C/2025/3630

14.7.2025

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 17 February 2025 – Administración General del Estado v Ishares Europe ETF

(Case C-139/25, Ishares Europe)

(C/2025/3630)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: Administración General del Estado

Respondent: Ishares Europe ETF

Question referred

In accordance with Article 63 TFEU, can any restriction on the free movement of capital arising from the legislation on IRNR (impuesto sobre la renta de los no residentes: income tax of non-residents) be considered to be neutralised where a non-resident entity which is equivalent to a resident harmonised investment fund may, under the applicable double taxation convention and the domestic legislation of its country of residence to which reference is made, elect to be taxed in the hands of the entity itself, even though ultimately it does not do so since it decides to transfer its credit to the fund participants, bearing in mind that the right to elect to be taxed under the law of the State of residence could allow it to deduct, in principle, all the excess tax paid in respect of IRNR, even though such a decision is binding on it with regard to all income derived by it?