



TAYFIN TAXTALK

ACCOUNTANTS & FORENSIC AUDITORS

“Your Empowered Insight into the World of Tax, Business and Personal Finance Issues.”

“WHERE THE SOUTH AFRICAN REVENUE SERVICE AND THE DEPARTMENT OF NATIONAL TREASURE GOT IT WRONG WITH SECTION 12J”

According to Treasury:
Section 12 J of the Income Tax Act was enacted in 2009 and was adopted as a policy instrument in order to meet a specific economic objective of job creation. By extension, an increase of the fiscus as a result of an increased tax base. Ten years later, the Government is in the process of reviewing this policy decision, citing “abuses” by the industry. The perplexed industry on the other end, is waiting on the Government to point out the nature and manner of such abuses, which it seemingly cannot do.

This misunderstanding lies in the gap between the expectations of the state and what the industry has achieved through this policy instrument. To simplify the issue, both departments in question, SARS and National Treasury failed to align this policy instrument to our broader economic policy, which is embedded in the National Development Plan (NDP). Furthermore, the guidelines around deliverables are not indisputably specific. Hence there is room for a debate: Government: “Abuses”. Industry : “Abuses, what abuses?” The NDP is an integral part of our economic policy with several objectives, including the reduction of inequality, poverty and unemployment to name but a few. It is therefore logical to expect that any policy instrument adopted to meet economic objectives in this country will be as closely aligned to the NDP as possible.

S12J as a developmental tool was not only intended to focus on job creation, but also on the integrity and longevity of the jobs created. The only way to achieve this goal is to develop key performance indicators and put them in place as part of the criteria for participating in the industry. The KPIs must be linked to monetary values, therefore be measurable. To illustrate this point, a simple example is that the government was to give a decisive indication as to how many jobs it expects each 12J VCC to create for every R1 million it raises in investment. Furthermore, it should stipulate on the integrity and longevity of the jobs by insisting that a certain number of jobs created should enable the jobseeker to at least enter into a tax bracket. South Africa is one of the most unequal societies in the world, and therefore the transformation agenda was supposed to be one of the most critical aspects of S12J. The 12J VCC industry, like most industries in South Africa, should comply with and be subjected to BBBEE laws. Enterprises that invest in black owned 12J VCCs should be able to score BBBEE points. Most companies, individuals and trusts that have the means to invest in s12J VCCs are white owned, because unfortunately the nature of capital is still predominantly white in this country.

Naturally enterprises elect to invest in white owned and managed VCCs as there is often little or no incentive to invest in black owned and managed 12J VCCs. This makes it very challenging for black owned 12JVCCs to compete, and it also creates an automatic entrance barrier for black participants in the industry. This explains why only less than ten percent of the 12JVCC industry is black.

The government has failed black business by not including a condition to the criteria stipulated in the guidelines stating that a certain percentage of each 12JVCC fund should be invested in black owned businesses. Black businesses were robbed of an opportunity to benefit from this policy instrument. The lack of a decisive decision regarding the percentage of capital the industry should invest in black owned companies has had negative implications for black business, and as a result, the majority of black businesses are not able to access capital from this industry. If things are left as they are, the probability of this changing is unlikely. This relates to the earlier point of linking the 12JVCC industry to BBBEE laws of the country. Finally, the 12J Income Tax Act accommodates largely high capital-intensive industries, which serves as another automatic barrier to entry for most black business. The tourism industry can be utilised as an example to illustrate this point.

To establish a business in the tourism sector, one must own or have access to land in a prime location for business, health or leisure. Unfortunately, a vast majority of black people in this country do not have access to this kind of land, or any land for that matter. Then one must further have the resources to develop the said land and market it up to point where it is profitable. Other industries that are accommodated or permitted by this Act share the same or similar characteristics in terms of participation of black people.

A recommendation on this point would be to open it up to industries that are less capital intensive, and by extension have more participation by black business. The intention that resulted in the founding of the S12J VCC industry was and is still good. Over the past ten years both the industry and the government have learnt valuable lessons. It is only through meaningful dialogue and engagement that an amicable solution can be formulated, by both parties assuming a solution driven perspective. We do not believe the solution lies in the enforcement of the cap, but rather the deeper understanding of each sides objectives. Rules that guide the industry need to be rewritten and a regulatory body needs to be established.

Part of the mandate of this regulatory body should be to establish a points system. Instead of affecting a one size fits all cap, 12J VCCs must then be given an opportunity to earn the right to raise capital through this policy instrument, by attaching a certain level of well-defined responsibility to it. Based on a points system, it should then be determined how much each 12JVCC can raise from each investor, without enforcing a blanket approach. The more the 12J VCC aligns itself to the objectives of the NDP, the more it should be able to raise capital through this policy instrument and vice versa.

By: Matshepo Skosana and Asmitha Mothilal
Global Diaspora Capital (Pty) Ltd - A Mothilal Attorneys

HEAD OFFICE

- Pretoria (Erasmia)

BRANCHES

- Rustenburg:
No 30 Heystek Street

(014) 592 3234

- Cape Town:
1108 De Beers Avenue, Somerset West
0861 TAYFIN
- Durban (Opening Soon)

TAYFIN ERASMIA

TAYFIN SANDTON

TAYFIN RUSTENBURG

TAYFIN CAPE TOWN

For any comments or suggestions regarding this advert or future issues, please contact our offices at 014 592 3234 / management.rtg@taygro.co.za.
(Tayfin does not accept any responsibility for the accuracy of information published in this advertisement.
Professional advice should be obtained by all taxpayers.)

FORENSIC AND INVESTIGATIVE AUDITORS
LIQUIDATORS AND TRUSTEES

30 HEYSTEK STREET, RUSTENBURG, (TEL) 014 592 3234 (FAX) 086 601 1472

Tayfin
Insolvency
Practitioners



TAYFIN
Business Rescue
Practitioners

