

SUMMARY

ECJ 10 November 2016, case C-548/15 (De Lange), Age discrimination – tax

<p>Tax law may, in principle, allow persons aged under 30 to deduct from their taxable income more vocational training expenses than older persons.</p>

Summary

Tax law may, in principle, allow persons aged under 30 to deduct from their taxable income more vocational training expenses than older persons.

Facts

The Dutch Income Tax Act allows persons aged between 18 and 30, to deduct the full expense of training from their taxable income provided certain conditions are satisfied. Others may deduct no more than € 15,000. When he was 32, Mr De Lange started training as a commercial airline pilot. In his 2009 declaration of taxable income he deducted € 44,507, being the full cost of his training. The tax authorities allowed a deduction of no more than € 15,000.

National proceedings

Mr De Lange appealed unsuccessfully in two instances. He argued that the distinction between individuals under and over 30 violated Article 3(1) of Directive 2000/78, which provides that the Directive applies to all persons in relation to “access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience”. Mr De Lange appealed to the Supreme Court, which referred questions to the ECJ. The first question was whether a taxation scheme such as the one at issue falls outside the material scope of the Directive. The third and fourth questions were whether Article 6 of the Directive precludes a taxation scheme such as that at issue.

ECJ’s findings

-

While the existence and scope of a right to deduct are not preconditions, as such, for access to vocational training, the resulting financial consequences may affect accessibility to training. According to the Dutch government, the right to deduct training expenses is designed to help young people by offering them tax concessions to make it easier for them to study during that period and gain a firm position on the labour market. In those circumstances, a taxation scheme such as that at issue can be regarded as relating to access to vocational training, within the meaning of Article 3(1)(b) of Directive 2000/78 (§18-20).

-

Article 6(1)(a) of Directive 2000/78 provides that the differences of treatment may include the setting of special conditions for young people on access to employment and vocational training, including dismissal and remuneration conditions, in order to promote their vocational integration or ensure their protection. Consequently, the objective of promoting the position of young people on the labour market can be regarded as legitimate for the purposes of Article 6(1) of Directive 2000/78. It is thus necessary to examine whether the means used to attain that objective are appropriate and necessary (§25-28).

-

As regards the appropriateness of a taxation scheme such as that at issue, it is common ground that such a scheme is capable of improving the position of young people on the labour market as it amounts to an incentive to pursue vocational training. It is, however, for the national court to determine whether that is indeed the case (§29).

-

The Netherlands Government observes that, while this scheme reserves the right to deduct the whole of their training costs from their taxable income solely to those under 30, those over 30 are nonetheless not excessively disadvantaged by that scheme. Persons over 30 enjoy a right each year to deduct training expenditure of up to € 15 000, irrespective of whether the costs incurred concern a first cycle of studies or a further cycle. Moreover, the right may be exercised without any limitation in time, whereas those under can only deduct the whole of their training costs in an ordinary period of study of 16 calendar quarters. In addition, training

costs amount to an average of € 15,000 per annum. Finally, as whether it is justified to exclude those over 30 from the right to full deduction of training costs, the government of the Netherlands argued that those over 30 have generally had the opportunity to undertake prior training and to pursue a professional activity, with the result that they are able to bear the financial burden of new training (§31-33).

-

Although Member States have a broad discretion in the field of social policy and employment, it does not appear that those that adopt a taxation scheme such as that at issue in the main proceedings go beyond what is necessary to attain the objective of promoting the position of young people on the labour market (§34).

Judgment

-

Article 3(1)(b) of Council Directive 2000/78 must be interpreted as meaning that a taxation scheme, such as that at issue in the main proceedings, which provides that the tax treatment of vocational training costs incurred by a person differs depending on his or her age, comes within the material scope of that Directive to the extent to which the scheme is designed to improve access to training for young people.

-

Article 6(1) of Directive 2000/78 must be interpreted as not precluding a taxation scheme, such as that at issue in the main proceedings, which allows persons who have not yet reached the age of 30 to deduct vocational training costs from their taxable income in full, under certain conditions, whereas the right to deduct is restricted in the case of those who have reached that age, in so far as, first, the scheme is objectively and reasonably justified by a legitimate objective relating to employment and labour market policy and, second, the means of attaining that objective are appropriate and necessary. It is for the national court to determine whether that is the case in the main proceedings.

Creator: European Court of Justice (ECJ)

Verdict at: 2016-11-10

Case number: C-548/15 (De Lange)