Passivitetsrätten vid skattetillägg

av

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Abstract

When a taxpayer fails to fulfill the obligation in Chapter 30 Section 1 and Chapter 31 Section 3 of the Swedish Tax Procedure Act, skatteförfarandelagen (2011:1244), the STPA, to submit information about his or her taxable income, he or she becomes liable to pay a tax surcharge. Decisions about tax surcharges can be made in both administrative and criminal proceedings. In fact, decisions on tax surcharges may be made due to a taxpayer’s passiveness during a criminal tax procedure, regardless of the intent. However, the European Court on Human Rights has established that a person’s silence is not, in itself, sufficient proof for a conviction. This causes a tension between the obligation to submit information about taxable income and the right to silence and the right against self-incrimination in the Swedish tax surcharge procedure.

The purpose of this thesis is to analyze the relationship between the Swedish system of tax surcharge and the right to silence and the right against self-incrimination according to the ECHR, the EU Charter, Article 3 Section 1 (e) of Directive 2012/13/EU and Article 7 of Directive 2016/343/EU. The method used to analyze these problems and discuss solutions combines a legal dogmatic method with an autonomous interpretation of the right to silence and the right against self-incrimination. The analysis shows that problems occur after the point where a taxpayer has been charged with a criminal offence according to the autonomous meaning of the concept. This point in time corresponds to the point in time when action is taken by the Swedish Tax Agency that has a substantial impact on the taxpayer. The analysis also shows that if a tax surcharge is levied only because of a taxpayer’s silence, after that point, there has been a violation of the right to silence and the right against self-incrimination according to the autonomous meaning.

The conclusion of the thesis is that there is a need for an amendment to the STPA, which reinforces the autonomous meaning of the right to silence and the right against self-incrimination in the Swedish tax surcharge procedure. This includes new rules in the STPA, which define 1) a duty for the Swedish Tax Agency to inform taxpayers about the right to silence and the right against self-incrimination, 2) the scope of the taxpayer’s obligation to submit information about taxable income in relation to the right to silence and the right against selfincrimination and 3) rules on exemption from tax surcharge when it violates the right to silence and the right against self-incrimination.

Keywords: The right to silence and the right against self-incrimination; tax surcharge; tax return; obligation to submit information.

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