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# *The ICAV*

## The Irish Collective Asset Management Vehicle

### 20 Questions and Answers



A&L Goodbody



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***Question 1: Does the ICAV itself make the application to the IRS to be seen as a partnership for U.S. tax purposes or is this the responsibility of the U.S. investors?***

The ICAV makes the relevant election on a Form 8832. The ICAV can pick the date that the election will be effective from, but the election must usually be made within 75 days of the date you want it to become effective.

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***Question 2: What is the tax position for overseas investors (neither U.S., nor Irish) investing into both US and non-US investments markets via an ICAV?***

The election to ‘check the box’ i.e. to be treated as a partnership for U.S. tax purposes, is a U.S. only tax election. Making this “check the box” election should not impact the manner in which the ICAV is viewed in other investment jurisdictions, where we would expect that the ICAV should be viewed as an Irish tax resident corporate fund.

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***Question 3: What is the tax treatment of the ICAV by other European jurisdictions compared with the existing PLC structure?***

The ICAV should be viewed as an Irish resident corporate fund. To the extent that the ICAV meets the conditions that the existing PLC structure does from a treaty analysis perspective, then a similar analysis should apply for a source country perspective.

From an investor country perspective, the investors will be holding shares in an Irish resident corporate fund when holding the ICAV so the investor taxation position should be consistent with the treatment that currently applies to holding shares in a PLC.

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***Question 4: Do we expect that a conversion from a PLC to an ICAV crystallises a tax liability? i.e. is the conversion a "trigger" / "distribution event", requiring a tax consideration in the hands of the investor ?***

In assessing the investor impact of the conversion, it is important to consider how each of the local countries of the investors would view the steps giving rise to the change in Regulatory status from a PLC to an ICAV. As it is a change in Regulatory status without a share redemption/issue, it is possible that many investor countries would view this as a tax neutral event and not crystallise a tax event for the investors.

Where a charge to investors could arise is where you have a PLC that currently performs PFIC reporting for U.S. investors and converts to an ICAV. In such circumstances “checking the box” could give rise to U.S. taxation for those investors on the move from PFIC to K1 reporting.

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## *Question 5: How are ICAVs recognised in relation to Tax Treaties?*

In determining whether an ICAV will be afforded the same tax treaty entitlements as the current PLC (both Irish resident corporate funds), it will be important to understand the basis upon which the source investment country afforded treaty benefits to the PLC and assess whether the ICAV will similarly meet those conditions for treaty entitlement.

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***Question 6: From a transparency perspective what are the material differences between the Common Contractual Fund (“CCF”) and ICAV ?***

The key difference is that while the ICAV can elect to be treated as a partnership, and therefore treated as tax transparent, from a U.S. tax perspective; it should be viewed as an Irish resident corporate fund in other jurisdictions. The election for U.S. tax transparency should have no impact on the status of an ICAV in other jurisdictions.

By way of comparison the CCF is viewed as a tax transparent vehicle by virtue of its contractual nature and is typically not viewed as an Irish resident for treaty purposes. In a CCF, the investors are typically viewed as holding the underlying assets directly from the perspective of assessing treaty entitlements. Therefore, in a CCF the relevant treaty is the one between the investor country and the investment country not the CCF (assuming both jurisdiction recognise the transparency of the CCF).

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***Question 7: Can an ICAV “check the box” on a sub-fund by sub-fund basis (from both an Irish and U.S. perspective)?***

It is possible for an ICAV to elect to “check the box” on a sub-fund basis. There is great flexibility based on investor profile / needs. You could therefore have some sub-funds within an umbrella which have “checked the box” and are treated as transparent for U.S. purposes and some which are treated as corporates.



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***Question 8: Could you have UCITS and Non-UCITS sub-funds in the same umbrella ?***

An ICAV may be registered and authorised by the Central Bank of Ireland as either a UCITS or an AIF/Non-UCITS. However, all sub-funds in the same umbrella structure must be either UCITS or AIF/Non-UCITS. Each umbrella structure is required to comply with the requirements set down in the UCITS regime or AIF/Non-UCITS regime as applicable.

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***Question 9: Is it anticipated that there would be any difference in the time it takes to establish an ICAV as distinct from a PLC?***

We would not currently anticipate that there will be a difference in the time it takes to establish an ICAV as distinct from a PLC.

The Central Bank of Ireland's 'Questions and Answers for ICAVs' states that the Central Bank will issue a Registration Order for a new ICAV within two weeks from the date of receipt by the Central Bank of a complete application for registration. This time period is similar to that of the Central Registration Office (“CRO”) when incorporating a new PLC.

The authorisation process will follow the same format as is applicable to existing PLC entities.

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***Question 10: Is there a requirement for An ICAV to have a minimum of one or more Irish-resident directors?***

Section 56 of the ICAV Act prescribes that an ICAV must have at least 2 directors at all times. Section 58 (1) of the ICAV Act further states that an ICAV shall not have as a director of the ICAV a body corporate or an unincorporated body of persons.

Subject to the outcome of the Central Bank of Ireland's Consultation Paper 86, the ICAV will be required to have at least 2 Irish resident directors.

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***Question 11: Can ICAV sub-funds have different financial reporting year end dates from one another within the same umbrella?***

Yes, an ICAV with different sub-funds may have different year end dates. Section 116 of the ICAV Act provides that separate accounts may be prepared and presented in respect of a sub-fund or sub-funds, and all references to an ICAV be read as, where appropriate, referring to the sub-fund or sub-funds in respect of which the separate accounts are to be prepared.

It is also possible to use different financial reporting frameworks for different sub-funds within the same umbrella e.g. US GAAP for one sub-fund and IFRS as adopted by the EU for another.

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***Question 12: Does an ICAV have segregation of liability between sub-funds in an umbrella structure?***

Section 35 of the ICAV Act provides for segregated liability between sub-funds of an ICAV.

Section 35 of the ICAV Act also provides that liability attributable or incurred by one sub-fund shall be discharged solely out of the assets of that sub-fund.

Section 36 (1) further prescribes that where an umbrella fund has segregated liability between sub-funds that the ICAV ensure that the words “An umbrella fund with segregated liability between subfunds” are included in all its letterheads and in any agreement entered into by the ICAV in writing with a third party.

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***Question 13: Could one ICAV sub-fund invest in another ICAV sub-fund within the same umbrella?***

**Yes, sub-funds of an umbrella ICAV may invest in another sub-fund in the same umbrella subject to the requirements of the Central Bank of Ireland.**

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***Question 14: Can an ICAV be listed/traded on the Irish Stock Exchange?***

**Yes, an ICAV may be listed on the Irish Stock Exchange in the same way as an existing PLC.**

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***Question 15: Previously you could incorporate a PLC in advance of getting Central Bank approval, does that fall away now that the Central Bank are the registrar for ICAVs?***

No, the registration of an ICAV will require the ICAV to obtain a Registration Order from the Central Bank of Ireland in advance of approval. The Central Bank of Ireland's 'Questions and Answers for ICAVs' states that the Central Bank of Ireland will issue a Registration Order for a new ICAV within two weeks from the date of receipt by the Central Bank of a complete application for registration. This timeframe should be built in to all timelines prepared for the approval of an ICAV.

It should be noted that section 17 of the ICAV Act states that the authorisation and approval of an ICAV pursuant to the ICAV Act is permissible where the ICAV is not authorised under the UCITS Regulations.



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***Question 16: What countries is it possible to migrate-in from to become an ICAV?***

Currently the relevant jurisdictions from which corporate investment funds will be entitled to redomicile to Ireland, and convert to ICAV status, using the new mechanism are: Bermuda, Cayman Islands, British Virgin Islands, Guernsey, Jersey and the Isle of Man.

Section 145 (2) of the ICAV Act provides the Irish Minister for Finance with the power to add further jurisdictions to the above list in due course where the legislation of their original territory of the existing offshore funds seeking to re-domicile allows outward and inward re-domiciliation.

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***Question 17: Would any Stock Exchange listing requirements give rise to Corporate Governance reporting requirements for an ICAV as a result?***

Part 4 and Part 5 of the ICAV Act sets out provisions in relation to 'Directors and Other Officers' and 'Meetings'. It should also be noted that the IFIA Corporate Governance Code will apply to the ICAV directors.

An ICAV which is listed on a stock exchange will need to comply with the requirements of the relevant exchange which may result in additional corporate governance requirements being met.

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***Question 18: In a master/feeder structure, can an ICAV feeder be set up to invest in a Cayman master?***

**Yes, subject to the existing requirements of the Central Bank of Ireland as they pertain to master-feeder structures.**

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***Question 19: If an ICAV is not a "company" then what is it?***

The ICAV is a specific body corporate. The ICAV Act prescribes definitions of what a 'company' and 'investment company' will be considered to be for the purposes of the ICAV requirements.

A 'company' is defined in the ICAV Act as an entity "formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act". An 'investment company' is defined as having "the same meaning as in Part 24 of the Companies Act 2014".

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***Question 20: In an umbrella structure, do you have to present aggregated totals in the financial statements of an ICAV?***

No, aggregated totals are not required in the financial statements of an ICAV structured as an umbrella fund.

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