

EXTERNAL GUIDE

VENTURE CAPITAL COMPANIES

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1 PURPOSE

- The purpose of this document is to provide guidelines for Venture Capital Companies (“VCC”).
- The process explains the legislative requirements and the obligations of approved VCCs.

2 INTRODUCTION

2.1 GOVERNING LEGISLATION

- The contents of the guide are subject to the provisions of Section 12J of the Income Tax Act No. 58 of 1962 (“the Act”).
- Section 12J was introduced to cater for the deductions in respect of expenditure incurred in exchange for the issue of venture capital shares.

2.2 VENTURE CAPITAL COMPANIES (VCC)

- One of the main challenges to the economic growth of small and medium-sized businesses and junior mining companies is access to equity finance.
- To assist these sectors in terms of equity finance, the government has implemented a tax incentive for investors in such enterprises through a VCC regime.
- Investors will receive a tax benefit in the form of a tax deduction in respect of expenditure actually incurred to acquire shares in approved VCCs. The approved VCC will issue investor certificates to its investors which will provide SARS with proof when the investor claims the relevant tax deduction.
- The VCC regime is subject to a 12 year sunset clause i.e. it will end on 30 June 2021. The purpose of this clause is to allow a review of the effectiveness of the VCC regime and the decision will be made as to whether it should be continued.

2.3 HOW DO I APPLY A FOR A VENTURE CAPITAL COMPANY STATUS ?

- An application form must be completed by the company. The application form is available electronically and can be accessed by following the steps below :
 - On the SARS website (www.sars.gov.za), click on <Businesses and Employers>
 - From the drop down list select <Venture Capital Companies>
 - Select the link <Click here to download the application form>
- The following supporting documents must accompany the application form:
 - A Tax Compliance Status (TCS pin) to substantiate that the company’s tax affairs are in order.
 - A registration certificate as issued by the Companies and Intellectual Property Commission (CIPC).
 - Memorandum of Incorporation and (if applicable) the Certificate of Confirmation that the amendment of memorandum of incorporation was accepted by the CIPC to confirm that the sole object of the company is the management of investments in qualifying companies.


- A copy of the Financial Sector Conduct Authority (FSCA) licence certifying that the VCC is licensed as a Financial Service Provider (FSP).

2.4 HOW TO COMPLETE THE VENTURE CAPITAL COMPANIES APPLICATION FORM

2.4.1 PARTICULARS OF THE COMPANY

- **Complete the following fields**

- “Registered name”: this is the name that appears on your Companies and Intellectual Property Commission registration certificate.
- “Trading name”;
- “Email address”;
- “Name of the Public Officer”;
- “Telephone Number”;
- “Fax Number”.
- Select “Y” if you’re a first time applicant or “N” if you are not registering for the first time
 - If no is selected, please state the reason for the withdrawal or rejection of the previous application.

		Venture Capital Company		Application for SARS Approval <small>(Section 12J of the Income Tax Act)</small>		VCC001		
Particulars of the Company								
Registered name	<input type="text"/>							
Trading name	<input type="text"/>							
Email address	<input type="text"/>							
Name of Public Officer	<input type="text"/>							
Telephone No.	<input type="text"/>			Fax No.	<input type="text"/>			
Are you a first time applicant?	<input type="checkbox"/> Y	<input type="checkbox"/> N	If No, please state the reason for the withdrawal or rejection of the previous application					<input type="text"/>

2.4.2 COMPLETE REFERENCE/REGISTRATION NUMBERS

- **Income tax (IT) reference number**
 - This is the registration number that a VCC obtains from SARS when it registers for Income Tax.
- **Pay-As-You-Earn (PAYE) reference number**
 - This is the registration number that a VCC obtains from SARS when it registers for Pay-As-You-Earn (PAYE).
- **Value Added Tax (VAT) number**
 - This is the registration number that a VCC obtains from SARS when it registers for Value-Added Tax.
- **Financial Services Provider (FSP) License Number**
 - This is the license number that a VCC obtains from Financial Services Provider when it registers for financial Services. Please attach a copy of the FSP licence certificate to your VCC application form.
- **Company registration number**
 - This is the registration number that a close corporation, co-operative or company obtains when it registers with CIPC. Please attach a copy of the CIPC certificate to your VCC application form.

Reference / Registration Number(s)										
Income Tax Ref No.		PAYE Ref No.	7	SDL Ref No.	L	UIF Ref No.	U			
VAT Reg No.	4	FSP License No. <small>(Attach copy of FSP license certificate)</small>		Co No. <small>(Attach copy of registration certificate issued by CIPC)</small>						

2.4.3 BUSINESS ADDRESS

- This is the physical address of the business i.e. the premises the business is trading from.
- Complete the following fields:
 - If the business is trading from a flat or townhouse, the actual flat or townhouse unit number must be inserted in “unit no” field
 - The name of the block or the block of flats or townhouse complex must be inserted in “complex” field, and
 - Where the business does not trade from a flat, townhouse or complex, leave these fields blank.
 - “Street no”
 - “Street/Name of farm”
 - “Suburb/District”
 - “City/Town”; and
 - “Postal code”.

Business Address									
Unit No.		Complex <small>(if applicable)</small>							
Street No.		Street / Farm Name							
Suburb / District									
City / Town									
								Postal Code	

2.4.4 POSTAL ADDRESS

- This is the address that the business would like its post to be sent to. It may be the same as the business address above or it may be a post box number or other address. If it is the same as the business address simply, mark the relevant box with an “X”.
- If the answer is “No”, the following fields will display and must be completed:
 - “Postal Agency or Other Sub-unit (if applicable) (e.g. Postnet Suite ID)”
 - “PO Box”: Indicate on the applicable tick box if the postal address is ‘P.O. Box’ or ‘Private Bag’.
 - “Private Bag”: Indicate on the applicable tick box if the postal address is ‘P.O. Box’ or ‘Private Bag’.
 - “Other PO Special Service (specify)”;
 - “Number”;
 - “Post Office”;
 - “Postal Code”;
 - “Registered Postal Address indicator”.

Postal Address									
Mark here with an “X” if same as above or complete your Postal Address	<input type="checkbox"/>								
								Postal Code	

2.4.5 COMPLETE INFORMATION RELATING TO THE COMPANY

- Complete the following questions by selecting Yes/No:
 - “Is the company a South African resident?”
 - “Are all of the company’s tax affairs in order?”
 - “Is the sole object of the company the management of investment in qualifying companies, as defined in Section 12J of the Income Tax Act?”
 - “Is the company licensed in terms of section 8(5) of the FAIS Act No.37 of 2002?”
 - Provide the Tax Compliance Status (TCS pin) to substantiate that the company’s tax affairs are in order.

Information Relating to the Company					
Is the company a South African resident?	Y	<input type="checkbox"/>	N	<input type="checkbox"/>	
Are all of the company’s tax affairs in order?	Y	<input type="checkbox"/>	N	<input type="checkbox"/>	
Provide the Tax Clearance Status Pin	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Is the sole object of the company the management of investments in “qualifying companies”, as defined in Section 12J of the Income Tax Act?	Y	<input type="checkbox"/>	N	<input type="checkbox"/>	
Is the company licenced in terms of section 8(5) of the FAIS Act No. 37 of 2002?	Y	<input type="checkbox"/>	N	<input type="checkbox"/>	

Note: If the applicant does not want to submit the form immediately or if there is uncertainty about details on the form or certain information needs to be recaptured; the applicant can either:

- Click “Save” to retain the captured information and complete the form at a later stage ;or
- Click “Reset” to remove the information captured on the form; or
- Click “Print” to print, sign and submit the form to SARS.

Save	Reset	Print
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2.4.6 DECLARATION

- After all the information has been completed, the applicant is required to complete, print and sign the declaration on the first page of the application form. Failure to do so will result in the application being rejected.

Declaration of Public Officer

I declare that:

- The information furnished in this application as well as the supporting documentation attached is true and correct in every respect; and
- I consent to SARS publishing the following information for access by the public, in terms of section 69(6) of the Tax Administration Act:
 - Company Name - VCC Reference No
 - VCC Status Date - Contact Details
 - VCC Status

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Please ensure you sign over
the 2 lines of “X”s above

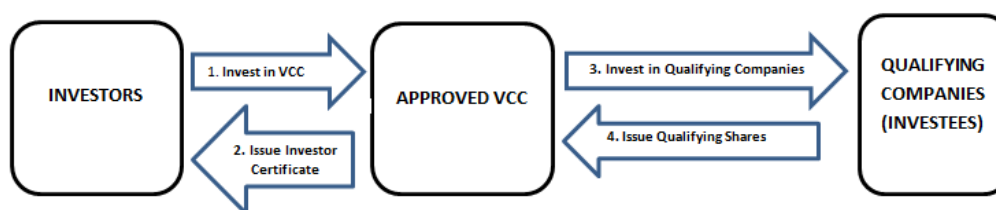
For enquiries go to www.sars.gov.za
or email vcc@sars.gov.za
or call 0800 00 SARS (7277)

Date (CCYYMMDD)

2.5 SUBMISSION OF VENTURE CAPITAL COMPANIES APPLICATION FORM

- The completed and signed application form together with the supporting documents must be submitted to SARS by using one of the following channels:
 - Email : vcc@sars.gov.za
 - Post : SARS Legal Counsel
Legal Advisory: Specialist Support
Venture Capital Companies
Private Bag X170
Rivonia
2128
- SARS will assess the application form and supporting documents to determine if the company meets the requirements.
 - If the application is successful, a VCC reference number will be allocated and an approval letter will be issued to the applicant
 - If the application is not successful, a rejection letter will be issued to the applicant stating the reason(s) for the rejection.
 - Standard turnaround time for approval of the application is 21 business days.

3 AN OVERVIEW OF HOW IT WORKS



- Investors will invest in approved VCC's in exchange for the issue of Venture Capital Shares and investor certificates. Investors can claim tax deductions in respect of their investments in an approved VCC.
- The approved VCC will, in turn, invest in qualifying Companies (investees) in exchange for qualifying shares.

3.1 WHO QUALIFIES TO BE AN INVESTOR?

- Any taxpayer qualifies to invest in an approved VCC.
- Investors can claim income tax deductions in respect of the expenditure actually incurred to acquire shares in approved VCCs.
- The approved VCC must issue investor certificates to its investors which will provide SARS with the proof when the investor claims the relevant tax deduction.
- Where any loan or credit is used to finance the expenditure in acquiring a venture capital share and remains owing at the end of the year of assessment, the deduction is limited to the amount for which the taxpayer is deemed to be at risk on the last day of the year of assessment.
- No deduction will be allowed if at the end of any year of assessment, after the expiry of a period of 36 months commencing on the first date of the issue of venture capital shares a taxpayer is a connected person to the VCC.

- If corrective steps acceptable to the Commissioner are not taken by the company, the Commissioner will withdraw the approval of that company and an amount equal to 125% of the aggregate amount contributed by the qualifying investor in exchange for VCC certificates will be included in the VCC income in the year of assessment in which such approval has been withdrawn.
- Except in the case where a taxpayer holds venture capital shares for a period longer than five years, the deduction is recouped (recovered) if the taxpayer disposes of the venture capital shares to the extent of the initial VCC investment (under the general recoupment rules of section 8(4) of the Act)).
- General income tax and Capital Gains Tax (CGT) rules apply in respect of VCC shares. Note: under no circumstances can a person request a tax directive for purposes of section 12J under paragraph 11 of the Fourth Schedule to the Act, in order to reduce his or her tax liability; or accept any advice from persons who indicate that such tax directives may be issued.
- The deduction that is allowed in the hands of an individual investor with regard to an investment or investments made to a SARS approved VCC, in the year of assessment in which such investment or investments are made, is not a prohibited deduction in terms of section 23(m) of the Act, as such expenditure is not related to any employment or office.

3.2 WHO QUALIFIES TO BE AN INVESTEE?

- The Investee must be a company which is a resident and must not be a controlled group company in relation to a group of companies.
- The company's tax affairs must be in order [a Tax Compliance Status (TCS)] Pin must be requested from SARS to support this requirement);
- The company must be an unlisted company (section 41 of the Act) or a junior mining company; A junior mining company may be listed on the Alternative Exchange Division (AltX) of the JSE Limited;
- During any year of assessment of that company that ends after the expiry of a period of 36 months commencing on the first date on which that company issued any share to a venture capital company—
 - the sum of the "Investment Income" as defined in section 12E (4) (c), derived by that company does not exceed an amount equal to 20 percent of the gross income of that company for that year; and
 - not more than 50 per cent of the aggregate amount received by or that accrued to that company from the carrying on of any trade was derived, directly or indirectly, from a person—
 - who holds a share in that venture capital company; or
 - who is a connected person in relation to a person who holds a share in that venture capital company;
- No person who holds a share in a venture capital company to which that company has issued any share holds, directly or indirectly and whether alone or together with any connected person in relation to that person, more than 50 per cent of the participation rights, as defined in section 9D (1), or of the voting rights in that company; and

- That company does not carry on any trade in relation to a venture, business or undertaking or part thereof that was acquired by that company, directly or indirectly, from a person—
 - who holds a share in a venture capital company to which that company has issued any share; or
 - who is a connected person in relation to a person who holds a share in that venture capital company;
- The company must not carry on any of the following impermissible trades:
 - Any trade carried on in respect of immoveable property, except trade as a hotel keeper (includes bed and breakfast establishments);
 - Financial service activities such as banking, insurance, money-lending and hire-purchase financing;
 - Provision of financial or advisory services, including legal, tax advisory, stock broking, management consulting, auditing, or accounting;
 - Operating casino's or other gambling related activities including any other games of chance;
 - Manufacturing, buying or selling liquor, tobacco products or arms or ammunition; or
 - Any trade carried on mainly outside the Republic.
- There are no special tax rules for qualifying companies (investees). The general tax rules will apply.

4 WHAT ARE THE PRELIMINARY REQUIREMENTS TO QUALIFY FOR AN APPROVED VCC STATUS

- A company must meet all of the following preliminary requirements to qualify for an approved VCC status for each year of assessment:
 - The company must be a resident;
 - The sole object of the company must be the management of investments in qualifying companies ;
 - The company's tax affairs must be in order;
 - The company must be licensed in terms of section 8(5) of the Financial Advisory and Intermediary Services Act, 2002.

4.1 ADDITIONAL REQUIREMENTS TO BE MET AFTER SARS HAS APPROVED THE VCC

- The company must satisfy the following requirements by the end of each year of assessment after the expiry of 36 months from the first date of issue of venture capital shares:
 - A minimum of 80% of the expenditure incurred by the VCC to acquire assets must be for qualifying shares, and each investee company must, immediately after the issuing of the qualifying shares, hold assets with a book value not exceeding:
 - R500 million in any junior mining company; or
 - R50 million in any other qualifying company
 - The expenditure incurred by the VCC to acquire qualifying shares in any *one* qualifying company must not exceed 20% of any amounts received in respect of the issue of venture capital shares.

5 FAILURE TO COMPLY WITH THE STIPULATED REQUIREMENTS

- Non-compliance with the following will trigger a withdrawal of an approved VCC status:
 - If during any year of assessment, after the approval of the VCC status, the company fails to comply with the preliminary approval requirements (refer to 4 above);
 - If the approved VCC does not take the acceptable corrective steps to rectify the connected person requirement within the period specified in the written notice from the SARS office (refer to 3.1 above).
 - If the company, at the end of any year of assessment after the expiry of 36 months from the first date of issue of venture capital shares, fails to meet the additional requirements (refer to 4.1 above).
- The SARS office will issue a written notification to the company, indicating that the company has failed to meet specific requirements and that the VCC status will be withdrawn if the company does not take the acceptable corrective steps within the period stated in that notice.

6 WITHDRAWAL OF VCC STATUS

- If the approved VCC does not take the acceptable corrective steps to rectify the non-compliance within the period specified in the written notice from the SARS office, the approved VCC status will be withdrawn from:
 - The commencement of that year of assessment if the VCC does not meet the preliminary approval requirements (refer to 4 above), or
 - The date of approval of the VCC status, if the approved VCC does not take the acceptable corrective steps to rectify the connected person requirements within the period specified in the written notice from the SARS office (refer to 3.1 above).
 - The commencement of that year of assessment where the VCC does not meet the additional requirements (refer to 4.1 above).
- The VCC will be notified of the withdrawal in writing.
- Once the approved VCC status has been withdrawn by the Commissioner, an amount equal to 125% of the aggregate amount contributed by the investor(s) in exchange for venture capital shares must be included in the VCC income in the year of assessment in which such approval has been withdrawn.
- A company may voluntarily request for a withdrawal of their approved VCC status. The request for withdrawal must be submitted in writing and must include the following information:
 - The VCC reference number
 - Taxpayer Reference Number of the VCC;
 - Reason(s) for withdrawal;
 - Record of all the investors;
 - Record of all the qualifying companies (investees).
- If the company takes the corrective steps to rectify the non-compliance that resulted in the withdrawal of the VCC status, the company may re-apply for an approved VCC status in the year of assessment following the year of assessment in which the VCC status was withdrawn. The standard application form must be used if the company decides to re-apply.
- There are no special tax rules for approved VCCs. The standard tax rules will apply.

7 RESPONSIBILITIES OF AN APPROVED VCC

- The VCC must maintain a record of all its investors. A copy of this record must be submitted to SARS at a given reasonable time-frame (usually 30 business days) to provide for the information. The records must contain at least the following details of the investors:
 - Taxpayer Reference Number of the Investor;
 - Name of Investor ;
 - Physical address;
 - Contact details;
 - Number of shares issued (per investor);
 - Value of shares (per investor);
 - Date of issue of shares (per investor).
- The VCC must maintain a record of all its qualifying companies (investees). A copy of this record must be submitted to SARS within a reasonable time-frame (usually 30 business days) providing the required information. The records must contain at least the following details of the qualifying companies (investees):
 - Taxpayer Reference Number of the VCC;
 - Name of entity;
 - Physical address;
 - Nature of trade conducted by the qualifying company;
 - Contact details of the qualifying company;
 - Number of qualifying shares received (per investee);
 - Value of qualifying shares (per investee);
 - Date of receipt of qualifying shares (per investee).
- The onus will be on the VCC to ensure that it invests in qualifying companies (investees) that meet the stipulated requirements (refer to requirements in 3.2 above).
- The VCC must issue “VCC investor certificates” to Investors (refer to 3.1 above) in the year in which the investment is received. The certificates issued by the VCC must include at least the following details:
 - The Taxpayer Reference Number of the VCC;
 - The VCC reference number (as issued by SARS after the approval of the VCC status);
 - The name and address of the VCC issuing the certificate to which enquiries may be directed;
 - The date of receipt of the investment;
 - The name and address of the Investor;
 - The Taxpayer Reference Number of the Investor;
 - The amount of the investment.
- On request from the Minister of Finance, a VCC must submit a report providing information that the Minister may prescribe.

8 ENQUIRIES

- If you have any enquiries regarding Venture Capital Companies, you can contact SARS via the following channels:
 - By phone : (011) 602 3839
 - By email : vcc@sars.gov.za
 - By Post : SARS Legal Counsel
Legal Advisory: Specialist Support
Venture Capital Companies

Private Bag X170
Rivonia
2128

9 CROSS REFERENCES

DOCUMENT TITLE	APPLICABILITY
VCC001- VCC Application form	All

10 DEFINITIONS AND ACRONYMS

CGT	Capital Gains Tax
CIPC	Companies and Intellectual Property Commission
FSP	Financial Services Provider in terms of the Financial Advisory and Intermediary Services Act 37 of 2002.
Investment Income	<p>In terms of section 12E(4)(c) of the Act 'investment income' means:</p> <ul style="list-style-type: none"> a) any income in the form of dividends, royalties, foreign dividends, rental derived in respect of immovable property, annuities or income of a similar nature; b) Any interest as contemplated in section 24J. (other than any interest received by or accrued to any co-operative bank as contemplated in paragraph (a)(ii)(ff)), any amount contemplated in section 24K and any other income which, by the laws of the Republic administered by the Commissioner, is subject to the same treatment as income from money lent; and c) Any proceeds derived from investment or trading in financial instruments (including futures, options and other derivatives), marketable securities or immovable property.
JSE	Johannesburg Securities Exchange
Junior Mining Company	Any company that is solely carrying on a trade of mining exploration or production which is either an unlisted company as defined in section 41 of the Act or listed on the alternative exchange division of the JSE Limited.
Qualifying Company	<p>In terms of section 12J(1) 'qualifying company' means any company if:</p> <ul style="list-style-type: none"> a) that company is a resident; b) the company is not a controlled group company in relation to a group of companies; c) the tax affairs of the company are in order and the company has complied with all the relevant provisions of the laws administered by the Commissioner; d) the company is an unlisted company as defined in section 41 of the Act or a junior mining company; e) the company is not carrying on any "impermissible trade"; f) During any year of assessment of that company that ends

	<p>after the expiry of a period of 36 months commencing on the first date on which that company issued any share to a venture capital company—</p> <ul style="list-style-type: none"> i) the sum of the “Investment Income” as defined in section 12E (4)(c), derived by that company does not exceed an amount equal to 20 percent of the gross income of that company for that year; and ii) not more than 50 per cent of the aggregate amount received by or that accrued to that company from the carrying on of any trade was derived, directly or indirectly, from a person— <ul style="list-style-type: none"> o who holds a share in that venture capital company; or o who is a connected person in relation to a person who holds a share in that venture capital company; <p>g) No person who holds a share in a venture capital company to which that company has issued any share holds, directly or indirectly and whether alone or together with any connected person in relation to that person, more than 50 per cent of the participation rights, as defined in section 9D (1), or of the voting rights in that company; and</p> <p>h) That company does not carry on any trade in relation to a venture, business or undertaking or part thereof that was acquired by that company, directly or indirectly, from a person—</p> <ul style="list-style-type: none"> i. who holds a share in a venture capital company to which that company has issued any share; or ii. who is a connected person in relation to a person who holds a share in that venture capital company.
Venture capital share	<p>An equity share held by a taxpayer in a venture capital company which is issued to that taxpayer by a venture capital company, and does not include any share which—</p> <ul style="list-style-type: none"> (a) (b) would have constituted a hybrid equity instrument, as defined in section 8E (1), but for the three-year period requirement contemplated in paragraph (b) (i) of the definition of “hybrid equity instrument” in that section; or (c) Constitutes a third-party backed share as defined in section 8EA (1). (d) Was issued to that taxpayer solely in respect or by reason of services rendered or to be rendered by that taxpayer in respect of the incorporation, marketing, management or administration of that venture capital company or of any qualifying company in which that venture vapital company holds or acquires any share.
Relevant Material	Any information, document or thing that is foreseeably relevant for the administration of a tax Act.
SARS	South African Revenue Service
The Act	The Income Tax Act No. 58 of 1962
VCC	Venture Capital Company

DISCLAIMER

The information contained in this guide is intended as guidance only and is not considered to be a legal reference, nor is it a binding ruling. The information does not take the place of legislation and readers who are in doubt regarding any aspect of the information displayed in the guide should refer to the relevant legislation, or seek a formal opinion from a suitably qualified individual.

For more information about the contents of this publication you may:

- Visit the SARS website at www.sars.gov.za
- Visit your nearest SARS branch
- Contact your own registered tax practitioner
- If calling from within South Africa, contact the SARS Contact Centre on 0800 00 7277
- If calling from outside South Africa, contact the SARS Contact Centre on +27 11 602 2093 (only between 8am and 4pm South African time).