

# ECJ Preliminary Ruling Request: *Keva and Others* (Case C-39/23) – Sweden's Högsta förvaltningsdomstolen Submits Referral on Right to Refund Swedish Withholding Tax Levied on Dividends of Swedish Companies Paid to Pension Institutions Established in Finland

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Report from Filip Krajcuska, Associate, IBFD

On 3 April 2023, a preliminary ruling request lodged on 26 January 2023 was published in the Official Journal of the European Union. In the referral, Sweden's Högsta förvaltningsdomstolen (Supreme Administrative Court) made reference to the Court of Justice of the European Union (ECJ) for a preliminary ruling in the case *Keva and Others* (Case C-39/23) on the right to refund of Swedish withholding tax levied on the dividends of Swedish companies paid to pension institutions established in Finland.

The Högsta förvaltningsdomstolen requested the ECJ to answer the following questions:

"(1) Does the fact that dividends paid by domestic companies to foreign public pension institutions are subject to withholding tax, whereas the corresponding dividends are not taxed if they accrue to the own State through its general pension funds, constitute such negative differential treatment that it entails a restriction of the free movement of capital prohibited, in principle, by Article 63 of the [TFEU](#)?

(2) If Question 1 is answered in the affirmative, what are the criteria that should be taken into account when assessing whether a foreign public pension institution is in a situation which is objectively comparable to that of the own State and its general pension funds?

(3) Can a possible restriction be regarded as being justified by overriding reasons of public interest?"

