

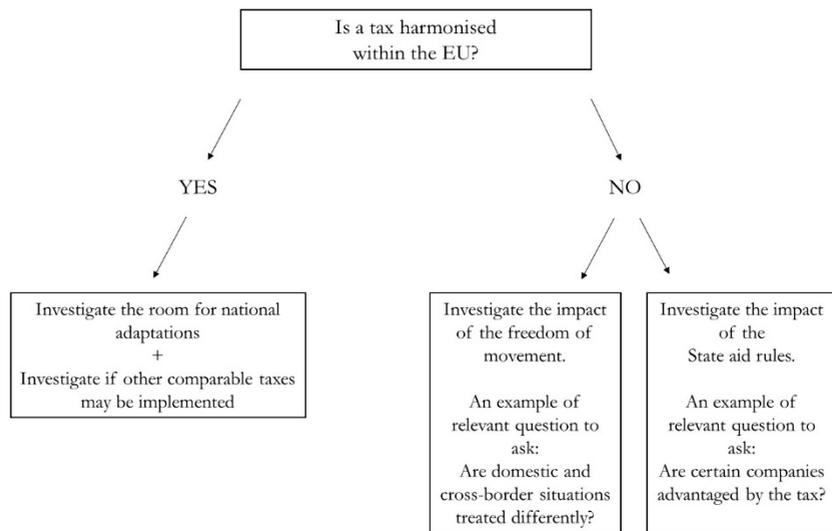
Summary

In Sweden tax laws are enacted by Parliament. Nevertheless, the tax law drafting process needs to take into account several transnational sources of law. EU-law is the most important transnational source of law that impacts tax law drafting in Sweden. This concerns both direct and indirect taxes, but in different ways: whereas direct taxes are not harmonised to a great extent, most indirect taxes are, especially through EU directives. The lack of harmonisation in the area of direct taxation is compensated by the ever-growing importance of the case law from the Court of Justice of the European Union. Moreover, each Member State is not only influenced by the case law relating to its own tax system, but also by the case law relating to the tax systems of other Member States. Nevertheless, not all areas of tax law are under the influence of EU law: Sweden can, for instance, freely decide over different types of tax rates or tax rules. Obviously, the same applies to the other Member States.

It is of utmost importance to monitor the continuous development of EU law – and its consequences for tax law – since it directly influences the possibilities to reform the Swedish tax system. This concerns both large reforms (for example through generally taking into account environmental considerations when designing the tax system) and smaller ones (for example the implementation of anti-avoidance rules). The need for Sweden, and for the other Member States, to take into consideration EU law is an obligation that stems from the membership in the European Union. The lack of implementation of EU law can imply far-reaching consequences, such as the reimbursement of taxes that have been levied in breach of EU law, or the payment of damages or penalties. Companies can also be requested to pay additional taxes in case they received illegal State aids.

Even if it requires expert competence to analyse thoroughly the compatibility with EU law of future tax reforms, there is no need for deep knowledge in the very first steps of a tax proposal. The first question one may ask is whether or not the tax at hand is harmonised. If this is not the case, there will be larger room to design Swedish tax law. But since neither tax bases nor tax rates may discriminate between different persons who are in a comparable situation, it is difficult to undertake an active tax policy that is aiming at favouring certain specific actors, sectors, regions, or Swedish companies or persons as opposed to foreign ones. Here follow a few simple questions that are worth asking in the early stages of a tax reform: may the proposed tax reform favour certain companies more than others? May the proposal treat differently cross-border and domestic situations? Has the EU already legislated with respect to a tax that is close to the actual proposal?

The table below compiles certain fundamental questions that need to be investigated when designing Swedish tax law:



This report aims at describing the effect of EU law on the design of Swedish tax rules. The report will hopefully make the debate efficient through informing its different actors about the more or less realistic options for future tax reforms.