

*"Many of life's failures are people who did not realize how close they were to success when they gave up". - Thomas Alva Edison*

**August 2018**

## **SECTION 12J – INVESTEE COMPANIES MAY NOT BE "CONTROLLED GROUP COMPANIES"**

Section 12J of the Income Tax Act, 58 of 1962 (the "**Act**") prohibits a Venture Capital Company ("**VCC**") to invest in an investee company which does not meet all the requirements of a 'qualifying investee company' ("**QIC**") as set out in the **Act**.

One such requirement is that the company being invested in may not be a 'controlled group company' in relation to a group of companies. A controlled group company is defined in the **Act** as: "*a controlled group company contemplated in the definition of a 'group of companies'*".

In terms of the definition of 'group of companies', an investee company will be regarded as a 'controlled group company' if more than 70% of its share capital is owned (directly or indirectly) by a corporate shareholder (in this case the **VCC**). As such, for an investee company to qualify as a **QIC** in terms of section 12J, at least 31% of its issued share capital must be owned by another entity / person (which is not a related party to the investor).

It is the responsibility of the **VCC** to ensure that it complies with the provisions of section 12J and therefore to ensure that it invests in **QIC's** only. Should the **VCC** fail to meet this requirement, or any other requirement prescribed by section 12J, the **VCC's** licence to operate as such may be revoked and penalties imposed.

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