show namely that a purely law dogmatic method risks entailing that the research in the VAT law no more is treated as a jurisprudential subject. That cannot be compensated by the theses being written in English. Therefore, I consider that a development where English is set before Swedish within the VAT research in Sweden should be counteracted by the universities (Sw., universitet and högskolor), above all if it – despite my objections – would exist a continuous acceptance of law dogmatics as something that in a methodological sense is supposed to be especially suitable for jurisprudential studies in the subject VAT law.

I may also reconnect to Forssén 2021b (pp. 32 and 33), where I mention that I in Forssén 2011 (p. 93) mentioned, with the EU-case C-216/97 (Gregg) as an example, that French should be regarded for exactness at interpretation of EU-verdicts. I referred there in Forssén 2011 (p. 69) to professor Ulf Bernitz and Leo Mulders.[33] English is, as mentioned, also after the United Kingdom’s exit from the EU, one of the official languages within the EU, like for instance Swedish and French. In the ”Gregg”-case the language of the case was actually English, but it was, as I mention in Forssén 2011 (p. 93) and come back to in Forssén 2013 (p. 72) and in Forssén 2020a (section 3.5), French that showed that the CJEU emphasizes the collection of VAT, that is the more general meaning of the principle of neutrality and not limited to the specific meaning of charging of VAT that follows by the English language version of the verdict. Thereby, I give evidence of the risk of over-emphasizing the importance of English for a thesis about the subject of VAT, like what has been done in Lindgren Zucchini 2020. I used at the interpretation of the ”Gregg”-case the recommendation from Leo Mulders in the mentioned work (p. 58) concerning the use of language for exactness when interpreting EU-verdicts, which means that I interpreted and accounted for (on the pages 92-94 in Forssén 2011) item 20, which was decisive for the question in the case, in my own language Swedish, in the language of the case English, and in French. Then I could make the judgment that the question of the collection of VAT should be set before the question of the charging of VAT, when it is a matter of upholding the principle of a neutral VAT according to the EU law. It is a

[33] See pp. 78 and 84 in Ulf Bernitz, *Kapitlet EUROPARÄTTEN* (the Chapter European Law), pp. 59–89, in *Finna rätt Juristens källmaterial och arbetsmetoder (elfte upplagan)*, Finding law The lawyer’s source material and work methods (eleventh edition), by Ulf Bernitz – Lars Heuman – Madeleine Leijonhufvud – Peter Seipel – Wiweka Warnling-Nerep – Hans-Heinrich Vogel, Norstedts Juridik 2010 and pp. 47 and 58 in Leo Mulders, the Chapter Translation at the Court of Justice of the European Communities in The Coherence of EU Law, by Sacha Prechal and Bert van Roermund, Bert (editors, Oxford University Press, Oxford 2008 (reprinted 2010).

great lack that Lindgren Zucchini 2020 does not contain any reading on the Swedish language, and that the thesis is completely dominated by the English language – French or any other foreign language for that matter is neither used therein. Leo Mulders is warning for the risk of only using one language at ”close reading” of EU-verdicts, which I consider is also proven by my example.

The importance of making in the Swedish VAT research interpretations of unclear concepts in verdicts or orders from the CJEU also with regard of Swedish, French and, if possible, other official languages in the EU than English is also shown by Lindgren Zucchini 2020 beginning with an interpretation of two EU.cases,[34] which I in Forssén 2021b (pp. 33 and 34) state leads to the misconception that it would be acceptable to disregard composite transactions supplied by more than one person. A jurisprudential study of the hard to determine subject composite transactions for VAT purposes should instead have been made unbiassed by an examination partly of what should be considered composite transactions, partly of what is similar to such transactions and partly of what sometimes is called composite transactions, but should not be comprised by the concept. Regardless of the language question should however the question of the right of deduction not have been delimited in Lindgren Zucchini 2020. That means namely, as I mention in Forssén 2021b (p. 30), that the study in Lindgren Zucchini 2020 has been made as if it did not even concerned VAT, but gross tax – like excise duty.[35]

The position of the Swedish language within the EU – the preparatory work to the Act concerning Sweden's accession to the EU in 1995 and the Language Act of Sweden in 2009

Forssén 2021c is ended with what is stated regarding the position of the Swedish language within the EU according to the preparatory work to *lagen (1994:1500) med anledning av Sveriges anslutning till Europeiska unionen* (the Act concerning Sweden's accession to the European Union in 1995) and according to *språklagen (2009:600)*, the Language Act.

In the preparatory work to the Act concerning Sweden's accession to the European Union (also called the Accession Act or the EU-Act) it is stated in section 19.4 (”Svenska språkets ställning i EU” – the position of the Swedish language within the EU) that *the Swedish language will in the EU have a stronger position than in any other organization outside the North. It becomes one the Union's official languages, which does not only mean that all legislation and official documents must exist in a Swedish version, but also that official communication in writing and orally may be done in Swedish*. With respect of Swedish as one of the smaller languages being naturally weaker in practice than the languages spoken by a greater number of people, the legislator considered it *anxious that Swedish is actively used in relation to the EU's institutions so that the right to use the own language will be kept alive*.[36] In Forssén 2011 I also mention that it in section 4 of the Language Act, which came into force on 1 July, 2009, is stated that Swedish is the main language in Sweden. Thereby I also noted that it by section 13 second paragraph of the Language Act follows that Swedish shall be defended as an official language within the EU.[37]

[34] The CJEU's verdict in the case C-208/15 (Stock '94), ECLI:EU:C:2016:936, and the CJEU's *order* in the case C-117/11 (Purple Parking and Airparks Services), ECLI:EU:C:2012:29.
[35] See also Forssén 2020 p. 744, Forssén 2021a pp. 23 and 26-28 and Forssén 2021c p. 440. See also Forssén 2011 pp. 273, 281 and 282 and Forssén 2013 p. 61, where I also mention that the right of deduction is decisive for what is meant with VAT according to the EU law, that is according to article 1(2) of the VAT Directive.
[36] See prop. 1994/95:19 (Sweden's membership of the European Union) Part 1, pp. 233 and 234.
[37] See Forssén 2011 p. 69.

Thus, it is not in compliance with the work on the EU-project to reduce the Swedish language in the VAT research in Sweden, by continuing to hold English before Swedish like what I consider is the case with reference to my reviews of the language issue in that research. By section 5 of the Language Act Swedish is as main language the common language in society, to which all living in Sweden shall have access and that shall be possible to use within all sectors in society. According to section 6 of the Language Act the State and local authorities have a special responsibility for Swedish to be used and developed. This means in my opinion that the State and local authorities shall not assign means to research where Swedish is set after English, why all such tendencies within the VAT research in Sweden should be counteracted by the universities (Sw., universitet and högskolor).

By the way, I consider, as mentioned, that Finnish also should be lifted as an EU-language in the VAT research in Sweden. This is further supported by it is stated in section 8 of the Language Act that *the State and local authorities have a special responsibility to defend and promote the national minority* langages, where Finnish is one of them according to section 7 of the Language Act.

Indirect taxes and the research in Sweden – where should it be going? Part 4

In a series of three articles in Balans fördjupingsbilaga (The Periodical Balans Annex with advanced articles), Björn Forssén has presented his view of the research in Sweden regarding indirect taxes. In this fourth and final article he is mentioning in the first place the research on excise duties and leaves at the same time an overview of the research in Sweden on VAT, excise duties and customs. Now he is looking forward and does not ask where the research is going, but where it should be going.

During the years of 2020 – 2022 *Tidskrift utgiven av Juridiska Föreningen i Finland* [The journal published by the Law Society of Finland (abbreviated JFT)], has published a series of three articles of mine, where I account for my view on the research in Sweden 1994 – 2020 about indirect taxes. In *Balans fördjupning* (The Periodical Balans Annex with advanced articles) I have written three shorter articles based on the articles in the JFT, and I am ending the series with this fourth article.

In the first two articles in the JFT on the research in Sweden about indirect taxes I made an overview of the method questions and of the position of the Swedish language in the research regarding value-added tax (VAT). In the third article I also bring up the research on excise duties in Sweden. A main thread is that I regarding the research on VAT and excise duties consider that the tax subject question has not been sufficiently treated in most of the Swedish theses in those two fields.

In the first and the third article in the JFT I also mention customs, and point out that the question which should be treated more concerns the tax object and to establish a uniform concept goods for the indirect taxes (which in the first place consist of VAT, excise duties and customs). Regarding research on customs law should the focus be set on the tax object, unlike with VAT and excise duty where the main aim is to distinguish the tax subjects from the consumers, whereby the tax subjects in principle are natural or legal persons with activities constituting what is normally denoted enterprises.

In *Balans fördjupning* (The Periodical Balans Annex with advanced articles) I have made shorter reviews of in the first place the questions I am bringing up in my articles in the JFT regarding the research in Sweden 1994 – 2020 within the field of indirect taxes. I do so also with this article, and mention in the first place the research on excise duties and leave also at the same time an overview of the research in Sweden on VAT, excise duties and customs. In the title of this article I do not ask where the research is going, but where it should be going.

1 The VAT research

Regarding the importance of the choice of method for a research result that will be useful for the legislators and appliers of law within the EU[38] I summarize the following concerning the two methodological main tracks that I identify for the VAT research in Sweden.[39]

[38] EU, the European Union or the Union.

[39] See my article *Momsforskningen i Sverige – metodfrågor* (The VAT research in Sweden – method questions), JFT 6/2020 pp. 716-757, section 5.2. (Cit. Forssén 2020a). See also my article *Momsforskningen i Sverige – vart är den på väg? Del 1* (The VAT research in Sweden – where is it going? Part 1), in *Balans fördjupningsbilaga*

Main track 1

- Regarding the alternative with a choice of method meaning an application of a comparative method with only an external perspective on the EU law in the field of VAT, i.e. with only third countries as material for comparison, I conclude that it gives a negative tendency for the implementation question, i.e. the question on the implementation of the rules in the EU's VAT Directive (2006/112/EC) into *mervärdesskattelagen (1994:200)*, ML (the Swedish VAT act), where an expected research result is concerned.

- Regarding the alternative with application of a comparative with an instead internal perspective on the EU law in the field of VAT, I conclude that it gives a positive tendency for the implementation question, where an expected research result is concerned.

- Regarding the alternative with application of a law dogmatic method completed with a comparative method, I conclude that it gives a positive tendency for the implementation question, where an expected research result is concerned. That alternative comprises five theses, inter alia my licentiate's dissertation and my doctor's thesis from 2011 and 2013.

Main track 2

- Regarding the alternative with application of only a law dogmatic method that is or is not purely law dogmatic, I conclude that it gives a negative tendency for the implementation question, where an expected research result is concerned.

Regarding the twelve theses within the VAT law during the years of 1994 – 2020 I denote applied method in two of the five I am referring to Main track 2 as purely law dogmatic, i.e. the authors start out from the law dogmatic method being the only suitable method for the VAT research.[40] My overall conclusion concerning the choice of method is that the research on the VAT law should become alienated from that approach, since a purely law dogmatic risks entailing that that subject no longer will be treated as a jurisprudential subject.

Thus, I am warning for the researcher within the field of VAT who applies a purely law dogmatic method falling into what I call the trap of mathematics in the research. If tools – models – are used to support for instance the law dogmatic method, the tool may not be made the method in itself for the jurisprudential study. Such an approach is only a matter of deduction, and no induction developing the knowledge on the subject. It would merely be a matter of calculating with law rules, if mathematics and logic would be made the method in itself, and not only used in the study as a supporting tool at to a law dogmatic method.

(The Periodical Balans Annex with advanced articles) 2/2021 pp. 22-28, 25-28. (Cit. Forssén 2021a). Forssén 2020a is available on www.forssen.com and Forssén 2021a is available on www.forssen.com and www.tidningenbalans.se.

[40] The two theses are: Oskar Henkow (deceased), Financial Activities in European VAT A Theoretical and Legal Research of the European VAT System and the Actual and Preferred Treatment of Financial Activities. Kluwer Law International 2008 (cit. Henkow 2008); and Giacomo Lindgren Zucchini, Composite Supplies in the Common System of VAT. Örebro Studies in Law 14/2020 (cit. Lindgren Zucchini 2020).

However, I do not dismiss the use of only a law dogmatic method, but state that it should be developed by the addition of legal semiotics.

Concerning the circumstance that five of the twelve theses in the two main tracks are written in English, inter alia Henkow 2008 and Lindgren Zucchini 2020, I state that a development where English is held before the Swedish language in the VAT research in Sweden should be that a development, where English is set before Swedish within the VAT research in Sweden, should be counteracted by the universities (Sw., *universitet* and *högskolor*). I state this as especially urgent if a purely law dogmatic would be proven recurrent within the research in VAT law in Sweden, since a lack in the choice of method never can be compensated by the theses being written in English. Thereby, I also note that it is not in compliance with the work on the EU-project to reduce the Swedish language or the position of other official EU-languages in the VAT research in Sweden, by those being pushed aside by the English language (which I call the language question).[41]

2 The research on excise duties[42]

2.1 Harmonised and non-harmonised excise duties in Sweden and the determination of the tax subject[43]

In Forssén 2022b, I account for inter alia that according to article 113 of the Treaty on the Functioning of the European Union (the Functional Treaty) there is a demand of harmonisation of the Member States' legislations for the indirect taxes, i.e. not only for VAT and customs, but also for excise duties. However, the harmonisation demand does not comprise all excise duties in Sweden, why I in that article account for the following for the mandatory (harmonised) excise duties according to the EU law, which are applying in Sweden (and shall be applying in the other Member States), and for the non-harmonised excise duties, which also are charged in Sweden:

Harmonised excise duties

In article 1(1) of the Excise Duty Directive (EU) 2020/262 it is stated that general arrangements for excise duty are stipulated for the following goods (*excise goods*):

(a) energy products and electricity covered by Directive 2003/96/EC;
(b) alcohol and alcoholic beverages covered by Directives 92/83/EEC and 92/84/EEC; and
(c) manufactured tobacco covered by Directive 2011/64/EU.

Non-harmonised excise duties

According to the Swedish tax authority's website are non-harmonised excise duties applying according to the following acts:

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[41] See my article *Momsforskningen i Sverige – svenska språkets* ställning (The VAT research in Sweden – the position of the Swedish language), JFT 6/2021 pp. 412-447, sections 1, 2.6 and 3. (Cit. Forssén 2021b). See also my article *Momsforskningen i Sverige – vart är den på väg? Del 3*, in *Balans fördjupningsbilaga* 2/2022 pp. 1-8, 3-8. (Cit. Forssén 2022a). Forssén 2021b is available on www.forssen.com and Forssén 2022a is available on www.forssen.com and www.tidningenbalans.se.

[42] See my article *Punktskatteforskningen i Sverige – skattesubjektsfrågan* (The research on excise duties in Sweden – the tax subject question), JFT 3/2022 pp. 242-276 (cit. Forssén 2022b). Forssén 2022b is available on www.forssen.com.

[43] See Forssén 2022b, sections 2 and 3.2.1.

- *lagen (1994:1776) om skatt på energi*, the LSE (the Energy Tax Act), except the excise duty on the fuels comprised by the stay procedure (according to Ch. 1 sec. 3 a of the LSE – *my remark*),
- *lagen (1984:410) om skatt på bekämpningsmedel* (the Act on Tax on Biocides),
- Sections *35–40 a of lagen (1994:1563) om tobaksskatt* (i.e. the excise duty on moist snuff, chewing-tobacco and other tobacco),[44]
- sec. 2 first paragraph no. 5 of *lagen (1990:661) om avkastningsskatt på pensionsmedel* (i.e. the Act on Tax on Return of Pension Means),
- *lagen (1990:1427) om särskild premieskatt för grupplivförsäkring, m.m.* (the Act on Special Premium Tax for Group Life Insurance, etc.),
- *lagen (1995:1667) om skatt på naturgrus* (the Act on Tax on Nature Gravel),
- *lagen (1999:673) om skatt på avfall* (the Act on Tax on Waste Products),
- *lagen (2007:460) om skatt på trafikförsäkringspremie m.m*. (he Act on Tax on Third Party Insurance Premium etc.),
- *lagen (2016:1067) om skatt på kemikalier i viss elektronik* (the Act on Tax on Chemicals in Certain Electronics),
- *lagen (2017:1200) om skatt på flygresor* (the Act on Tax on Air Trips),
- *lagen (2018:696) om skatt på vissa nikotinhaltiga produkter (the Act on Tax on Certain Products with Nicotine Content),*
- *lagen (2018:1139) om skatt på spel, (the Act on Tax on Lotteries)*
- *lagen (2019:1274) om skatt på avfall som förbränns (the Act on Tax on Burn up Waste), and*
- *lagen (2020:32) om skatt på plastbärkassar (the Act on Tax on Plastic Carrier Bags).*[45]

Regarding *the harmonised excise duties*, I state that according to article 1 of Directive 2003/96/EC shall energy products and electricity be taxed in the EU's Member States in accordance with that directive,[46] and that I mention excise duty in the form of energy tax, carbon dioxide tax and sulphur tax in Sweden with regard of certain fuels according to Ch. 1 sec. 3 a of the LSE. I do not make a complete review of who is tax liable according to Ch. 4 sec. 1 of the LSE, but notes that according to Ch. 4 sec. 1 no. 1 is a person tax liable for energy tax, carbon dioxide tax and sulphur tax if the person in the capacity of authorised warehousekeeper is handling certain fuels, namely fuels according to Ch. 1 sec. 3 a for which duty suspension arrangement applies according to the LSE. The problem I bring up concerning the compliance with the EU law the field of excise duties is that it for the determination of the tax subject exists in Ch. 1 sec. 4 no. 1 of the LSE a reference to *the nonharmonised income tax law* and the concept *näringsverksamhet* (business activity) in the whole of Ch. 13 of *inkomstskattelagen (1999:1229)*, IL (the Swedish Income Tax Act), regarding which activities are to be deemed as *yrkesmässiga* (professional). Although the concept *näringsidkare* (trader) is not used in the Excise Duty Directive, unlike what was the case in the two previous directives in the field, the tax subject is determined independently in article 7(1), why the connection in Ch. 1 sec. 4 no. 1 of the LSE to the concept *näringsverksamhet* in the whole of Ch. 13 of the IL is not EU conform. The connection comprises namely not only the determination of *näringsverksamhet* in a real sense according to Ch. 13 sec. 1 first paragraph second sentence, which stipulates that *with business activity is*

[44] The rules in question have been replaced in *lagen (2022:155) om tobaksskatt* by Ch. 2 sections 9 and 10.
[45] See <https://www4.skatteverket.se/rattsligvagledning/edition/2022.1/382794.html?q> (visited 2023-02-20).
[46] The complete title of directive 2003/96/EC is: Council directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity.

meant that an activity for obtaining income is carried out professionally and independently, but also inter alia sec. 2 of Ch. 13 of the IL. This means that a legal person, in opposition to a natural person, is deemed having a business activity regardless whether the prerequisites for a real business activity are fulfilled. I do not mention the other two harmonised excise duties, which in Sweden are comprised by *lagen (1994:1564) om alkoholskatt* (the Swedish Alcohol Tax Act) and *lagen (1994:1563) om tobaksskatt* (the Swedish Tobacco Tax Act) respectively, since the connection to *the non-harmonised income tax law* does not exist therein.[47]

Regarding *the non-harmonised excise duties*, it is only in *lagen (1984:410) om skatt på bekämpningsmedel*, the Act on Tax on Biocides, that the mentioned connection to *the non-harmonised income tax law* exists regarding what is meant by the concept *yrkesmässig verksamhet* (professional activity), namely in sec. 4 third paragraph whose wording corresponds completely with Ch. 1 sec. 4 of the LSE. I mention something about the Act on Tax on Biocides in connection with the LSE, whereas other non-harmonised excise duties are not mentioned at all. However, I mention something about another non-harmonised excise duty in Sweden, namely the recently abolished advertising tax, which was abolished by *lagen (1972:266) om skatt på annonser och reklam* (RSL), i.e. the Swedish Advertising Tax Act, being revoked on 1 January, 2022 according to SFS 2021:1166. For the determination of yrkesmässig verksamhet there was also in first paragraph first sentence in the instructions to sec. 9 of the RSL a connection to the concept *näringsverksamhet* in the whole of Ch. 13 of the IL.[48] However, the problem in question regarding the determination of the tax subject concerning the advertising tax was resolved by chance, simply by the RSL being abolished.[49]

2.2 Regarding the choice of method in the research on excise duties[50]

Regarding the choice of method in the research on excise duties, I state inter alia that it is more open than regarding the VAT to use third countries as material for comparison at the use of a comparative method for jurisprudential studies regarding the implementation of the Excise Duty Directive (EU) 2020/262 into the national legislations for harmonised excise duties. It depends on that there is no specific definition of what is meant with excise duties according to the EU law in the Excise Duty Directive (EU) 2020/262. I consider that what is important is to, in the same way as concerning the implementation questions regarding VAT, consider both the tax subject question and the tax object question at a study of the implementation question in the field of excise duties.

Regarding the research so far in the field of excise duties in Sweden, which consists of *Punktskatter – rättslig reglering i svenskt och europeiskt perspektiv* (Excise duties – legal regulation in a Swedish and European perspective), by professor Stefan Olsson,[51] I note that the method therein is not what I call a purely law dogmatic method, which I consider typically

[47] By the way, the same applies according to *lagen (2022:156) om alkoholskatt* (the new Swedish alcohol tax act) and *lagen (2022:155) om tobaksskatt* (the new Swedish tobacco tax act), which on 13 February, 2023 replaced the two acts from 1994. This was made acccording to the Excise Duty Directive (EU) 2020/262, which came into force then according to article 56 therein. In accordance with the directive were then also some alterations made in the LSE, by SFS 2022:166, and *lagen (2022:157) om Europeiska unionens punktskatteområde* (the Swedish Act on the European Union's excise duty area) was introduced. I refer to the rules from the time before 13 February, 2023 – see Forssén 2022b, section 3.2.1.
[48] See Forssén 2022b, section 3.2.4.
[49] See Forssén 2022b, section 3.3.
[50] See Forssén 2022b, section 5.1.
[51] Stefan Olsson, *Punktskatter – rättslig reglering i svenskt och europeiskt perspektiv*, Iustus förlag 2001. (Olsson 2001).

means that the choice of method can be expected to give a useful research result for the implementation question also in the field of excise duties. My criticism regarding Olsson 2001 concerns instead the circumstance that questions about the tax subject are given a rather limit treatment therein, and above all that the phenomenon, with a connection for the determination of professional activity in Ch. 1 sec. 4 no. 1 of the LSE and in sec. 4 third paragraph of the Act on Tax on Biocides to the concept business activity in the whole of Ch. 13 of the IL, is not treated at all. However, Olsson 2001 serve as guidance for the future research regarding the excise duties insofar as the thesis confirms that neither such research in the field of indirect taxes shall be made by the application of a purely law dogmatic method.

In Forssén 2022b, section 3.2.5, I state inter alia that Olsson 2001 is written in Swedish, and that it is in line with what I state in Forssén 2021a about the importance for the research in jurisprudential subjects that are influenced by the EU law to promote Swedish at such studies. With respect of methodology I moreover state that Olsson 2001 is also in line with what I state in Forssén 2020a. A traditional law dogmatic method is used in Olsson 2001, but with the statement that *various methods can of course complete each other*, why I consider that Olsson 2001 thereby cannot be considered to have been conducive to the development within the VAT research in Sweden that I am warning for by Forssén 2020a, Forssén 2021a and Forssén 2021b, namely the risk that the jurisprudential studies will be made by application of what I call a purely law dogmatic method, like what I have stated is the case with Henkow 2008 and Lindgren Zucchini 2020. My criticism regarding Olsson 2001 concerns instead the lack of analysis on the theme EU conformity of the determination of the tax subject in the national Swedish legislation in the field of excise duties, which I come back to in conclusion.

2.3 Comparison with Finnish law in the field of excise duties[52]

I make a comparison with Finnish law in the field of excise duties. Concerning the mentioned connections to *the non-harmonised income tax law*, I note that it is the energy taxation in Finland that is of interest for a comparison with the excise duties in Sweden, since there is not any tax on either biocides or advertising in Finland. Thus, it is of interest that it concerning the energy taxation is stated in the Finnish tax authority's detailed instructions that inter alia authorised warehousekeepers and registered consignees are tax liable, whereby a reference is made to sections 12 and 13 of *punktskattelagen (182/2010)*, FPL (the Finnish Excise Duty Act),[53] but without any connection to the income tax law for the determination of the tax subject like regarding the energy tax in Ch. 1 sec. 4 no. 1 of the LSE. Thus, the tax subject is determined independently in the FPL, which is conform with the EU law in the field of excise duties.

2.4 A non-EU conform determination of the tax subject in the field of excise duties may cause non-EU conform consequences for the taxation amount for VAT[54]

A non-EU conform determination of the tax subject in the field of excise duties may cause non-EU conform consequences for the taxation amount for VAT, regardless whether it is a

[52] See Forssén 2022b, section 3.2.3.
[53] See the Finnish tax authority's detailed instructions regarding energy taxation 19 February, 2021, dnr VH/904/00.01.00/2021, section 1.4, <https://www.vero.fi/sv/Detaljerade_skatteanvisningar/anvisningar/56206/energibeskattning2/> (visited 2023-02-20).
[54] See Forssén 2022b, section 3.3.

matter of harmonised excise duties or non-harmonised excise duties. Such a connection to *the non-harmonised income tax law* for the determination of the tax subject in the field of excise duties, which is still made regarding the connection in Ch. 1 sec. 4 no. 1 of the LSE and in sec. 4 third paragraph of the Act on Tax on Biocides to the concept business activity in the whole of Ch. 13 of the IL, namely causes a competition distortion regarding the VAT in conflict with the secondary law and recital 4 of the premable to the VAT Directive and article 1(2) of the VAT Directive as well as with the primary law and article 113 of the Functional Treaty.

The mentioned consequence for the VAT emerges by the selection of tax subjects becoming far too comprehensive for the two excise duties regarding the legal persons., whereby I state the following to confirm this. That depends on that it in a chain of producers and distributors comes in a legal person that would not belong to he chain if it was not for the connection to the whole of Ch. 13 of the IL existing for the energy tax or the tax on biocides increasing the costs for real traders occurring in a later link of the ennobling chain, since they cannot deduct that – due to that in the present respect non-EU conform LSE or *lagen (1984:410) om skatt på bekämpningsmedel* (the Act on Tax on Biocides) – undesired excise duty (gross tax). Since the enterprises in later links of the ennobling chain cannot deduct excise duty that normally would not occur on the acquisitions, the costs increase for the determination of the taxation amount for VAT on their taxable supplies of goods or services.

Under the mentioned circumstances will in the end the consumer, as tax carrier of the VAT, be burdened by a higher price including VAT on the purchase of goods or services compared to if the expansion of the selection of tax subjects would not occur concerning the legal persons regarding the energy tax and the tax on biocides, which is not EU conform.

3 The research on customs law[55]

Concerning the third of the mentioned indirect taxes, i.e. customs, there is, like with the field of excise duties, only one thesis in customs law (Sw., *tullrätt*), namely professor Christina Moëll's.[56] Customs does not present any problem in itself regarding the determination of the tax subject. According to the secondary law is in article 5(19) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (the Union Customs Code) a person who is liable to pay a customs debt, the debtor (Sw., *gäldenären*), defined as "any person liable for a customs debt". Thus, the use in the rule of the expression *any person* (Sw., *varje person*) means that the debtor can be an ordinary private person (consumer) as well as an entrepreneur.

Since both entrepremneurs and consumers can be tax subjects regarding customs, the focus at the research within the customs law can be set on the tax object. In opposition to what is stated in Moëll 1996, efforts should in my opinion be made within the field of indirect taxes aiming at simplifications, for example by a common concept on goods being prepared within the EU. Such research would not only lead to simplifications within the EU regarding VAT, excise duties and customs, but also preparing for customs questions at a future introduction of

[55] See Forssén 2020a, section 5.3.2 and Forssén 2022b, sections 5.2 and 5.3.
[56] See Christina Moëll, *Harmoniserade tulltaxor Införlivande, tolkning och tillämpning av internationella regler för varuklassificering* (Harmonised customs tariffs Incorporation, interpretation and application of international rules on classification of goods). Juristförlaget in Lund 1996. (Cit. Moëll 1996).

the free trade agreement between the USA and the EU, i.e. regarding the TTIP-agreement,[57] if the work with TTIP will be resumed.

For continuing research within customs law, I may note that a change has occurred regarding the primary law concerning the inidrect taxes since Moëll 1996 was written. When Moëll 1996 was written article 113 of the Functional Treaty was corresponded by article 99 of the Rome Treaty. Article 99 of the Rome Treaty was first replaced by article 93 of the EC Treaty, which, by the Lisbon Treaty, was replaced on 1 December, 2009 by article 113 of the Functional Treaty. Thereby, a principle of neutrality has come to be clearly expressed by the primary law for the indirect taxes, unlike what was the case in article 99 of the Rome Treaty.

4 Concluding viewpoints

Concerning the research in Sweden on indirect taxes (VAT, excise duties and customs) I may conclude with the following viewpoints regarding where I consider that it first should be going.

Regarding the VAT and the twelve theses so far my review of those shows that the research in Sweden should above all become alienated from what I denote a purely law dogmatic method, i.e. that the choice of method should be based on the law dogmatics as especially suitable for the subject like what is stated in Henkow 2008 or as something that can be chosen unconditionally like in Lindgren Zucchini 2020. Such an approach means in the end that the VAT research will not be treated as a jurisprudential subject, but more like research within natural science – as if the VAT Directive contains something similar to a physical object that shall be discovered and analysed. The law dogmatic method should instead be developed, for instance, as mentioned above, by the addition of legal semiotics, regardless whether the metho is combined with a comparative method or with empirical examinations. I have proven that the choice of method in Lindgren Zucchini 2020 led to delimitations which made a problemizing of the subject, composite transactions for VAT purposes, impossible. The analysis should instead have been made by an examination partly of what should be considered composite transactions, partly of what is similar to such transactions and partly of what sometimes is called composite transactions, but should not be comprised by the concept. According to section 1.3 in Lindgren Zucchini 2020 are the implementation question as well as questions on right of deduction for input tax expressly delimited. By delimiting the right of deduction the author is leaving out one of the criteria that is contained in the VAT principle according to article 1(2) of the VAT Directive. Regardless of the method question, the implementation question and the language question should at least never the right of deduction have been delimited in Lindgren Zucchini 2020, since it means that the study has been carried out as if it did not even concern VAT according to the EU law, but gross tax – like excise duty.[58]

Regarding the research so far on excise duties in Sweden, i.e. Olsson 2001, my criticism concerns, as mentioned above, the lack of analysis on the theme EU conformity of the

[57] TTIP or T-TIP is the abbreviation of The Transatlantic Trade and Investment Partnership.

[58] See my article *Momsforskningen i Sverige – vart är den på väg? Del 2* (The VAT research in Sweden – where is it going? Part 2, in *Balans fördjupningsbilaga* (The Periodical Balans Annex with advanced articles) 2/2021 pp. 29-36, 30 and 31. (Cit. Forssén 2021c). Forssén 2021c is available on www.tidningenbalans.se and on www.forssen.com. See also: Forssén 2020a, pp. 720, 740, 744, 745 and 750; Forssén 2021a, pp. 26–28; and Forssén 2022a, pp. 2, 7 and 8; and the preface of my book *Vara och tjänst vid sammansatta transaktioner – tolkning och tillämpning enligt mervärdesskattelagen och EU:s mervärdesskattedirektiv* (Goods and services at composite supplies – interpretation and application according to the VAT Act and the EU's VAT Directive), self-published 2020, available on www.forssen.com and in printed version at Kungliga biblioteket in Stockholm (the National Library of Sweden) and at the Lund University Library.

determination of the tax subject in the national Swedish legislation in the field of excise duties, whereby I from Forssén 2022b (section 3.2.5) especially may mention that neither the legislator nor the research in Sweden treats the non-EU conform determination of the tax subject concerning the energy tax. In Olsson 2001 was not regarded the same that I brought up as the main issue in my licentiate's dissertation,[59] i.e. that the determination of the tax subject in Ch. 4 sec. 1 no. 1 of the ML was made by an incorporation therein of *the non-harmonised income tax law*, also existed in the field of excise duties. Professor Stefan Olsson participated at the final seminar regarding Forssén 2011. He said he did not understand my comparison with Olsson 2001 regarding the precarious with connections from the indirect taxes to *the non-harmonised income tax law*, where the concept *yrkesmässig* (professional) and thereby the determination of the tax subject is concerned. I stated in Forssén 2011 that Olsson 2001 does not focus on the tax subject like I do in Forssén 2011. To stimulate further research in Sweden in the field of excise duties, I noted the following as a considerable lack in Olsson 2001: [60]

- On page 144 in Olsson 2001 it is stated that within income and value-added taxation it is *often enough to delimit the tax subject with far definitions like e.g. professionality*. However, he refers in a footnote to that statement to *Ch. 13 sec. 1 of the IL, Ch 1 sec. 1 no. 1 of the ML.* Thus, I noted that it in Olsson 2001 is not regarded that the connection from Ch. 4 sec. 1 no. 1 of the ML from the year of 2001 applied to the concept business activity (Sw., *näringsverksamhet*) in the whole of Ch. 13 of the IL, i.e., as mentioned above, also inter alia to sec. 2 therein.

I stated in Forssén 2011 that an explanation to professor Stefan Olsson not bringing up in Olsson 2001, concerning the mentioning therein of the determination of the concept professional (Sw., *yrkesmässig*) in the main rule in the ML, that the reference for that determination to Ch. 13 sec. 1 (first paragraph second sentence) of the IL was altered on 1 January, 2001 to apply to the concept business activity in the whole of Ch. 13 of the IL, could be that Olsson 2001 was issued during June 2001, that is after that alteration of the rule. However, in the preface of Olsson 2001 it is stated that new material has been regarded until 31 December, 2000.[61] Thus, it is a considerable lack in Olsson 2001 that the connection in Ch. 1 sec. 4 no. 1 of the LSE and the instructions to sec. 9 of the RSL respectively to the concept business activity in the whole of Ch. 13 of the IL, for the determination of the tax subject regarding energy tax and advertising tax respectively, is not mentioned, since that phenomenon emerged already on 1 January, 2000, by SFS 1999:1289 and SFS 1999:1241 respectively and, concerning tax on biocides, by SFS 1999:1252. By the way, it may be mentioned that there is a proposal according to the Government's bill 2022/23:46 on the ML being replaced on 1 July, 2023 by a new VAT act. I have commented that proposal in the JFT,[62] and mention that article also in Forssén 2022b.[63]

Regarding customs law I may especially iterate, in opposition to what has been stated in the research in Sweden so far, i.e. Moëll 1996, that efforts should above all be made meaning that simplifications will be achieved within the whole of the field of indirect taxes, e.g. by a

[59] *Skattskyldighet för mervärdesskatt – en analys av 4 kap. 1 § mervärdesskattelagen* (Tax liability for VAT – an analysis of Ch. 4 sec. 1 of the ML), Jure Förlag AB 2011. (Cit. Forssén 2011). Forssén 2011 is available in the database DiVA (www.diva-portal.org) and on www.forssen.com.
[60] See Forssén 2011, p. 76.
[61] See Olsson 2001, p. 6.
[62] See Björn Forssén, *Synpunkter på vissa regler i förslaget till en ny mervärdesskattelag i Sverige – SOU 2020:31* (Viewpoints on certain rules in the proposal to a new VAT Act in Sweden – SOU 2020:31). (Cit. Forssén 2020b). Forssén 2020b is available on www.forssen.com.
[63] See Forssén 2022b, sections 4 and 5.2.

common concept on goods being prepared within the EU. That would not only lead to simplifications within the EU regarding VAT, excise duties and customs, but also be preparing for customs questions at a future introduction of the free trade agreement between the USA and the EU (TTIP). if the work with it will be resumed.

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