

## SECTION 12J: AN INTRODUCTION

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*“ The Venture Capital Company is intended to be a marketing vehicle that will attract retail investors. It has the benefit of bringing together small investors as well as concentrating investment expertise in favour of the small business sector ”*

- South African Revenue Service (SARS)



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## 1. Did you know?

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Did you know that all taxpayers are entitled to a **100% tax deduction** on monies invested into the Section 12J opportunity, thereby achieving an **immediate return of up to 41% for individuals and trusts, and 28% for companies**, being the reduction in marginal taxes payable? This successful initiative has been set up by government and [SARS](#) to grow your investment into small and medium sized enterprises, as a way of stimulating the economy and creating jobs.

Some frequently asked questions:

- **Is this for me?** - Yes, this is an extraordinary opportunity for ANY South African taxpayer.
- **Is this a legitimate way to minimize the amount of tax you pay?** - Yes, this is set up by [SARS](#) in accordance with [Section 12J of the Income Tax Act No. 58 of 1962](#) that was created specifically to encourage taxpayers to invest in small and medium sized enterprises in the Republic of South Africa.
- **Are there any risks?** - Yes, although you save up to 41% in marginal taxes, the underlying investments need to perform adequately for you to realise those savings and additional good growth, as in the case of the Section 12J company Anuva Investments.
- **Is there a catch?** – No, but it is important to understand that to avoid any recoupment of your tax deduction funds remain invested for 5 years. Additionally, the investment is of your taxable income not tax due, i.e. Taxable income x marginal tax rate = Tax due.
- **Can I independently verify this information?** – Yes, you can speak to [SARS](#) directly or any senior tax Advocate.

**Anuva Investment (Pty) Ltd is the leading Section 12J company** and the among the first of its kind! Anuva is a private company **regulated by the Financial Services Board (FSB)**, and is **registered with the South African Revenue Services (SARS)** as a “*Venture Capital Company*” (VCC) in terms of [Section 12J of the Income Tax Act No. 58 of 1962](#).

- **Are Anuva's investments risky?** - Anuva's team of experts, carefully select opportunities to minimize risk and target good returns for investors. Anuva's mandate is to choose established cash positive companies - *not* start-ups - and guide these to success, providing good dividend flows and capital growth for investors. Anuva's investment process is governed by an investment committee to ensure that the investment risk is minimized.
- **Why trust a company like Anuva with your savings?** - There are many reasons to trust Anuva (see below) but primarily, Anuva's mandate is to return good results while minimising risk.

- **Why Anuva vs another 12J company?** - Anuva is a leading Section 12J company with proven results and an excellent reputation.
- **Does Anuva have a track record?** - Yes. Anuva has a 2-year track record and has raised approximately R118 290 631 in share capital to date. [Click here](#) to download the Annual Financial Statements for the year ended 29 February 2016.
- **Is Anuva delivering good returns?** - Yes, in addition to the upfront tax saving, 2016 results show that earnings increased to R13 744 777, shareholders received a 24% dividend yield and share capital increased to R33 532 479. Currently, the Anuva team targets an 8% dividend yield annually.
- **What are the costs of investing?** – A once off 2% capital raising fee and 2% management fee per annum on capital invested to run and administer the fund. Capital raising fees are waived on dividends reinvested.
- **Is Anuva transparent?** - Yes, Anuva prides itself on being transparent and is the only Section 12J fund that has published its results annually since inception.
- **Is Anuva compliant with the FSB, and the Section 12J legislation?** - Yes, Anuva's corporate governance is excellent and is regulated by both the FSB (FSB No: 45663) and SARS (VCC No: VCC-0008).
- **Who governs Anuva?** - Anuva is governed by a board of 4 directors:
  - Larry Worthington-Fitnum - FSB Fund manager and Key Individual,
  - Neill Hobbs CA (SA) RA – Chartered Accountant CA (SA), Registered Auditor and Senior Business Rescue Practitioner,
  - Michael Hainebach – experienced entrepreneur and key individual of iTouch and ViaMedia,
  - Johan Slabber – turnaround specialist with 20-years of experience in Sub-Sahara Africa developing mining, agriculture and trading projects.
- **What is the minimum investment?** - The minimum investment Anuva has agreed upon is R1 000 000.

*The contents of this document do not constitute and should not be construed as investment, tax, legal, accounting or other advice. For advice on these matters you should consult your own investment, tax, legal, accounting or other advisers about any material or information discussed in this email. Notwithstanding the abovementioned, an investment must be considered high risk and investors are urged to seek independent professional advice on their investment.*

## 2. Section 12J in Summary

### 2.1. Reducing your tax bill

Section 12 J came into effect on the 1st July 2009 and was created specifically for the purpose of inviting investors to participate in the capitalisation of promising small and medium size qualified enterprises in the Republic of South Africa.

Taxpayers who invest in a Venture Capital Company (“VCC”), through the acquisition of shares in the VCC, are entitled to a 100% tax deduction on monies invested, subject to the provisions of Section 12J, thereby achieving an immediate return of up to 41% (being the reduction in taxes payable) on their investment.

**Example:** A taxpayer earns R2 000 000 in rental income and:

#### 1.1. No investment into the VCC

Income:	R 2 000 000
Deductions:	<u>R 0</u>
Taxable Income:	R 2 000 000
Tax payable @ 41%:	<b>R 820 000</b>

#### 1.2. Invests R 1 000 000 into a VCC

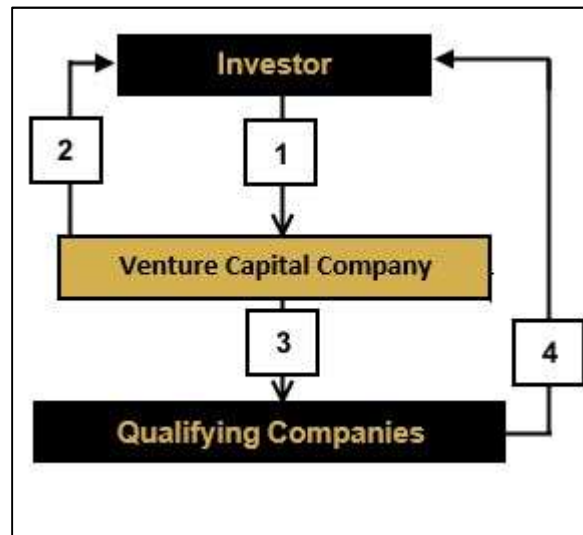
Income:	R 2 000 000
Deductions - 12J Investment:	<u>(R 1 000 000)</u>
Taxable Income:	R 1 000 000
Tax payable @ 41%:	<b>R 410 000</b>

**Summary:** Option (1.2) resulted in an immediate tax saving of R 410 000.

The tax deduction is available to all taxpayers, including individuals and all legal entities (e.g., companies and trusts).

## 2.2. Participating in the fund

- 1) Investor acquires shares in a 12J-compliant VCC.
- 2) The VCC will provide the investor with a certificate which will allow the investor to claim a tax deduction on the expenditure incurred in acquiring the VCC shares.
- 3) The VCC will, in turn, invest and acquire shares in qualifying companies.
- 4) The qualifying company will generate an additional return for the shareholders.



### 3. Amended Legislation

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Following the 2014 budget speech, SARS have promulgated the following amendments to Section 12J:

- a) No recoupment on the initial deduction if the shares are held for more than 5 (Five) years
- b) Increase in limit of the target company's **book value**\* from R20 million to R50 million.

The amendments have applied from 1 January 2015 to any investments into a VCC company.

*\*Book value: The book value is not assets less liabilities, but rather the assets of the company less any allowances (such as wear and tear) on particular assets.*

## **4. Additional 12J Requirements**

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### **4.1. Investment into Qualifying companies**

The VCC's investment into the qualifying companies must be pure equity.

The VCC cannot acquire more than 69% of the shares in qualifying companies.

The VCC cannot invest into the following industries / trades:

- Immovable property
- Banking
- Long and Short term insurance
- Money lending
- Hire-purchase funding
- Financial or advisory services
- legal services
- stock broking services
- management consulting services
- tax advisory services
- auditing or accounting services
- Gambling
- Liquor
- Tobacco
- Arms or ammunition
- Trade carried on mainly outside South Africa

### **4.2. Investment into the VCC**

Whereby, any loan or credit is used to finance the taxpayers acquisition of venture capital shares, the immediate deduction in the year of assessment is limited to the amount the taxpayer has transferred, into the Venture Capital Fund, and not the total balance of the loan or credit.

Eg. If a taxpayer receives a loan from the bank of R 20 million to purchase shares in a VCC, however the taxpayer only invests R 5 million then the taxpayers deduction will be limited to the R 5 million and not the full R 20 million loan.

Further to the above, if the taxpayers invests into the VCC using a loan then the loan must be repayable within 5 years and the taxpayer must genuinely be at risk should the VCC lose value or be liquidated.



**4.3. After 36 months, from the later of (a) 15 January 2015 or (b) the VCC's date of first issue of shares, the VCC must meet the following criteria:**

- i) At least 80% of the VCC's expenditure must be utilised in the acquisition of shares in qualifying companies with a book value immediately after the investment of less than 50 million, and,
- ii) No more than 20% of the funds received into the VCC may be utilised on one investment.

e.g: R50 million is invested into the VCC of which only R20 million is invested into qualifying companies. After the 36 months the VCC must satisfy one of the following criteria.

- i) Of the R20 million invested into qualifying companies, at least R 16 million (being 80%) must be invested into companies with a book value of less than R 50 million. The remaining R 4 million may – but does not have to be - invested into companies with a book value of more than R 50 million, and,
- ii) In this case, the VCC is limited to invest up to R 10 million (being the 20% of R 50 million) into each qualifying company it invests in. Assuming the company reached the threshold of R 10 million for each investment the VCC would have invested into two companies (being the R 20 million invested).

## 5. Risks of a Section 12J Company

- 5.1. No tax deduction will be allowed for the taxpayer if immediately after the acquisition of the VCC shares the taxpayer becomes a connected person in relation to the VCC , per Section 12J(3A).

“connected persons” means :

Natural person	In relation to a :	requirements:
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Natural person		Any relative
Trust		Any trust if the natural person or relative is a beneficiary of the trust
Company		Individually or jointly, with any connected person, holds directly or indirectly at least 20% of the Equity Shares and Voting Rights

Company	In relation to a :	requirements:
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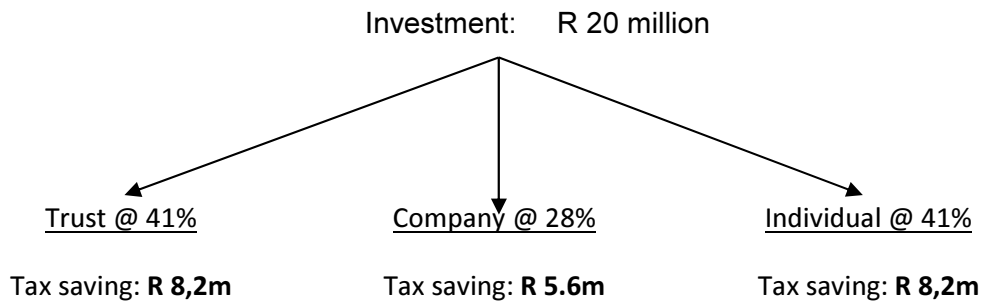
Company		If at least 20% of both equity shares and voting rights are held by the company, <u>and</u> no shareholder has majority voting rights
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- 5.2. If the VCC does not comply with all the provisions of both the 12J as well any any other section of the Income Tax Act then the VCC will be fined 125% of all expenditure incurred by the taxpayers in acquiring VCC shares.

## 6. Frequently Asked Questions (FAQ)

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**6.1. If I invest R20m into the fund before 28 February 2017, what will my tax savings be as a... (trust, company, individual)?**



**6.2. How will I receive this tax saving? Is it only for the year of investment?**

The tax saving will be a deduction from taxable income within the year that the investment into the VCC was made.

To illustrate - if an investor invests on the 27th of February 2017, then the tax deduction will be included in the investor's 2017 income tax calculation.

**6.3. When do I need to invest the R20m to receive the tax benefit?**

The investment will need to be within the financial year end of the year in which the investor requires the tax deduction.

If an investor invests on the 27th of February 2017 then the tax deduction will be included in the investor's 2017 income tax calculation, however If an investor invests on the 1st of March 2017 then the tax deduction will be included in the investor's 2018 income tax calculation.

**6.4. Do I need to pay recoupment tax on disposal of investments into the VCC?**

If the shares are held for a period in excess of five years there will be no recoupment of tax allowances upon disposal of the shares. Capital Gains Tax will, however, be payable on the full proceeds.

### **6.5 What if a qualifying company has a book value exceeding R50 million?**

The legislation provides that if the VCC has invested into more than five companies after a period of three years then the book value limit of R 50 million is not applicable and the VCC would be able to purchase the qualifying company.

### **6.6 Who will manage the various aspects of the VCC?**

#### FSB Compliance:

All FSB statutory requirements will be managed by the Key Individual.

#### The VCC:

The company will be managed by the board of directors, who contract Hobbs Sinclair Business Solutions (Pty) Ltd to assist with the associated administrative and accounting functions.

#### Qualifying company's performance:

The VCC will contract Hobbs Sinclair Business Solutions (Pty) Ltd as the appointed managers of the qualifying companies.

The board works with the existing management teams and shareholders of the companies they invest in to manage the performance of their investment. Where changes need to be made in the short-term, additional resources from Hobbs Sinclair Business Solutions (Pty) Ltd will be contracted to ensure the performance of the company while the board determines how and who the performance of the companies will be stabilised and driven forward in the medium and long-terms.

### **6.7 Will I be able to sell my shares in the fund?**

Yes, the VCC is a private company and the shares may be sold in accordance with the Company's MOI. There are, however, tax advantages to holding onto your shares for more than 5 years – i.e., no tax recoupment (see point 6.4).

### **6.8 How will the VCC be valued if additional shareholders are added in the future?**

It is proposed that the shares in the VCC be valued in accordance with an agreed valuation model by the board of directors.

**6.9 What happens if more than 80% of the VCC's expenditure is utilised in the acquisition of qualifying companies shares?**

The 80% threshold is a *minimum* requirement and therefore does not restrict the VCC in utilising 100% of expenditure in the acquisition of qualifying company shares.

It is important to note that this minimum threshold of 80% is only effective after 36 months from the date of approval of the company as a VCC.

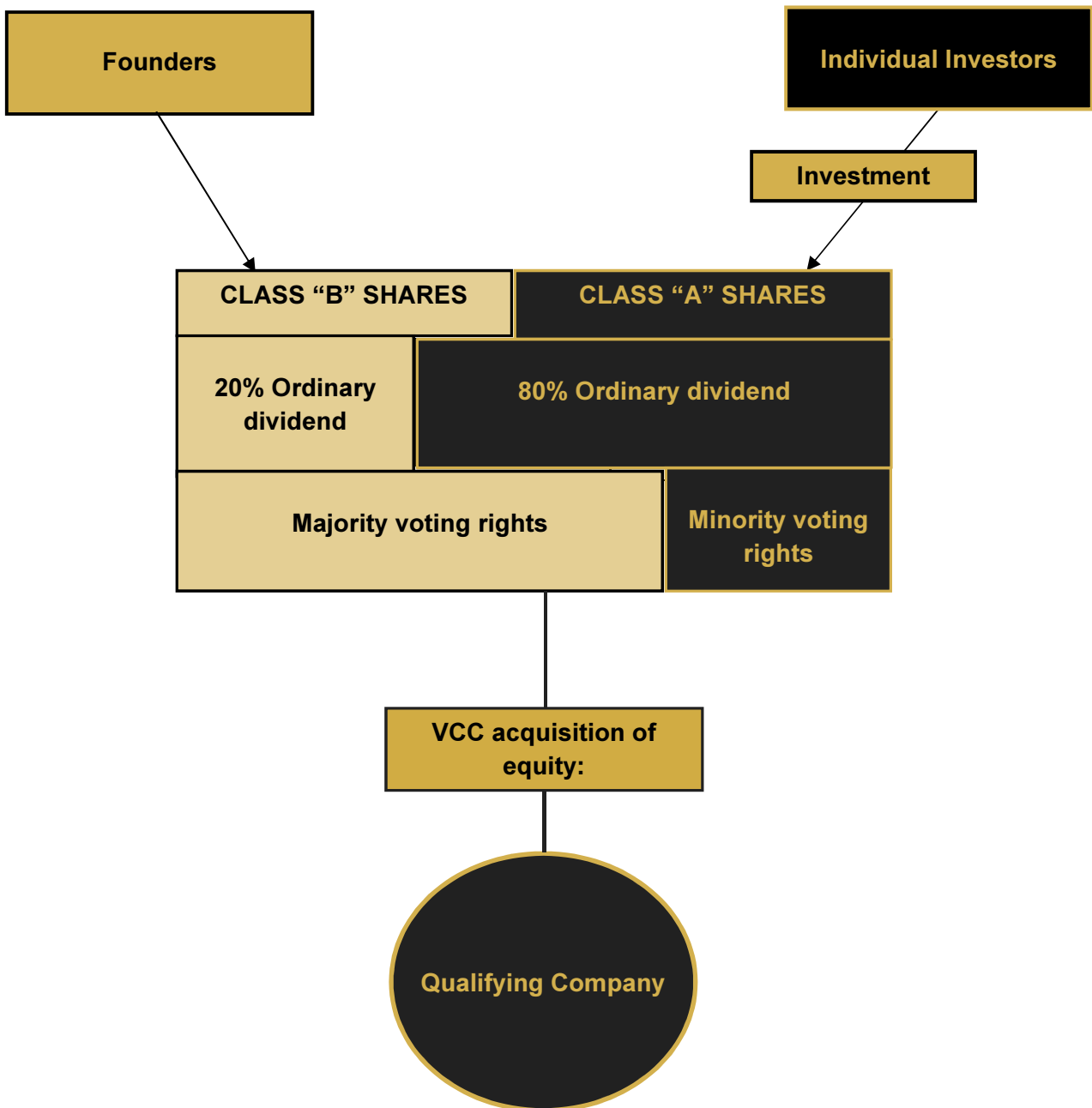
**6.10 If VCC cannot acquire more than 70% of the equity in the qualifying companies, can an investor in the VCC also acquire shares in the qualifying company.**

Yes, an investor in the VCC can acquire the remaining shares in the qualifying company provided that he remains within the connected party rules – as set out in [Section 2 of the Companies Act](#).

**6.11 Is Anuva compliant the relevant regulatory boards?**

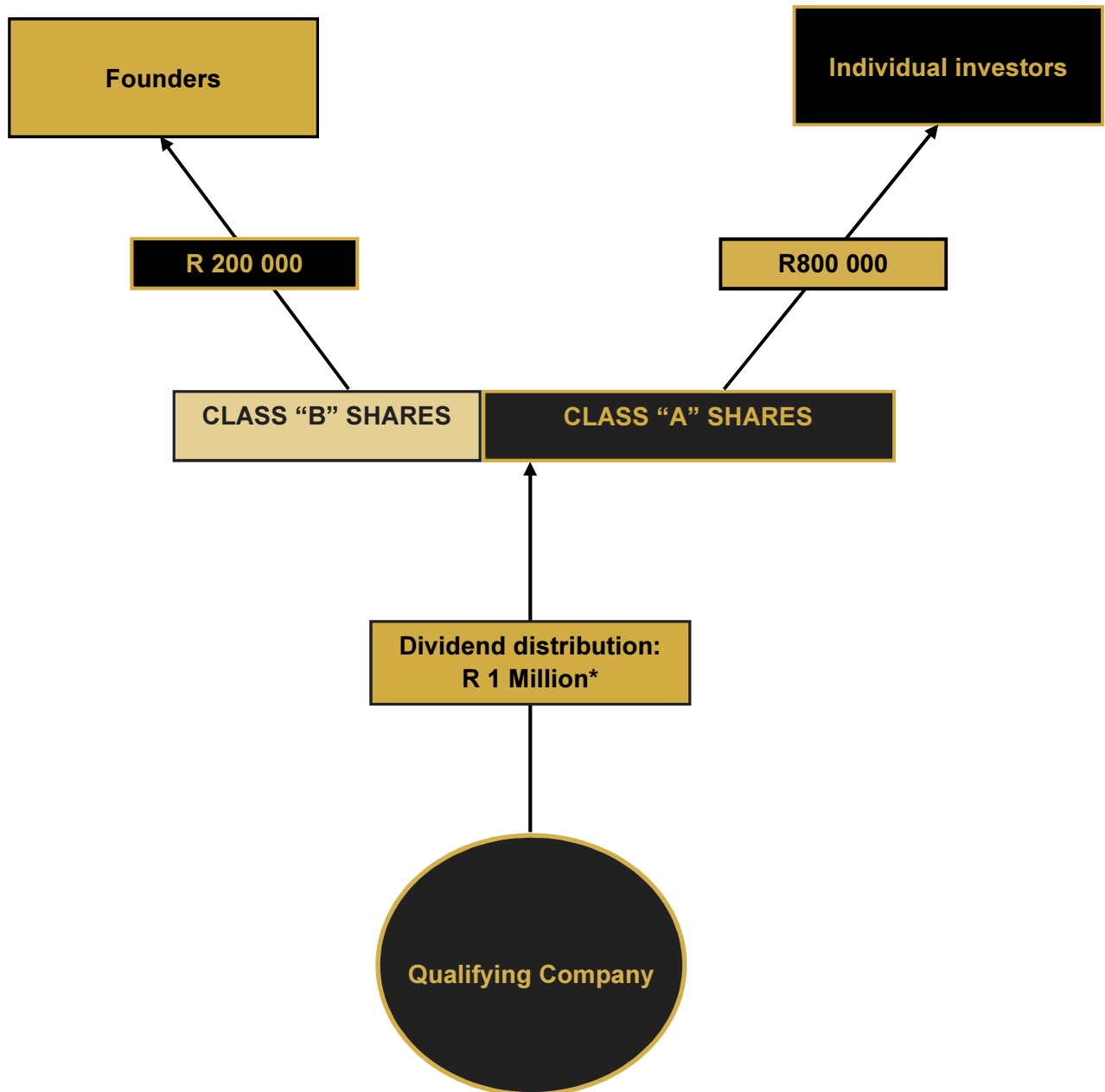
Yes. Anuva is a registered VCC with both FSB and SARS. SARS approved Anuva as a 12J-compliant VCC on the 15<sup>th</sup> of January 2015.

## 7. Illustration – Equity Investment



*\*It is possible for the investor to acquire the remaining 31% of the equity in the Qualifying Company*

### 8. Illustration – R 1 Million Dividend Distribution



*\*The above illustration is based on the assumption that all the costs in the VCC have already been met.*