

**Memorandum of Understanding (hereafter “the MoU”)  
between the Competent Authorities of Germany and Ireland according to paragraph 3  
of Article 25 of the Agreement of 30 March 2011 between the Federal Republic of  
Germany and Ireland for the Avoidance of Double Taxation and the Prevention of  
Fiscal Evasion with respect to Taxes on Income and on Capital as amended through  
Protocol of 3 December 2014 (hereafter “the Agreement”) with respect to the  
application of the grandfathering clause pursuant to paragraph 5 of Article 32 of the  
Agreement**

Pursuant to paragraph 3 of Article 25 of the Agreement the Competent Authorities of the Federal Republic of Germany and Ireland have agreed as follows:

- (1) Paragraph 5 of Article 32 of the Agreement (hereafter “the grandfathering clause”) shall cover any payment under paragraph 2 or 3 of Article 17 of the Agreement where an individual was in receipt of such payments before the entry into force of the Agreement on 28<sup>th</sup> November 2012. Those payments also include German social insurance pensions paid to residents of Ireland.
- (2) It is understood that the grandfathering clause can in general only be applied if the payments that were being received before 28<sup>th</sup> November 2012 were actually subject to the Germany-Ireland Double Tax Agreement of 1962.
- (3) If an individual chooses to make use of the grandfathering clause, this choice cannot be revoked and the former Agreement of 1962 will apply consistently for 2013 and each subsequent year.
- (4) The former Agreement of 1962 will however no longer apply after a transformation of a pension, which constitutes a new pension entitlement (e.g. transformation of a disability pension to an old-age pension) received on or after 28<sup>th</sup> November 2012.
- (5) It is also understood that, pursuant to Article 29 of the Agreement, the grandfathering clause cannot be applied insofar as those payments are not liable to tax in a Contracting State because they had not been remitted to or received in that State.
- (6) An Irish resident wishing to make use of the grandfathering clause for German social insurance pension payments shall apply to the Competent Authority of Ireland for a mutual agreement procedure according to paragraph 1 and 2 of Article 25 of the Agreement. In respect of such payments, the period within which a case is to be presented referred to in the second sentence of paragraph 1 of Article 25 of the Agreement shall be extended until one year after this MoU has been signed.

(7) If the conditions set out above are met and an Irish resident receiving German social insurance pensions makes use of the grandfathering clause, it is understood that the relevant Articles of the former Agreement of 1962 apply and Ireland has the right to tax. In these instances, Germany will refund any tax paid by that individual for 2013 and any subsequent years in respect of these social insurance pension payments in accordance with the former Agreement of 1962 in order to eliminate any existing double taxation of such income.

(8) Where an Irish resident receiving German social insurance pensions does not make use of the grandfathering clause, it is understood that the relevant Articles of the former Agreement of 1962 shall not apply and Germany has the right to tax. In these instances, Ireland will refund any tax paid by that individual for 2013 and any subsequent years in respect of these social insurance pension payments in accordance with paragraph 2 or 3 of Article 17 of the Agreement in order to eliminate any existing double taxation of such income.

This Memorandum of Understanding shall enter into force as signed by the competent authorities of the Contracting States.

Berlin, 17<sup>th</sup> December 2020

Dublin, 17<sup>th</sup> December 2020

For the Competent Authority  
of the Federal Republic of Germany

For the Competent Authority  
of Ireland



Silke Bruns



Eamonn O'Dea