WHAT MAKES A PIECE OF TAX LEGISLATION REALLY UNSUCCESSFUL?

BY

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There is in Sweden a growing realisation of the importance of legislative science. By legislative science is meant the scientific study of the techniques of lawmaking. Largely on the German model, a Swedish Association for Legislative Science has been formed. As for so much else in Swedish legal science we have Jan Hellner to thank for this interest in legislative science. Not only has he written the only existing work in Swedish, *Lagstiftning inom förmögenhetsrätten*,[1] but he was also the prime mover in forming the Association. The intention in the present article is to raise one problem for discussion, namely what it is that makes a piece of tax legislation really unsuccessful. The article largely follows the method developed by Jan Hellner in his pioneering work.

There have certainly been complaints about tax legislation in the past, most frequently about the height of the taxes, so that one sometimes gets the feeling that some writers do not realise that Government and the municipality have bills that must be paid. That tax rates can undeniably be a problem is an insight that underlies the world's great tax reforms, including the Swedish. The present article, however, will not touch upon the magnitude of tax rates but will be confined to matters of legislative technique.

A possible starting point for discussing legislative technique in tax law is to consider how a good piece of tax legislation should be designed. The present author has earlier chosen this way of attacking the problem, in his article *Skattesystemets komplexitet och skatternas höjd*[2] and also as co-author of *Enhetlig inkomstskatt*.[3] Underlying these works is the notion that the complications of the tax system are created by the system itself, when it treats different revenues and different tax objects differently. The most important principle in the creation of good income taxation is to treat all revenues and all tax objects as far as possible equally.

The approach chosen in the present article is different: to start with a really bad piece of legislation and discuss the reasons why it is no good.

[1] (Legislation in the Law of Property) 1990.

[2] (The Complexity of the Tax System and the Height of the Taxes), included in Skatterna ett samhällsproblem (Taxes a Social Problem), Riksbankens Jubileumsfond 1986:1.

[3] (Uniform Income Tax) often called the SACO document; 1986.

This way of tackling the subject immediately raises a methodological question: how does one know that a piece of legislation is no good?

There is no obvious answer to this question. Different people may have entirely different ways of going about answering it. Forcing things slightly, one could say that tax consultants perhaps wish for complicated legislation to create jobs for them, tax authorities wish for draconian legislation to keep a stranglehold on taxpayers; while taxpayers want legislation that is easy to avoid, students want legislation that is easy to learn and the scientifically active want legislation that contains interesting problems. In a democratic society governed by the rule of law, however, it is surely most natural to take the legislator's intentions,[4] hence in Sweden, constitutionally, the *Riksdag's* (Parliament's) intentions, as the starting point. A good law is thus one that realises the legislator's intention; a bad law is one that does not. The problem of how to discover the legislator's intentions has been discussed frequently in connection with legal exegesis. His intentions can be established in the same way for tax law, i.e. through the *travaux préparatoires* and on the principles developed within tax law. Should one, however, confine oneself to the intentions the legislator has expressed in a specific case of legislative business? It may be assumed that the legislator was guided by certain general principles for how the legislation should be designed, principles he considers so self-evident that they do not need to be explicitly expressed in a particular case. The present author ventures to claim that one such general principle is that legislation must be as clear as possible. There are many obvious reasons for this. Clarity makes it easier for those liable to tax to predict the consequences of the legislation, and prediction is a central principle of the rule of law. Clarity makes the law easier for the tax authorities to apply, which means they are more easily able to keep pace with their work. The number of disputes decreases, reducing pressure upon the courts. With less work required by tax matters, there is a socioeconomic gain. It may of course be claimed that the clarity principle is not self-evident. Were the limits of burdensome legislation unclear, those liable would avoid transactions falling within the unclear border areas, while clear limits allow them to position themselves precisely within these limits. It is assumed however that the legislator does not hold such views, but is guided instead by a general desire for clear legislation.

In brief, then, tax legislation is bad if it does not meet the legislator's intentions and if it is unclear in its formulation. It is then particularly bad

[4] Thus the point of departure is the same as Hellner's, op.cit. p 16.

if it is unclear both in intention and technical expression.[5]

It is in fact possible to say something before a piece of tax legislation comes into force about its clarity and its prospects of achieving its objectives. And this is actually what happens in the traditional Swedish process of circulating for comments, during which the products of legislative work in Sweden are subjected to prior scrutiny that is often sophisticated. Prospects for assessing the legislation should be even better when it has been in force for some time, for there should then be good opportunities for judging how unclear it has really been. Certain unclarities perhaps do not emerge until later. It also happens that critics of certain legislation put forward unnecessary fears before an act comes into being. It can always be found that older products of legislation were not subjected to the same critical scrutiny as proposed laws, which possibly contributes to spreading the view that "old taxes are good taxes, new taxes are bad taxes".

To maintain the following discussion of why a piece of tax legislation fails at a concrete level, a piece of actual legislation will serve as the starting point. For the reasons given, it must be one that has been in force for some time, that is unclear and that does not fulfil the legislator's intentions insofar as these are clear. From the many legislative products that fulfil these requirements, the one chosen is the tax residence rules, or what is termed the five-year rule, earlier the three-year rule. This legislation is particularly illustrative.

The three-year rule versus the five-year rule – an introduction

The concept of residence for taxation purposes is regulated in sec 53 of the Municipal Tax Act. With the introduction of the three-year rule the legislator distinguishes between three cases:

1. Residence in Sweden
2. Habitual abode in Sweden
3. Substantial links with Sweden

Substantial links with Sweden are considered to obtain if the taxpayer cannot show that there are not certain links with Sweden. Hence the burden of proof lies with the taxpayer. The period for which the burden

[5] Tax legislation can also be poor for other reasons. The principle of the rule of law can be disregarded in other ways than poor predictability; but the criteria given here probably suffice to cover a large number of poor tax laws.

of proof lies with the person liable to tax was originally three years, but after an amendment to the act in 1985 five years, whence the names three-year rule and five-year rule.[6]

Why is the five-year rule an unsuccessful piece of legislation?

The Swedish institution of preliminary rulings is an important innovation which has aroused great interest throughout the world and gained many imitators in other countries. It affords those liable to tax an opportunity of having the fiscal effects of a certain course of action assessed before undertaking that course. If the person liable makes use of the preliminary ruling, it is binding upon the tax authorities.

Through a preliminary ruling, then, a legislative unclarity can be removed in a concrete case. On the other hand, frequent preliminary rulings in one area may be taken as a reliable indication of unclarity in the legislation. In entirely clear legislation no preliminary ruling would be needed at all, in reasonably clear legislation the legal position should have cleared after one or more decisions by the Supreme Administrative Court. If on the other hand preliminary rulings prove necessary year in, year out and even become a natural part of actions of any significance to the person liable to tax, the legislation must be considered seriously unclear. Many preliminary rulings are given regarding application of the five-year rule,[7] and this surely indicates that the rule has in practice proved to be unclear.

Has the five-year rule managed to realise the intentions of the legislator? If so, the question arises, what were the legislator's intentions?[8]

[6] The three-year rule versus the five-year rule has been discussed and analysed on several occasions, e.g. by Nils Mattson in Bosättningsbegreppet i kommunalskattelagen (The Concept of Residence in the Municipal Taxation Act), SST 1975 p 373–396, 451–483: Bosättningsbegreppet. Några ord om motiven bakom reglerna (The Concept of Residence. A Few Words on the Reasons Underlying the Rules) SN 1990 p 189–205, and Svensk internationell skatterätt (Swedish International Tax Law), 10 edn 1990 p 29–36; by the present author in Gustaf Lindencrona, Skatter och kapitalflykten (Taxation and capital movements) academic thesis, 1972, p 296–313, and Lodin, Lindencrona, Melz, Silfverberg, Inkomstskatt (Income Tax), 2nd edn, 1991 p 476–480.

[7] Sture Bergström has in his book Förhandsbesked vid inkomstbeskattning (Preliminary Rulings in Income Taxation) also treated preliminary rulings in the case of emigration from Sweden (p 180–198). He notes that preliminary rulings are numerous in this area, p 181.

[8] Nils Mattsson has in an article quoted above (Note 6) specially investigated the reasons for the tax concept of residence: Bosättningsbegreppet. Några ord om motiven bakom reglerna (The Concept of Residence. A Few Words on the Reasons Underlying the Rules) SN 1990 p 189–205.

Double-taxation experts, whose report formed the basis of the original three-year rule, put forward in their report the wish for greater clarity: "A person intending to move to another country should have a justified claim to be able to obtain a general overview of the tax consequences".[9] But this is not the only goal. Another is to prevent double tax exemption where a person moving from Sweden is not taxed in the country to which he moves even though the liability to Swedish tax ceases to exist.[10] No other goals are mentioned by experts on double taxation. When the experts move on to a discussion of the design of the residence rules, however, they begin:

"As a guiding principle for modified design of the residence rules, it appears desirable to stipulate that no move should be hindered where it is evident that it is prompted by reasons other than fiscal. On the other hand the rule should in other cases be so designed that our country can retain the power to tax at least for some time."[11]

Surely the principle quoted does not follow from the goals outlined earlier but represents a new one, namely that Sweden must be able to retain the power to tax for a period subsequent to the move in cases of tax emigration.

In the Bill the Minister offers fairly detailed statements on the purpose of the three-year rule. Initially the goal of clarity[12] is mentioned, and the desirability of retaining unlimited tax liability in Sweden when the person liable to tax has emigrated without acquiring a new residence.[13] The Minister continues:

"The new regulations should in other words afford an opportunity – at least temporarily – of preventing international tax evasion. This is not to imply that persons who for tax or other reasons wish to settle abroad should be forbidden to take this step. The intention is rather to counter fictitious settlement abroad. The person moving must decide if he wishes to take all the consequences of his emigration and cut off his ties with Sweden."[14]

The statement quoted is crucial for establishing the goal of the three-year rule. It contains a whole series of unclarities.

1. The rule is claimed to aim at preventing international tax evasion.

[9] SOU (Official Swedish Government Report) 1962:59, p 72.
[10] Op. cit. p 73.
[11] Op. cit. p 73.
[12] Government Bill 1966:127 p 48.
[13] Op. cit. p 49.
[14] Op. cit. p 49.

Yet it affords an opportunity for this, albeit temporary. Can one here speak of a goal?

2. By international tax evasion is meant the removal of what was earlier a Swedish tax base by legal or illegal means. Here must be understood the type of international tax avoidence known as tax emigration, i.e. removal to another country for the purpose of terminating unlimited tax liability in Sweden. The very next sentence, however, states that removal for tax purposes is not to be "forbidden". Is it or is it not a purpose to counter tax emigration?

3. Quite independently of the unclarity in the purpose, fiscal means cannot be used to forbid anybody anything. What can be done is only to cause fiscal consequences to figure in a number of transactions, which can have a deterrent effect. Should the word "förvägras" ('deny, forbid') be read as "försvåras" ('hamper, render more difficult')?

4. The purpose of the rule is stated to be rather to counter fictitious settlement. The word "snarast" ('rather') implies a further unclarity. Is it a goal to counter fictitious settlement, or is it not?

5. Fictitious settlement should reasonably refer to a settlement that is not real, but only feigned, i.e. the person liable to tax does not reside where he states he does, but somewhere else. It is thus something other than really residing abroad for the purpose of avoiding Swedish tax, which is not fictitious settlement. What is the purpose, to prevent tax emigration or to prevent fictitious settlement?

6. There is no irrefutable logical connection between residence abroad not being fictitious settlement and the fact that the mover has cut off all ties with Sweden. In an increasingly internationalised world it is strange to imagine that a person liable to tax must both live in and have all his ties to one country.

The Standing Committee of Ways and Means in its report agrees with the demand for clarity[15] and that double tax exemption must not arise.[16] Further, "the intention of the three-year rule is thus exclusively to counter fictitious settlement abroad."[17] The Committee's statement is thus appreciably clearer than the Minister's.

In connection with the conversion of the three-year rule into the five-year rule, further statements are made regarding the goal of the legislation. The Minister says "the purpose, now as when the rule was introduced, is to prevent what is termed fictitious settlement abroad by

[15] BevU (Ways and Means Committee) 1966:54 p 22.
[16] Op. cit. p 23.
[17] Op. cit. p 24.

persons earlier residing and active in Sweden."[18] This time the Standing Committee on Taxation makes no special statement about the goal.

In summary, it is hardly an exaggeration to say that there is significant unclarity on the purpose of the three-year rule and its successor the five-year rule. But it does seem clear that the legislator has striven to ensure that the rules will be clear and that double tax exemption will not arise. As to whether tax emigration or fictitious settlement are to be prevented, the unclarity is so great that the legislator was presumably inspired by both goals, i.e. to prevent fictitious settlement and to make tax emigration more difficult.

Actually it is not hard to understand the reason for the legislator's lack of clarity. When the three-year rule was introduced, the tax burden for a physical person was heavy by international comparison. Sweden applied, and still applies, the state-of-domicile principle, i.e. a person resident in Sweden has unlimited tax liability here. A person wishing to avoid unlimited tax liability in Sweden could do this by moving, i.e. by causing his Swedish residence to cease to exist.[19] It was therefore tempting for the legislator to attempt to retain unlimited liability to tax in Sweden through an expansion of the concept of fiscal domicile. On the other hand it has traditionally been considered reprehensible in international fiscal relations to employ fiscal means to prevent persons liable to tax from leaving the country. To prevent fictitious settlement, however, has always been viewed as proper.

Have the goals been realised in the legislation?

In the *travaux préparatoires* clarity was mentioned on several occasions as a goal of this legislation. The rich occurrence of preliminary rulings, as mentioned, indicates that clarity has not been achieved. What follows is a more detailed discussion of the reasons why the legislation has proved to be unclear. The question seems particularly significant as a general problem.

In the *travaux préparatoires* the desire to avoid double tax exemption was also stressed. This may arise through Sweden abstaining from its unlimited right of taxation before the person liable becomes considered as resident in the state to which he has moved. Alternatively the problem

[18] Government Bill 1984/85:175 p 13.

[19] That persons liable to tax do indeed actually emigrate for tax reasons has been illustrated in a relatively new doctoral thesis, Hans Lindqvist, Kapitalemigration (Capital Emigration) 1990. Lindqvist has established this through interviews with a number of emigrants.

can arise if the person liable is considered to be resident in Sweden according to a double-taxation agreement but not according to domestic law. Has this goal been realised?

Both the present five-year rule and the earlier three-year rule list a number of points of connection with Sweden. It is still unclear how many links there must be for the person liable to be considered to have essential ties with Sweden. But one thing is certain – if the person liable has been able to show that he has none of the links listed in the text of the Act, he has shown that he has no essential ties with Sweden. It is thus possible for a person liable to tax who has strong tax reasons not to be considered resident in Sweden to avoid this residence. Whether or not unlimited tax liability has arisen in some other state does not affect the decision concerning Swedish residence. Hence neither the three-year rule nor the five-year rule realises the general goal of preventing double tax-exemption.[20]

As already mentioned it is unclear whether the legislator intended to make tax emigration more difficult. The *travaux préparatoires* quoted demonstrate, however, that the idea was not foreign to him. The activity exhibited by Sweden in the negotiations regarding double-taxation conventions to obtain scope for the three-year rule (five-year rule) is also hard to explain unless such a purpose is accepted. For reasons mentioned above – the possibility for anyone with strong tax reasons to sever all ties with Sweden – the three-year rule (five-year rule) is not effective against tax emigration. There is one further reason for this. Most Swedish double-taxation agreements are designed on the basis of the OECD model agreement.[21] Rules of the model convention do not give scope for application of the three-year rule.[22] The person liable to tax can through the article on residence in the double-taxation convention with a country to which he may be considering emigration, when he applies that convention, have his unlimited Swedish tax liability set aside as soon as he leaves this country. According to the rules of the OECD

[20] In the present author's Skatter och kapitalflykt (Taxation and Capital Movement) this circumstance is expressed thus: "The three-year rule lets past precisely those cases that are fiscally interesting. For other less fiscally interesting cases in which the person liable wishes for emotional reasons to retain a certain link with Sweden and the tax reasons are not strong enough to override all other considerations, this entails a troublesome legal uncertainty since the person liable does not know how far the ties to Sweden must be cut off for him to be considered to have emigrated." (p 315). When this was written the three-year rule had only been in force for a few years. It appears equally true today after over 25 years.

[21] OECD. Model Double Taxation Convention on Income and Capital. The model convention exists in two versions, one from 1963 and one from 1977 (revised 1992).

[22] Residence is treated in article 4.

article this generally means that the person liable has obtained permanent dwelling in the country to which he has moved and no longer has such a dwelling in Sweden. In this situation no double tax exemption arises. On the other hand it is possible for the person liable to be taxed in a country with more advantageous rules than Sweden's. The three-year rule (the five-year rule) is not an efficient way of preventing tax emigration.

The question of whether the three-year rule (five-year rule) is an effective way of preventing fictitious settlement abroad is harder to answer since it is difficult to say what fictitious settlement means. If settlement is taken to mean permanent dwelling, the difficulties are not so great. In that case the meaning of a fictitious settlement is quite simply that one does nor really live where one has stated but somewhere else – surely a not unusual case. Prior to the three-year rule however the settlement concept was not considered only to imply permanent residence. The double taxation experts state:

"The expression residence and domicile does not mean that the person in question necessarily needs to have a dwelling in this country; it is probably sufficient if he has some more appreciable link to Sweden for example chattels or personal or economic interests."[23]

As Nils Mattsson says, the concept of dwelling and residence has never been tested since the advent of the three-year rule. Therefore there is naturally no practice.[24]

The present writer considers it most natural to assume that the advent of the three-year rule implied a systematisation of the legal rules so that residence and domicile "came to refer to the existence of a permanent dwelling and the person and economic interests are classified under substantial links". The issue is extremely unclear. If fictitious settlement is considered to mean that the person liable to tax does not live where he states, it is hard to see how this may be prevented through the three-year rule (five-year rule) except very indirectly. If the person liable to tax has links to Sweden which require his continual personal presence in the country, for example as a businessman, this may be a sign that he also has his true residence in Sweden, not in other cases.

If "residence and domicile" are considered in such a broad sense that they comprise cases in which substantial links exist, this means that fictitious settlement must be prevented by imposing upon the person liable to tax a burden of proof of emigration for a certain period of time.

[23] SOU 1962:59 p 61.

[24] As given Mattsson, SN 1990 p 190–191.

"Residence and domicile" then become very comprehensive notions. If there exist model conventions on the OECD model, the broad Swedish definition becomes ineffective since the definition in the conventions takes precedence over the Swedish one.

Why is the three-year rule (five-year rule) unclear?

Clarity can thus be seen as a general requirement upon tax legislation. As to the three-year rule (five-year rule), this was also one of the most important reasons for the advent of the new legislation. Why is it then that so many question-marks remain concerning a piece of legislation that has been in force since 1967? This writer has already touched upon the unclarity concerning the goal of the legislation. Unclarity on this point renders more difficult the drafting of a clear legal text, and also its interpretation. But there are also other reasons: unclarity in relation to earlier law and shortcomings in system conformity.

1. Unclarity in relation to earlier law.

Prior to the advent of the three-year rule, the residence rules of the Municipal Tax Act had remained largely unchanged. The rules were based on the municipal tax committee proposals published in SOU 1924:53–54. A comprehensive legal practice covers the older provisions.[25] The three-year rule brought with it a new piece of legislation, yet it was never explained how far earlier practice had become irrelevant. The Ways and Means committee considered that the legislation was chiefly intended to codify legal practice.[26] On the other hand it is possible that earlier practice had become changed over the years.[27] The special design of the three-year rule also meant that practice was given a new context. It has thus been unclear how far it should still be seen as affording guidance after the advent of the three-year rule.

2. Unsatisfactory system conformity.

The three-year rule (five-year rule) has been designated a burden-of-proof rule, meaning that it is incumbent upon the person liable to tax to show that for a certain period a substantial link with Sweden no longer exists. As a burden-of-proof rule the three-year rule (five-year rule) is, however, very special. It is not that the person liable must show the exist-

[25] The practice is described in Nils Mattsson, Bosättningsbegreppet i kommunalskattelagen (The Concept of Residence in the Municipal Tax Act), SST 1973 p 378 ff.

[26] Ways and Means Committee 1966:54 p 24.

[27] Nils Mattsson, Bosättningsbegreppet i kommunalskattelagen (The Concept of Settlement in the Municipal Tax Act), SST 1973 p 383.

ence of a certain circumstance, e.g. no permanent residence in Sweden, with the risk of being considered resident in the country if it is not possible to show this. The assessment regarding substantial links must take into account a large number of factors. These factors (links) are listed in the legal text. Further links may not be adduced. Nowhere is it stated how many links the person liable needs to prove do not exist. The only thing that is certain is that a person liable to tax who has succeeded in showing that none of the points of connection listed in the legal text exists has succeeded in showing that he has no true link with Sweden. Despite comprehensive legal practice regarding the three-year rule it is still unclear how many points of contact the person liable may have with Sweden and still be considered to have emigrated.

The intention of the three-year rule was from the beginning to attach a certain importance to the length of the stay abroad. After the three years have elapsed, the burden of proof transfers to the tax authorities. If the length of the stay abroad is to be of significance this should mean that the end of the three-year period should entail an appreciable range. In case RÅ 1974 ref 97 just this question arises of what it means that the three-year period has ended. The tax authorities maintain here that no change has taken place regarding the points of connection. During the three-year period the person liable was not considered to have been able to show that he had no substantial connection with Sweden. The Supreme Administrative Court found this enough to enable it to consider that there existed a substantial link with Sweden even after the three years had elapsed.

As a juridical design the three-year rule is very unusual.

1. Burden-of-proof rules are most unusual in Swedish tax law.Tax law has an established system of rules of evidence. The declaration by the taxpayer is to be accepted unless the authorities have been able to show circumstances that suggest that it is not correct. It is then incumbent upon the taxpayer to show that they are correct, nevertheless, etc, etc. The very existence of burden-of-proof rules is bound to cause problems.

2. Rules that mean that a certain number of aspects must be considered together are unclear per se. The legal consequence (unlimited tax liability) should relate to a legal fact (e.g. permanent residence in Sweden). This is also the norm in tax law.

3. If a weighing-together rule is combined with a burden-of-proof rule, double unclarity arises. How many points of connection must be shown not to exist and how is this to be proved? A design like this is also very unusual, if not unique, in Swedish tax law.

In summary, the basic problem of the three-year rule (five-year rule)

is that it is designed in a way that is foreign to the systematic arrangement of the Municipal Tax Act.

4. Unsatisfactory conformity with the double taxation conventions.

The relationship between double taxation conventions and domestic tax law is clear in Sweden. Conventions can only limit, never expand, a domestic Swedish tax claim. Double taxation conventions always include a residence rule. This means that the residence rule of the convention always takes precedence over the domestic Swedish residence rules. The application of conventions and domestic international tax law is made easier if they are as similar to one another as possible. This has in fact by and large been a goal of the Swedish tax legislator. Domestic rules on permanent establishment have for example been harmonised with the OECD ones. As to residence and domicile, however, the rules not only differ in nature but are also differently designed. The OECD rules on residence, article 4 in the modern convention, refer primarily to domestic law. If there is domicile in two countries, which which easily happens if the three-year rule (five-year rule) is applied and "the ladder" in point 2 is used. The first rung of the ladder runs:

"a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests)."

In the not-impractical case that the taxpayer has permanent homes in both the Contracting States, he is thus considered to be resident in the state with which his personal and economic connections are strongest. The concept centre of vital interests exhibits an appreciable similarity to substantial link: there is no identicity between these concepts, but the similarity is so great that it can appear confusing. In case RÅ 1968 ref 9 the Supreme Administrative Court also interpreted centre for vital interests to mean that the negative burden of proof in the three-year rule should also apply in that case.[28] This has not been repeated, but shows the risk of using similar but different concepts in conventions and domestic tax law.

[28] Gustaf Lindencrona, Skatter och kapitalflykt (Taxation and Capital Movements) 1972 p 304 note 10.

Legislative lessons learned

It is not the present intention to make proposals for reform of the three-year rule (five-year rule) even if it must be clear from this article that reform is needed. Instead, an attempt will be made to point some general lessons from this example. The lessons that may be learned are chiefly three.

The first concerns the desirability that the legislator is clear himself, and makes clear to those liable to tax and to the tax authorities, what he in fact intends. This sounds simpler than it is. The legislator perhaps like the public has a feeling that something is unsatisfactory. Yet such a feeling cannot be satisfactorily transferred to legal text in the hope that the problem will be solved through legal practice, for practice will then only further increase the confusions. In the field of tax law, practice can only act to clarify when it can do so within frameworks drawn up by the legislation. The legislator must through sufficiently broad enquiry obtain a sufficiently good understanding both of reality and of the legal/scientific problems involved.

Secondly, the relationship of the new legislation to earlier practice must be made clear. The legislator must note whether the legislation is intended to codify practice or to set it aside. The latter circumstance is not unusual in tax law, the legislator often intervening with legislation only when he considers that practice has developed in an unfortunate manner.

The third lesson is that the legislation must be consistent. If tax legislation is to be graspable and applicable, it must be based on clear principles. It is tempting in the individual case to depart from these principles to achieve the desired effects and remove what in the individual case may appear to be less desirable results. If the legislator gives in to this temptation, however, he is contributing to the creation of legislation which is difficult to grasp and complex, and may lead either to unreasonably severe consequences for the person liable or to possibilities for evasion. In both cases the reputation of tax legislation is being jeopardised.

It is naturally simpler to achieve system conformity in large thoroughgoing tax reforms. However in an area which is so much an object of the *Riksdagen's* proper interest as tax legislation is, this legislation cannot remain entirely unchanged for long periods. It is therefore particularly important in the smaller reforms to observe the importance of not departing from the general systematic nature of that field of legislation.