

Addition No. 2, the 1st of April 2007

EC law analysis of the reference in the Swedish VAT act to the concept *näringsverksamhet* (business activity) in the Swedish income tax act for the purpose of determining the concept *yrkesmässig verksamhet* (taxable person) in the Swedish VAT act

On pages 154 and 155 the value for the security of legal rights of the individual of publishing the SKV's writs in the form of 'general advice' (Sw., "*allmänna råd*") instead is mentioned. Robert Pålsson, whose book *Riksskatteverkets rekommendationer* (Eng., The RSV's recommendations) is referred to there, brings up a new source in an article in *Skattenytt* (Eng., the Tax news) 2006, "*Skatteverkets styr signaler – en ny blomma i regelrabatten*" (Eng., 'The SKV's steering signals – a new flower in the bed of rules') [*Skattenytt* (Eng., the Tax news) 2006 pp. 401-418]. It concerns the standpoints (Sw., *ställningstaganden*) from the SKV which often are mentioned steering signals, and which have been introduced after the introduction of the nation-wide covering tax authority SKV on the 1st of January 2004. Robert Pålsson may be perceived welcoming the SKV's ambition to accomplish a conform application of the tax rules, by clarifications in the standpoints, which is in line with what's argued for here. The steering signals are mainly general advice, but Robert Pålsson would like to see more of the necessary consequence analyses for issuing those and is first of all warning for the SKV giving itself the role of constitution court and legislator, by stating in the standpoints whether a certain tax rule is complying with EU law. Although the EU law shall be applied also on authority level, that leads to the principally problems mentioned. Robert Pålsson has not investigated the steering signals in the field of indirect taxation in the respect mentioned, but the problems with the described shift of power can hardly be considered less there than concerning the income tax. The indirect taxes are comprised by both the primary- and secondary law, whereas it can be questioned whether the income tax is comprised by anything else but secondary law. Robert Pålsson doesn't bring that up explicitly, but an obvious problem on the topic of foreseeable decisions is that certain standpoints in the field of value added taxation have been issued also as ordinary writs, whereas other questions have been dealt with only in writs. It is yet another reason for bearing in mind Robert Pålsson's suggestion to transfer the steering signals for instance to the SKV's series for general advice (SKV A), for the purpose of giving an overview. That would make it easier for the SAC when judging whether certain general advice should be considered.

01.04.2007 Björn Forssén

Best regards,
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