

Letter of information regarding the Memorandum of Understanding of 18 December 2020 between the competent authorities of Ireland and the Federal Republic of Germany regarding the application of the Ireland-Germany Double Taxation Agreement

The competent authorities of Ireland and the Federal Republic of Germany have recently concluded and published a Memorandum of Understanding with respect to the application of the Germany-Ireland Double Taxation Agreement of 2011 (“the 2011 DTA”). According to this Memorandum of Understanding, any payments pursuant to paragraph 2 or 3 of Article 17 of the 2011 DTA – for example, **payments of German social insurance pensions** – fall within the scope of the grandfathering clause laid down in Article 32 (5) of the 2011 DTA.

An Irish resident pensioner affected can elect to make use of this grandfathering clause, which will mean that pension payments that had already been taxable in Ireland on the basis of the Germany-Ireland Double Taxation Agreement of 1962 (“the 1962 DTA”) shall remain taxable in Ireland also under the 2011 DTA and vice versa.

The election can be made by means of mutual agreement procedure (“MAP”) application using Form MAP1 below. This option of making a MAP application is only applicable in cases where an Irish resident pensioner affected started receiving German social insurance pension payments within the meaning of paragraph 2 or 3 of Article 17 of the 2011 DTA before 28th November 2012 and that income had been subject to taxation in Ireland according to the DTA of 1962. Furthermore, this option is only applicable if those pension payments are actually taxed in Ireland under Irish tax law.

A completed Form MAP1 should be sent to the Competent Authority of Ireland (details below) who will then consult with the German Competent Authority to put the grandfathering clause into practice.

Whether it is advantageous for an individual affected by this to make use of the grandfathering clause depends on each individual’s tax situation. Please note the German and Irish Authorities cannot give individual tax advice. In case of doubt as to whether it is advantageous or not to make use of the grandfathering clause it is recommended that taxpayers seek advice from a tax adviser.

In cases where such German social security pension payments have been subject to double taxation in Ireland and in Germany, the existing double taxation can be eliminated within the mutual agreement procedure taking into account the Memorandum of Understanding of 18 December 2020 and the decision of the affected pensioner whether these payments should still be taxed in Ireland according to the 1962 DTA.

Form MAP1

Application for Mutual Agreement Procedure (“MAP”) pursuant to Article 25 of the Ireland-Germany Double Taxation Agreement (‘the Agreement’) regarding paragraph 5 of Article 32 of the Agreement and in consideration of the Memorandum of Understanding of 18 December 2020.

Name:

Address:

Tax number (PPSN):

I, the above-named, confirm that I am in receipt of German pension payment(s), which I first received before the 28th November 2012, namely;

and, (understanding that these payments would otherwise be taxable in Germany) I elect that these payments should continue to be taxable in Ireland and claim any double taxation relief from German tax to which I may be entitled.

Name (print)

Signature

Date: _____

Please send to:

Office of the Revenue Commissioners
St John’s House
High St
Tallaght
Dublin 24
D24 DK26