

KEEP YOUR INVESTMENTS SMALL- TO MEDIUM-SIZED

Small- and medium-sized businesses customarily struggled to access venture finance, which is essential for its development and growth. In an attempt to assist small- and medium-sized business (and specifically junior mining companies) in attaining access to venture finance, the legislature included a tax incentive associated with such investments (per section 12J of the Income Tax Act).

The incentive is only available to taxpayers investing in approved 'venture capital companies' ("VCC"). A VCC is a company approved as such by the Commissioner of SARS and with the specific purpose of providing venture finance to small- medium-sized entities (or 'qualifying companies'). A 'qualifying company' is defined as:

- A resident company which is not a controlled group company;
- All its tax affairs are in good order;
- An 'unlisted company' or a 'junior mining company' as defined in the Income Tax Act;
- Is not involved in any 'impermissible trade' activities; and
- The sum of its investment income does not exceed 20% of its gross income.

The incentive is in the form of a deduction (subject to anti-avoidance provisions). The taxpayer will be allowed a deduction from its taxable income, the expenditure actually incurred in subscribing for shares in a VCC, of course subject to certain qualifications. Any taxpayer will qualify as an investor in a VCC. The following are preliminary requirements for a company to be an approved VCC:

- The company must be a resident company;
- The sole purpose of the company must be to invest in qualifying companies;
- The company's tax affairs must be up to date and in order; and
- The company must be licensed in terms of section 7 if the Financial Advisory and Intermediary Services Act.

Section 12J of the Income Tax Act was specifically introduced to provide for tax deductions in the event of a taxpayer subscribing and the VCC issuing shares to such taxpayer. It does not include a sale of shares by an existing shareholder of the VCC. There are no tax benefits available for the VCC. This venture capital company regime is subject to a 12-year sunset clause, which will terminate on 30 June 2021 and will subsequently be reviewed by the legislature.

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