

DET CIVILRÄTTSLIGA I SVENSK INKOMSTSKATTERÄTT



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av

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Abstract

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The relationship between tax law and private law has been discussed extensively in the legal sources of Swedish income taxation. However, what is meant by private law has not been elaborated or problematized to any greater extent. The legal sources of Swedish income taxation seem to presuppose private law as something given; an external entity that tax law relates to. In this thesis I set out to critically analyze this premise by using discourse theory and immanent critique. When doing this I depart from a distinction between two different perspectives on private law: substantialism and functionalism. This distinction appears in the private law literature as a way of describing the differences between the continental legal culture and the Nordic legal culture. The former tradition is characterized by substantialism, which means that concepts and rights are seen as having a substance. Consequently, legal problems are primarily solved by making deductions from legal concepts. The latter tradition is characterized by functionalism, according to which concepts are seen as relative. Legal problems are solved by balancing different interests and by regarding the consequences of different solutions. In my thesis I show that the treatment of private law within Swedish income taxation is dominated by substantialism. I problematize this treatment of private law by showing that private law concepts and private law rights to a large extent can be understood in contradictory ways. Consequently, the reference to private law can support contradictory solutions to tax law problems. I further on show how the understanding of the relationship between tax law and private law changes when private law is addressed through a functionalistic perspective instead. This perspective is underpinned by pragmatism and strives to make visible the underlying ideological interests that are being reproduced and protected through the reference to private law when solving tax law problems.

Keywords: tax law, private law, legal theory, substantialism, functionalism, pragmatism, discourse theory, immanent critique

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