

Irish Collective Asset-management Vehicles Act (ICAV)

The eagerly awaited legislation, the Irish Collective Asset-management Vehicles Act (ICAV), was signed into law by the President on March 4, 2015. The Act will come into operation by way of ministerial order and it is anticipated that the Minister for Finance will issue the commencement order shortly.

The Act provides for the establishment of a new form of corporate structure that is designed specifically for investment funds, both UCITS and AIFs, and to meet the changing needs of the global funds industry.

Background

For many years, Ireland has been the domicile of choice for assets managers seeking to establish and operate regulated funds. As of December 2014, there were 5,833 domiciled funds with assets of approximately €1,661bn. In addition, in recent years Ireland has been the fastest growing international fund administration centre. As of December 2014, Irish administrators serviced 13,193 Irish and non-Irish domiciled funds with assets under administration of €3,373bn.

Despite the continuing success of the Irish funds industry, it was noticeable that Ireland did not offer a fund structure similar to the SICAV offered in other EU jurisdictions and the Irish government set about filling this gap as part of its IFSC Strategy for 2011-2016. In this regard, the government undertook to introduce a legal framework for a corporate fund structure which is not a company required to be incorporated under the Irish Companies Act, resulting in the introduction of the ICAV.

What is the ICAV?

The ICAV is a new corporate vehicle designed for Irish investment funds. It will exist in addition to the current fund structures, including investment companies established as public limited companies, and will offer an increased level of choice for fund promoters.

Why is the ICAV being introduced?

The ICAV legislation will modernise the corporate fund structure and is conceived specifically with the needs of investment funds in mind.

As ICAVs will not be incorporated under the Companies Act, they will not be subject to the onerous rules that are considered more appropriate to trading companies. Instead, ICAVs will be both authorised and regulated by the Central Bank of Ireland. The Central Bank of Ireland has previously indicated that it will be in a position to accept applications under the Act within two weeks of commencement.

Features of the ICAV

The following outlines the main features of the ICAV:

- will not be subject to the reporting requirements and restrictions of the Companies Acts; reduced administrative obligations and costs are likely to apply to funds established as an ICAV as a result;
- will be able to make an election under US tax law (the “check the box” rules) to be treated as a transparent or flow-through entity for US tax purposes thus allowing US investors to avoid tax consequences that are usually associated with an investment in passive foreign investment companies;



- may be established as an umbrella structure with a number of sub-funds and it will be possible to prepare separate audited accounts for each sub-fund rather than on a consolidated basis;
- the accounts may be prepared using various accounting standards including US GAAP, Irish GAAP and IFRS;
- will not be subject to risk spreading/diversification requirement which currently apply to certain investment vehicles;
- will not have a Memorandum and Articles of Association; instead it will be incorporated using an “Instrument of Incorporation”, which may be changed without investor consent provided the change would not prejudice shareholders;
- no requirement to hold an AGM;
- existing collective investment schemes domiciled in Ireland will be able to convert to an ICAV structure;
- existing collective investment schemes domiciled outside of Ireland will be able to migrate to Ireland as an ICAV;
- will be subject to the same attractive Irish tax regime that currently applies to PLC’s;
- its registered office must be in Ireland;
- it must have a minimum of two directors on its board;
- its assets must be entrusted to a depositary/custodian;
- it may establish multiple share classes;
- shares and/or debentures may be issued; and
- it has more simplified procedures for schemes of amalgamation, mergers and reorganisations.

Tax transparency – unique selling point for US investors

The ICAV should prove particularly attractive to US investors looking for tax efficient returns. Currently an Irish fund structured as a PLC is a corporation for US tax purposes and is not permitted to “check the box” in order to be treated as a transparent entity for US tax purposes. As a result, such Irish funds are generally subject to tax at two levels from a US tax perspective:

- at the fund level (where the income is earned); and
- at the investor level (when a distribution is made).

An ICAV will be able to elect its classification under the US “check the box” tax rules and as a result will be treated as a transparent or disregarded entity for US tax purposes and should be open to more favourable tax treatment. The availability of an ICAV should therefore enhance the attractiveness of Irish funds to investment managers seeking to market their funds in the US.

Re-domiciliation of offshore funds to Ireland

Given the ICAV’s aforementioned ability to “check-the-box” for US tax purposes, there will be an opportunity for existing offshore funds to re-domicile to Ireland and continue to maintain favourable tax treatments for their US taxable investors. Irish legislation allows for the efficient and effective re-domiciliation of funds to Ireland which will allow those funds to migrate to Ireland whilst maintaining its legal identity. As there would be no change in legal identity, the re-domiciliation should not constitute a taxable event for investors and the fund should retain its performance track record following the migration.

Conversion from incorporated company status

Existing PLC’s will be able to convert to an ICAV. It is expected that a large number of existing PLC’s will take advantage of this option to migrate to an ICAV in particular to avail of the tax treatment benefits available for US taxable investors.

Conclusion

The ICAV represents an additional structural option to managers that will complement the existing options available in Ireland and will further enhance Ireland’s reputation as the asset management domicile of choice.

Contact

If you have any questions on the above please contact a member of our team.

Niamh Meenan

Partner, Financial Services Audit
D +353 (0)1 6805 614
E niamh.meenan@ie.gt.com

Peter Vale

Partner, Tax
D +353 (0)1 6805 952
E peter.vale@ie.gt.com

John Glennon

Partner, Financial Services Audit
D +353 (0)1 6805 630
E john.glennon@ie.gt.com

Paschal Comerford

Director, Tax
D +353 (0)1 433 2437
E paschal.comerford@ie.gt.com

David Lynch

Director, Financial Services Audit
D +353 (0)1 6805 923
E david.lynch@ie.gt.com

Maura Cronin

Director, Financial Services Audit
D +353 (0)1 6805 947
E maura.cronin@ie.gt.com

24-26 City Quay, Dublin 2, D02 NY19

Offices in Dublin, Belfast, Cork, Galway, Kildare, Limerick and Longford.



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www.grantthornton.ie