Seminar with verdicts from the Court of Justice of the EU (CJEU) related to the tax law. Södertörn University, autumn term 2019.

This case law seminar is in the first placel meant to concern problems regarding the Swedish national tax law's EU conformity, when the EU law shall determine the contents of the Swedish tax legislation. The CJEU cases concerns value added tax (VAT). The VAT is comprised by the EU law, where the EU's VAT Directive (2006/112/EC) is fundamental.

1 July 2013 the determination of the tax subject was altered by SFS 2013:368 (prop. 2012/13:124) – SFS stands for *svensk författningssamling* (Swedish Code of Statutes) and prop. is short for *Regeringens proposition* (the Government bill) – in the Swedish VAT act, *mervärdesskattelagen (1994:200)*, ML, inter alia so that the concept professional (Sw., *yrkesmässig*) in Ch. 4 sec. 1 was replaced by the concept taxable person (Sw., *beskattningsbar person*), according to article 9(1), which reads:

> [Sw.]
> "Med *beskattningsbar person* avses den som, oavsett, på vilken plats, självständigt bedriver en ekonomisk verksamhet, oberoende av dess syfte eller resultat."
>
> Med *ekonomisk verksamhet* avses varje verksamhet som bedrivs av en producent, en handlare eller en tjänsteleverantör, inbegripet gruvdrift och jordbruksverksamhet samt verksamheter inom fria och därmed likställda yrken. Utnyttjande av materiella eller immateriella tillgångar i syfte att fortlöpande vinna intäkter därav ska särskilt betraktas som ekonomisk verksamhet."
>
> [Eng.]
> "'Taxable person' shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.
>
> Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as 'economic activity'. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity."

Previously Ch. 4 sec. 1 of the ML had referred to the concept business activity [Sw., *näringsverksamhet*] according to Ch. 13 of the Swedish income tax act, *inkomstskattelagen (1999:1229)*, as the main rule for the determination of professional activity [Sw., *yrkesmässig verksamhet*]. The questioning of that connection was also the main question (A) in *Skattskyldighet för mervärdesskatt – en analys av 4 kap. 1 § mervärdesskattelagen* (licentiate's dissertation 2011 by Björn Forssén, published by Jure förlag). The EU Commission had formally notified 26 June 2008 to start a procedure against Sweden on breach of the EU law regarding the ML and its definition of economic activity in the ML.

However, the problem addressed here concerns the determination of the right of deduction of input tax (VAT) on acquisituions of goods or services. That right is determined in Ch 8 sec. 3 first paragraph of the ML, which reads:

[Sw.]
”Den som bedriver en verksamhet som medför skattskyldighet får göra avdrag för den ingående skatt som hänför sig till förvärv eller import i verksamheten.”

[Eng., translation by the author]
Any person carrying out an activity which entails tax liability is entitled to make a deduction of the input tax referring to acquisitions or import in the activity.

Thus, the main rule on the determination of the right of deduction in the ML connects to the concept *skattskyldig*, i.e. tax liable. Tax liable regards the liability to account for output tax (VAT). See Ch. 1 sec. 8 first paragraph of the ML with reference to Ch. 1 sec. 1 of the ML whose main rule (first paragraph number 1) reads:

[Sw.]
”Mervärdesskatt ska betalas till staten enligt denna lag vid sådan omsättning inom landet av varor eller tjänster som är skattepliktig och görs av en beskattningsbar person i denna egenskap”.

[Eng., translation by the author]
VAT shall be paid to the State according to this act for a supply within the country of goods or services which is taxable and made by a taxable person acting as such.

The question is whether it is EU conform with the above-mentioned connection to the concept tax liable for the determination of the right of deduction. The concept in the VAT Directive that corresponds with tax liable (Sw., ***skattskyldig***) is person liable for payment (Sw., ***betalningsskyldig***), but in the main rule of the emergence and scope of the right of deduction in the directive that right is connected to taxable person (Sw., ***beskattningsbar person***), according to article 168 (a), which reads:

[Sw.]
”I den mån varorna och tjänsterna används för den beskattningsbara personens beskattade transaktioner skall han ha rätt att, i den medlemsstat där han utför dessa transaktioner, från den mervärdesskatt som han är skyldig att betala dra av följande belopp:

a) Mervärdesskatt som skall betalas eller har betalats i medlemsstaten för varor som har levererats, eller kommer att levereras, till honom eller för tjänster som har tillhandahållits, eller kommer att tillhandahållas till honom av en annan beskattningsbar person.”

[Eng.]
”In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person;”

The problem is that the concept tax liability (Sw., *skattskyldighet*) was not replaced by taxable person (Sw., *beskattningsbar person*) in Ch. 8 sec. 3 first paragraph of the ML, when *beskattningsbar person* (taxable person) was introduced 1 July 2013 for the determination of the tax subject. The question whether the connection to the concept *skattskyldig* (tax liable)

for the determination of the right of deduction is EU conform was side issue D in my licentiate's dissertation. I mention below certain para:s in four CJEU cases (which shall be available in four PDF Files to the seminar), and ask You to reflect over the following questions.

1) Is it in compliance with the CJEU's case law that the emergence of the right of deduction of input tax on acquisitions in the activity, by the connection to the concept tax liability (Sw., *skattskyldighet*), would be depending on that it before have occured taxable transactions leading to liabilty to account for output tax?

2) In its notification 26 June 2008 to start a procedure against Sweden on breach of the EU law the EU Commission referred in the present respect to SOU 2002:74 Part 1, *Mervärdesskatt i ett EG-rättsligt perspektiv*, Value added tax from an EC law perspective (SOU, *statens offentliga utredningar* – i.e. the Government's official reports/investigations). The question is whether that report/investigation correctly uses the concepts *yrkesmässig verksamhet* (professional activity), *skattskyldighet* (tax liability) and *avdragsrätt* (right of deduction). I state on pages 113 and 114 of my licentiate's dissertation that the report/investigation confuse these concepts, when the delay of the emergence of the right of deduction by comparison with the VAT Directive is descibed, and that the EU Commission does not seem to notice that phenomenon. What do You think? See the EU Commissions notification to start a procedure on breach of the EU law, the Goverment's reply to the EU Commission and SOU 2002:74 Part 1 pp. 78-87 (these three texts are to be found in three PDF Files which shall be available to the seminar – although only in Swedish).

3) Could it be that both the Government and the EU Commission believe that SFS 2013:368 and the alteration of the determination of the tax subject has resolved also the problem about EU conformity regarding the emergence of the right of deduction according to Ch. 8 sec. 3 firsta paragraph of the ML? On page 87 in SOU 2002:74 Part 1 it is stated that the point of time for an activity to be deemed as professional (Sw., *yrkesmässig*) occurs later than regarding economic activity (Sw., *ekonomisk verksamhet*). However, it was *yrkesmässig verksamhet* (professional activity) that was *préjudiciel* to the emergence of tax liability (*skattskyldighet*) and the right of deduction – not the contrary. If it exists a delay of the emergence of the right of deduction acording to the ML compared to the VAT Directive, I thus state on page 114 in the dissertation that it depends on the concept tax liability being used in Ch. 8 sec. 3 first paragraph of the ML instead of professional activity or – nowadays – taxable person (*beskattningsbar person*). I state on page 85 in *The Entrepreneur and the Making of Tax Laws – A Swedish Experience of the EU law* (e-book, Melker Förlag) that the Government and the EU Commission are talking at cross-purposes, and that both believe that the question of the emergence has been resolved by the directive's *beskattningsbar person* – taxable person – nowadays being used in Ch. 4 sec. 1 of the ML to determine the tax subject:

> "Thus, my answer to the question, *how* it is that the legislator hasn't yet addressed the problem concerning the main rule on the right of deduction in the Value Added Tax Act 1994 with regard of EU conformity, is that the Swedish Government believes that the implementation on the 1st of July 2013 of taxable person with regard of the tax subject automatically resolved also the issue concerning the determination of the right of deduction. The EU Commission is probably under the same impression. They are speaking over the heads of each other and neither one of the Swedish Government or the EU Commission are probably aware today of the described communication distortion in the Value Added Tax Act 1994 existing with regard of the intention

of a neutral VAT, which is expressed by the recitals of the VAT Directive (2006/112) and the directive's article 1(2), secondary EU law, as well as by article 113 TFEU, primary EU law."

What do you think? In other words: why is it not mentioned in SFS 2013:368 that Ch. 8 sec. 3 first paragraph of the ML does not use the concept *beskattningsbar person* (taxble person)?

When working with the assignment you may reflect in particular about the following three circumstnces in relation to the alteration of the act 1 July 2013, by SFS 2013:368:

[Sw.]

- "… verksamheten skall medföra skattskyldighet, dvs. omsätta varor och tjänster som medför skattskyldighet, för att avdragsrätt för ingående skatt skall föreligga enligt 8 kap. 3 § ML. Tidpunkten för när en verksamhet kan bli betraktad som yrkesmässig ligger följaktligen definitionsmässigt senare än vad som gäller för ekonomisk aktivitet enligt artikel 4." [SOU 2002:74 Del 1 s. 87.]

  [Eng., translation by the author]
  … the activity shall entail tax liability, i.e. supply goods and services that entails tax liability, for a right to deduct input tax being considered existing according to Ch. 8 sec. 3 of the ML. The point of time when an activity may be deemed as professional occurs consequently by definition later than what applies for economic activity according to article 4. [SOU 2002:74 Part 1 p. 87.]

[Sw.]

- "I samma dokument anges också att tidpunkten för när en verksamhet kan bli betraktad som 'yrkesmässig' enligt den svenska mervärdesskattelagen infaller senare än tidpunkten för när den ska betraktas som ekonomisk enligt mervärdesskattedirektivet." [Se s. 7 i EU-kommissionens underrättelse den 26 juni 2008, där det i not till den citerade texten hänvisas till SOU 2002:74 Del 1 s. 87.]

  [Eng., translation by the author]
  In the same document it is also stated that the point of time when an activity can be deemed as professional according to the Swedish VAT act occurs later than the point of time when it shall be considered economic according to the VAT Directive. [See p. 7 in the EU Commission's notification 26 June 2008, where in a note to the cited text a reference is made to SOU 2002:74 Part 1 p. 87.]

- In the answer to the EU Commission 9 October 2008 the Government mentions the concept *yrkesmässig* (professional) and the determination of the tax subject, but not the concept *skattskyldighet* (tax liability) for the determination of the emergence and scope of the right of deduction in Ch. 8 sec. 3 first paragraph of the ML.

For the reading of the CJEU cases it may be mentioned that they are from the time before the VAT Directive. Then it was in the first place the so called Sixth Directive (77/388/EEC) that applied to the present questions, and inter alia that diectiuve was replaced in 2007 by the VAT Directive (2006/112/EC). Article 4(1) of the Sixth Directive

has its correspondence today in article 9(1) of the VAT Directive and article 17 of the Sixth Directive has its correspondence today in article 168 (a) of the VAT Directive.

Para 23 in the CJEU's case 268/83 (Rompelman)

"In this regard, it is not necessary to distinguish the various legal forms which such preparatory acts may take, in particular between the acquisition of a right to the transfer of the future ownership of property and the acquisition of the property itself. Furthermore, the principle that VAT should be neutral as regards the tax burden on a business requires that the first investment expenditure incurred for the purposes of and with the view to commencing a business must be regarded as an economic activity. It would be contrary to that principle if such an activity did not commence until the property was actually exploited, that is to say until it began to yield taxable income. Any other interpretation of Article 4 of the Sixth Directive would burden the trader with the cost of VAT in the course of his economic activity without allowing him to deduct it in accordance with Article 17 and would create an arbitrary distinction between investment expenditure incurred before actual exploitation of immovable property and expenditure incurred during exploitation. Even in cases in which the input tax paid on preparatory transactions is refunded after the commencement of actual exploitation of immovable property, a financial charge will encumber the property during the period, which may sometimes be considerable, between the first investment expenditure and the commencement of exploitation. Anyone who carries out such investment transactions which are closely connected with and necessary for the future exportation of immovable property must therefore be regarded as a taxable person within the meaning of Article 4."

[Sw.]
"I det avseendet finns det inte anledning att skilja mellan de olika rättsliga formerna för dessa förberedande handlingar, särskilt inte mellan å ena sidan en fordringsrätt avseende den framtida äganderätten och å andra sidan förvärvet av själva äganderätten. Principen om mervärdesskattens neutralitet när det gäller skattebelastningen på företaget kräver att de första investeringskostnaderna för ett företags behov och för att starta företaget skall anses som ekonomisk verksamhet. Det skulle strida mot denna princip om denna verksamhet inte inleddes förrän i det ögonblick fastigheten verkligen utnyttjades, dvs. när en skattepliktig intäkt uppstår. Varje annan tolkning av artikel 4 i sjätte direktivet skulle innebära att näringsidkaren inom ramen för sin ekonomiska verksamhet belastades med kostnaden för mervärdesskatten utan att enligt artikel 17 ha möjlighet att dra av den och skulle göra en godtycklig åtskillnad mellan investeringskostnaderna före och under det faktiska utnyttjandet av en fastighet. Även om det föreskrevs att den ingående skatt som erlagts för förberedande handlingar skulle återbetalas när det faktiska utnyttjandet av en fastighet inletts, skulle en finansiell börda belasta egendomen under den ibland ansenliga tiden mellan de första investeringskostnaderna och det faktiska utnyttjandet. Den som företar sådana investeringshandlingar som är nära knutna till och nödvändiga för det framtida utnyttjandet av en fastighet skall följaktligen anses som skattskyldig person i den mening som avses i artikel 4."

Para 15 in the CJEU's case C-97/90 (Lennartz)

"Consequently, it is the acquisition of the goods by a taxable person acting as such that gives rise to the application of the VAT system and therefore of the deduction mechanism. The use to which the goods are put, or intended to be put, merely determines the extent of the initial deduction to which the taxable person is entitled under Article 17 and the extent of any adjustments in the course of the following periods."

[Sw.]
"Följaktligen är det en skattskyldig persons förvärv av varor, när han uppträder i egenskap av skattskyldig, som bestämmer när mervärdesskattesystemet och därmed också avdragsbestämmelserna skall tillämpas. Det bruk som görs av varorna, eller som planeras för dessa, bestämmer endast omfattningen av det ursprungliga avdrag som den skattskyldiga personen enligt artikel 17 har rätt till samt omfattningen av eventuella jämkningar under påföljande perioder."

Para 35 in the CJEU's case C-400/98 (Breitsohl)

"It is important to note that it is the acquisition of goods or services by a taxable person acting as such that gives rise to the application of the VAT system and therefore of the deduction mechanism. The use to which the goods or services are put, or intended to be put, determines only the extent of the initial deduction to which the taxable person is entitled under Article 17 of the Sixth Directive and the extent of any adjustments in the course of the following periods, which must be carried out under the conditions laid down in Article 20 ofthat directive (Case C-97/90 *Lennartz* v *Finanzamt München* [1991] ECR I-3795, paragraph 15)."

[Sw.]
"Det skall framhållas att det är en skattskyldig persons förvärv av varor eller tjänster, när han uppträder i egenskap av skattskyldig person, som bestämmer när mervärdesskattesystemet, och därmed också avdragsbestämmelserna, skall tillämpas. Det bruk som görs av varorna eller tjänsterna, eller som planeras för dessa, bestämmer endast omfattningen av det ursprungliga avdrag som den skattskyldige har rätt till enligt artikel 17 i sjätte direktivet samt omfattningen av eventuella jämkningar under påföljande perioder, vilka skall ske i enlighet med villkoren i artikel 20 i detta direktiv (dom av den 11 juli 1991 i mål C-97/90, Lennartz, REG 1991, s. I-3795, punkt 15; svensk specialutgåva, volym 11,
s. 299)."

Para:s 15-25 in the CJEU's case C-110/94 (INZO)

"15 In *Rompelman* the Court held, at paragraph 22, that the economic activities referred to Article 4(1) may consist in several consecutive transactions and that preparatory acts, such as the acquisition of business assets and therefore the purchase of immovable property, must themselves be treated as constituting economic activity.

16 Also in *Rompelman,* the Court held, at paragraph 23, that the principle that VAT should be neutral as regards the tax burden on a business requires that the first investment expenditure incurred for the purposes of and with the view to commencing a business must be regarded as an economic activity and that it would be contrary to that principle if such an activity did not commence until the property was actually exploited, that is to say until it began to yield taxable income. Any other interpretation of Article 4 of the directive would burden the trader with the cost of VAT in the course of his economic activity without allowing him to deduct it in accordance with Article 17 and would create an arbitrary distinction between investment expenditure incurred before actual exploitation of immovable property and expenditure incurred during exploitation.

17 It follows from *Rompelman* that even the first investment expenditure incurred for the purposes of a business may be regarded as an economic activity within the meaning of Article 4 of the directive and that, in that context, the tax authority must take into account the declared intention of the business.

18 Where the tax authority has accepted that a company which has declared its intention to begin an economic activity giving rise to taxable transactions has the status of a taxable person for the purposes of VAT, the carrying out of a study into the technical and economic aspects of the activity envisaged may therefore be regarded as an economic activity within the meaning of Article 4 of the directive, even if the purpose of that study is to investigate the degree of profitability of the activity envisaged.

19 It follows that, in the same circumstances, VAT paid in respect of such a profitability study may in principle be deducted in accordance with Article 17 of the directive.

20 Contrary to the submissions of the Belgian and German Governments, entitlement to that reduction is retained, even if it was subsequently decided, in view of the results of that study, not to move to the operational phase but to put the company into liquidation, with the result that the economic activity envisaged did not give rise to taxed transactions.

21 As the Commission has observed, it is contrary to the principle of legal certainty for the rights and obligations of taxable persons to depend on facts, circumstances or events which occurred after the tax authority made a finding in respect of those rights and obligations. It follows that, as from the time when the tax authority accepted, on the basis of information provided by a business, that it should be accorded the status of a taxable person, that status cannot, in principle, subsequently be withdrawn retroactively on account of the fact that certain events have or have not occurred.

22 Any other interpretation of the directive would, moreover, be contrary to the principle that VAT should be neutral as regards the tax burden on a business. It would be liable to create, as regards the tax treatment of the same investment activities, unjustified differences between businesses already carrying out taxable transactions and other businesses seeking by investment to commence activities which will in future be a source of taxable transactions. Likewise, arbitrary differences would be established between the latter businesses, in that final acceptance of the deductions would depend on whether or not the investment resulted in taxable transactions.

23 Finally, as the Court held in *Rompelman,* at paragraph 24, it is for the person applying to deduct VAT to show that the conditions for deduction are met and Article 4 does not preclude the tax authority from requiring objective evidence in support of the declared intention to commence economic activities which will give rise to taxable transactions.

24 In that context, as the Commission has stated, a taxable person acquires that status definitively only if the person concerned made the declaration of intention to begin the envisaged economic activities in good faith. In cases of fraud or abuse, in which, for example, the person concerned, on the pretext of intending to pursue a particular economic activity, in fact sought to acquire as his private assets goods in respect of which a deduction could be made, the tax authority may claim repayment of the sums retroactively on the ground that those deductions were made on the basis of false declarations.

25 Accordingly, it should be stated in reply to the question from the national court that Article 4 of the Sixth Directive must be interpreted as meaning that:

— where the tax authority has accepted that a company which has declared an intention to commence an economic activity giving rise to taxable transactions has the status of a taxable person for the purposes of VAT, the commissioning of a profitability study in respect of the envisaged activity may be regarded as an economic activity within the meaning of that article, even if the purpose of that study is to investigate to what degree the activity envisaged is profitable, and that

— except in cases of fraud or abuse, the status of taxable person for the purposes of VAT may not be withdrawn from that company retroactively where, in view of the results of that study,

it has been decided not to move to the operational phase, but to put the company into liquidation, with the result that the economic activity envisaged has not given rise to taxable transactions."

[Sw.]
”15 I punkt 22 i den ovan nämnda domen Rompelman fann domstolen att sådan ekonomisk verksamhet som avses i artikel 4.1 kan bestå av flera på varandra följande handlingar och att förberedande verksamhet, såsom anskaffning av för driften erforderliga medel och därmed sammanhängande fastighetsförvärv, är att betrakta som ekonomisk verksamhet.

16 Principen att beskattningen av mervärdet skall påverka ett företags avgiftsbörda på ett neutralt sätt medför enligt punkt 23 i samma dom att redan de första investeringsutgifterna för en planerad näringsverksamhet måste anses som ekonomisk verksamhet. Att anse att den ekonomiska verksamheten tar sin början först då fastigheten faktiskt nyttjas, dvs. då den skattepliktiga inkomsten uppkommer, skulle strida mot denna princip. Varje annan tolkning av artikel 4 i direktivet skulle medföra att näringsidkarna påfördes kostnader för mervärdesskatt, utan möjlighet till avdrag enligt artikel 17, och innebära en godtycklig skillnad mellan investeringsutgifter före respektive efter den tidpunkt då fastigheten togs i bruk.

17 Av denna dom framgår att även de första investeringsutgifterna för en planerad näringsverksamhet kan hänföras till ekonomisk verksamhet i den mening som avses i artikel 4 i direktivet och att skatteförvaltningen i detta sammanhang skall beakta den avsikt som bolaget har uppgivit.

18 Om skatteförvaltningen har ansett att ett bolag med avsikt att påbörja verksamhet som omfattar skattepliktiga transaktioner är mervärdesskattskyldigt, kan en studie avseende tekniska och ekonomiska aspekter på den planerade verksamheten hänföras till ekonomisk verksamhet i den mening som avses i artikel 4 i direktivet, även om avsikten med denna kalkyl endast är att undersöka huruvida den planerade verksamheten är lönsam.

19 Därav följer att det i princip skall vara möjligt att i enlighet med artikel 17 i direktivet göra avdrag för den ingående mervärdesskatt som under nyssnämnda förutsättningar har erlagts avseende en sådan studie.

20 I motsats till vad den belgiska och den tyska regeringen har anfört kvarstår avdragsrätten även om det med hänsyn till utfallet av denna studie senare har beslutats att den egentliga verksamheten inte skall påbörjas och att bolaget skall försättas i likvidation, vilket medfört att den planerade verksamheten aldrig givit upphov till transaktioner som varit föremål för beskattning.

21 Som kommissionen har anmärkt medför rättssäkerhetsprincipen att de skattskyldigas rättigheter och skyldigheter inte kan vara beroende av faktiska omständigheter, förhållanden eller händelser som har inträtt efter skatteförvaltningens fastställelse. Härav följer att när skatteförvaltningen på grundval av lämnade uppgifter har fastställt att ett visst företag är skattskyldigt till mervärdesskatt är en retroaktivt verkande omprövning av detta ställningstagande, som har sin grund i senare inträffade eller uteblivna omständigheter, i princip utesluten.

22 Om direktivet tolkas på annat sätt, skulle det strida mot principen att beskattningen av mervärdet skall påverka företagets avgiftsbörda på ett neutralt sätt. Det skulle finnas risk för att skatteförvaltningens handläggning av liknande investeringsverksamhet gav upphov till obefogade skillnader i behandlingen av företag som redan sysslar med skattepliktiga transaktioner och företag som genom investeringar söker påbörja verksamhet som kommer att ge upphov till skattepliktiga transaktioner. Då avdragen endast kan godkännas i de fall där sådana investeringar leder till skattepliktiga transaktioner, skulle dessutom godtyckliga skillnader uppkomma mellan företag i den senare gruppen.

23 Slutligen bör tilläggas att domstolen i punkt 24 i den ovan nämnda domen Rompelman har förklarat att den som ansöker om avdrag för mervärdesskatt har att visa att villkoren för rätt till avdrag är uppfyllda och att bestämmelserna i artikel 4 inte hindrar att skatteförvaltningen kräver att sökanden styrker sin uppgift att denne avser påbörja sådan ekonomisk verksamhet som ger upphov till skattepliktiga transaktioner.

24 Som kommissionen har framhållit kan en näringsidkare endast anses vara skattskyldig i slutlig bemärkelse om avsiktsförklaringen angående planerad verksamhet har lämnats i god tro. I fall av bedrägeri eller undandragande, där en näringsidkare under föregivande av att vilja utveckla viss ekonomisk verksamhet i verkligheten söker lägga tillgångar som kan omfattas av avdragsrätten till de egna medlen, kan skatteförvaltningen retroaktivt kräva återbetalning av de belopp för vilka avdrag medgivits med hänvisning till att beslutet grundats på vilseledande uppgifter.

25 Frågan skall därmed besvaras så, att artikel 4 i direktivet skall tolkas på följande sätt:

— Sedan skatteförvaltningen förklarat att ett bolag som tillkännagivit att det avser inleda en ekonomisk verksamhet medförande skattepliktiga transaktioner är skattskyldigt till mervärdesskatt, kan även beställningen av en lönsamhetsstudie avseende den planerade verksamheten anses utgöra ekonomisk verksamhet i artikelns mening, trots att studien enbart har till syfte att undersöka om den planerade verksamheten är lönsam.

— Bolaget kan inte med retroaktiv verkan frånkännas egenskapen av skattskyldig person, i annat fall än bedrägeri eller undandragande, när det mot bakgrund av studiens utfall har beslutats att den egentliga verksamheten inte skall påbörjas och att bolaget skall försättas i likvidation, vilket medfört att den planerade ekonomiska verksamheten inte har givit upphov till skattepliktiga transaktioner."

Updated 10 August 2019 Björn Forssén [Original version 25 August 2015]

To this memo there shall be 7 PDF Files with the following contents:

- The CJEU case 268/83 (Rompelman)
- The CJEU case C-97/90 (Lennartz)
- The CJEU case C-110/94 (INZO)
- The CJEU case C-400/98 (Breitsohl)
- pp. 78-87 in SOU 2002:74 Part 1 (*Mervärdesskatt i ett EG-rättsligt perspektiv* – Value added tax in an EU perspective)
- *EU-kommissionens formella underrättelse den 26 juni 2008 om definitionen av ekonomisk verksamhet i ML* [2008/2002 K(2008) 2794] – The EU Commission's formal notification 26 June 2008 on the definition of economic activity in the ML [2008/2002 K(2008) 2794]
- *Regeringens (finansdepartementets) svar den 9 oktober 2008 till EU-kommissionen (Fi2008/4218)* – The Government's (the Treasury's) reply 9 October 2008 to the EU Commission (Fi2008/4218)