3) *Article 52(3) of Directive 2007/64 must be interpreted as meaning that it gives Member States the power to prohibit generally payees from levying charges on the payer for the use of any payment instrument, if the national legislation, as a whole, takes into account the need to encourage competition and the use of efficient payment instruments, which is for the referring court to ascertain.*

(1) OJ C 73, 10.3.2012.

Judgment of the Court (First Chamber) of 10 April 2014 (request for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Bydgoszczy — Poland) — Emerging Markets Series of DFA Investment Trust Company v Dyrektor Izby Skarbowej w Bydgoszczy

(Case C-190/12) (1)

(Reference for a preliminary ruling — Freedom of establishment — Free movement of capital — Articles 63 TFEU and 65 TFEU — Tax on income of legal persons — Difference of treatment between dividends paid to resident and non-resident investment funds — Exclusion of tax exemption — Restriction not justified)

(2014/C 175/05)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Bydgoszczy

Parties to the main proceedings

Applicant: Emerging Markets Series of DFA Investment Trust Company

Defendant: Dyrektor Izby Skarbowej w Bydgoszczy

Re:

Request for a preliminary ruling — Wojewódzki Sąd Administracyjny w Bydgoszczy (Poland) — Interpretation of Articles 63 TFEU and 65 TFEU — Freedom of establishment and free movement of capital — Fiscal legislation exempting from tax on the income of legal persons dividends paid to investment funds established in the territory of Member States, but excluding from entitlement to that exemption investment funds established in non-member countries

Operative part of the judgment

1) *Article 63 TFEU on the free movement of capital applies in a situation, such as that at issue in the main proceedings, where, under national tax legislation, the dividends paid by companies established in a Member State to investment funds established in a non-Member State are not the subject of a tax exemption, while investment funds established in that Member State receive such an exemption.*

2) *Articles 63 TFEU and 65 TFEU must be interpreted as precluding tax legislation of a Member State, such as that at issue in the main proceedings, under which dividends paid by companies established in that Member State to an investment fund situated in a non-Member State cannot qualify for a tax exemption, provided that that Member State and the non-Member State concerned are bound by an obligation under a convention on mutual administrative assistance which enables the national tax authorities to verify any information which may be transmitted by the investment fund. It is for the referring court, in the main proceedings, to examine whether the mechanism for the exchange of information provided for within that cooperation framework is in fact capable of enabling the Polish tax authorities to verify, where necessary, the information provided by investment funds established in the United States on the conditions for their formation and the conduct of their business, in order to establish that they operate within a regulatory framework equivalent to that of the European Union.*

(1) OJ C 209, 14. 7. 2012.