

2. The interpretation given to the concept of 'fixed establishment from which business transactions are effected' is not called into question, in a situation such as that in the main proceedings, by the fact that the taxable person has, in the Member State where it has applied for refund, a wholly-owned subsidiary, the purpose of which is almost exclusively to supply the person with various services in respect of its technical testing activity.

(¹) OJ C 269, 10.9.2011.

Judgment of the Court (Fourth Chamber) of 25 October 2012 (reference for a preliminary ruling from the Cour de cassation — Belgium) — Déborah Prete v Office national de l'emploi

(Case C-367/11) (¹)

(Freedom of movement for persons — Article 39 EC — National of a Member State seeking employment in another Member State — Equal treatment — Tideover allowance for young persons seeking their first job — Grant subject to completion of at least six years' studies in the host State)

(2012/C 399/08)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Déborah Prete

Defendant: Office national de l'emploi

Re:

Reference for a preliminary ruling — Cour de cassation (Belgium) — Interpretation of Articles 12, 17, 18 and 39 EC (now Articles 18, 20, 21 and 45 TFEU) — Tideover allowance for young persons seeking their first job — Grant subject to completion of at least six years' studies at an educational establishment in the Member State concerned — Refusal to grant it to a national of another Member State who completed her secondary studies in that other State, on the sole ground that the above condition was not fulfilled — Factors to be taken into account to appraise the young person's link to the national employment market

Operative part of the judgment

Article 39 EC precludes a national provision such as that at issue in the main proceedings, which makes the right to a tideover allowance for the benefit of young people looking for their first job subject to the condition that the person concerned has completed at least six years' studies in an educational establishment of the host Member State, insofar as that condition prevents other representative factors liable to establish the existence of a real link between the person claiming the allowance and the geographic labour market concerned being taken

into account and accordingly goes beyond what is necessary to attain the aim pursued by that provision which is to ensure that such a link exists.

(¹) OJ C 282, 24.9.2011.

Judgment of the Court (First Chamber) of 25 October 2012 — European Commission v Kingdom of Belgium

(Case C-387/11) (¹)

(Failure of a Member State to fulfil obligations — Articles 49 TFEU and 63 TFEU — Articles 31 and 40 of the EEA Agreement — Taxation of income from capital and immovable property — Resident and non-resident investment companies — Withholding tax — Setting off of withholding tax — Exemption of income from capital and movable property — Discrimination — Justifications)

(2012/C 399/09)

Language of the case: French

Parties

Applicant: European Commission (represented by: W. Mölls and C. Soulay, Agents)

Defendant: Kingdom of Belgium (represented by: J.-C. Halleux and M. Jacobs, Agents)

Intervener in support of the defendant: United Kingdom of Great Britain and Northern Ireland (represented by: S. Behzadi-Spencer, Agent)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Articles 49 and 63 TFEU and Articles 31 and 40 of the European Economic Area Agreement — Taxation of income from capital and immovable property — Exemption for investment companies — National legislation providing for a withholding tax on income from capital and immovable property ('précompte mobilier') — Discrimination against foreign investment companies which do not have a fixed establishment in the national territory inasmuch as they are not permitted to recover the amount paid by way of withholding tax — Lack of justification

Operative part of the judgment

The Court:

1. Declares that, by maintaining different rules for the taxation of income from capital and movable property according to whether it is earned by resident investment companies or non-resident investment companies with no permanent establishment in Belgium, the Kingdom of Belgium has failed to fulfil its obligations under Articles 49 TFEU and 63 TFEU, and Articles 31 and 40 of the Agreement on the European Economic Area of 2 May 1992;