cutting through complexity

KPMG in Ireland
Alternative Investments

The ICAV
What you need to know

The Irish Collective Asset-management Vehicle (ICAV) is a new form of collective investment vehicle. It sits alongside existing fund structures (Unit Trusts, Common Contractual Funds, Investment Limited Partnerships, and Part XIII Investment Companies). Summarised below are key tax and legal aspects of the new ICAV.

What is the ICAV?

The ICAV is a new form of collective investment vehicle for UCITS funds and Alternative Investment Funds (AIFs). It provides managers and promoters with a corporate structure that is designed specifically for investment funds and which is not subject to rules or requirements designed for other forms of company (thereby helping to reduce administrative burden and cost).

Like an investment company, an ICAV is a corporate entity that is governed by a board of directors and owned by shareholders. ICAVs are regulated funds and, therefore, have all of the benefits of a regulated structure. Consequently, an ICAV needs an authorisation to carry on business either as an AIF or as a UCITS.

The ICAV enhances Ireland's competitiveness as a domicile for investment funds by virtue of its attractive legal structure. Critically, it also represents a simpler product for US investors from a tax perspective.

Key features of the ICAV

- The ICAV legislation is separate from that governing other Irish companies – this should "future proof" against unintended consequences arising from changes in Irish and European company law.
- The investors in an ICAV benefit from limited liability protection (i.e. the liability of members of an ICAV is limited to the amount, if any, unpaid on the shares respectively held by them).
- There is no requirement for an ICAV to have aim of spreading investment risk.
- The Central Bank is both the registration and the supervisory authority for the ICAV.
- An ICAV may be established as an umbrella structure with a number of sub-funds and share classes. An umbrella ICAV has segregated liability between sub-funds. It is possible to prepare separate accounts for each sub-fund.
- ICAVs can issue debenture stock, bonds and other securities and may be listed on a stock exchange.
- Paid up share capital must be equal to the net asset value of the ICAV.
- An ICAV has a governing document known as an instrument of incorporation ("IOI"). Similar to the memorandum and articles of association of a plc, the IOI is the constitutional document of an ICAV.
- The board of directors of an open-ended ICAV are permitted to elect to dispense with the holding of an annual general meeting by giving at least 60 days written notice to all of the ICAV's shareholders.

Formations, Conversions, Redomiciliations, & Mergers

There is a streamlined and relatively straight forward procedure for:

- the establishment of a new investment fund as an ICAV;
- the conversion of an existing Irish Company to an ICAV;
- the migrating or re-domiciling investment funds established as companies to Ireland as ICAVs; and
- a merger involving an ICAV as the receiving fund.

Taxation of the ICAV

ICAVs are subject to the same tax regime as other Irish funds. The key components of this regime are as follows:

- No Irish income tax at the fund level.
- 41% exit tax on distributions to Irish investors but no Irish withholding tax / exit tax on all distributions to non-Irish investors and certain categories of Irish investors.
- No Irish withholding tax / exit tax on all distributions where the shares are held in a recognised clearance system.
- No transfer taxes on the issue, redemption or transfer of shares.
- No hidden taxes (e.g. wealth taxes / net asset taxes).
- Access to Ireland's extensive double taxation agreements minimising the effects of foreign withholding taxes on returns on investments.
- Exemptions from Value Added Tax for many services required by a fund (in particular fund management services).

US taxation advantages of the ICAV

The ICAV is attractive to US investors as it simplifies the US tax treatment. This is because the ICAV effectively allows taxable US investors to be in the same tax position as if they had invested directly in the underlying investments of the ICAV. This treatment allows US investors access to relief under US tax treaties as well as the ability to use tax credits attaching to investments made by the fund. It also means that the complex US Passive Foreign Investment Company (PFIC) regime does not apply.

This treatment can be achieved because the ICAV is able to make an election under the US "check the box" rules to be treated as a "pass through" entity for US federal income tax purposes. This will result in an ICAV being treated as a "partnership" (if it has more than one investor) or a "disregarded entity" (if it has only one investor) for US tax purposes. In contrast, an Irish fund established as a PLC cannot use the "check the box" option because it is deemed to be a "per se" corporation.

Until the introduction of the ICAV, Irish funds distributed to US investors typically were established as unit trusts or investment limited partnerships in order to achieve this "pass through" treatment. Irish master-feeder funds typically used a unit trust at the master level for this purpose. Although unit trusts may not be subject to the US PFIC rules, they are not as familiar to US or other global investors as a corporate structure that can "check the box". An ICAV may be used at the master level while the feeder fund may be either an ICAV, PLC, unit trust, or investment limited partnership.

The ability to convert an existing fund into an ICAV or re-domicile a foreign fund in Ireland as an ICAV is usually tax neutral. However, the particular facts and circumstances will determine whether this will be the case. Consequently, careful consideration should be given to whether the conversion or re-domiciliation might crystallise any taxes or adversely impact on an investor's tax position. Particular care is needed where "check the box" elections are required or where the converting / re-domiciling fund changes its "check the box" status.

In addition, while an ICAV may elect to be treated as a "pass through" entity for US federal income tax purposes, it is, in general, respected as a corporate entity in most other jurisdictions. Many jurisdictions provide for more favourable tax treatments in respect of dividends and gains on share transfers. The fact that the ICAV is a body corporate makes it more likely to have the right to treaty access in cases of treaties where the status of non-corporate entities (such as unit trusts) is not recognised.

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