

# **FREQUENTLY ASKED QUESTIONS VENTURE CAPITAL TAX INCENTIVES GUIDELINES**

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## **GENERAL**

### **1. What are the types of tax incentives available?**

There are two main types of tax incentives available, namely tax exemption and tax deduction. The latter is available for direct investments in qualified investee company or investments made through a qualified venture capital company (VCC).

### **2. How should I register a VCC as required under these incentives?**

Subsequent to the revision of the *Guidelines on the Registration of Venture Capital and Private Equity Corporations and Management Corporations* (VCPE Guidelines) effective 28 November 2022, registration of VCCs which are managed by a separate VCMC for incentive purposes will be done as part of the tax incentive certification process.

#### VCCs which are managed by a separate VCMC

The VCC will be registered under these Guidelines. This will be done concurrently as part of the first submission for certification.

The VCMC is required to provide the salient information and supporting documents of its VCCs that it wishes to certify for tax exemption (by filling in the *Certification Form for Tax Exemption for VCC*, to be submitted together with the application for VCMC tax exemption).

#### VCCs which are managed by an in-house management team

Since the regulated fund management activity is done in-house, the VCC is required to be registered under the VCPE Guidelines. More information is available here: <https://www.sc.com.my/regulation/licensing/venture-capital-and-private-equity-registration>

Subsequently, the VCC may make an application under this Guidelines to certify that the VCC meets the conditions of the relevant incentives.

## **TAX EXEMPTION**

### **3. Would a VCC be able to claim tax exemption after 31 December 2026?**

Yes, the exempt period can extend beyond 31 December 2026 provided the VCC has received its first tax exemption certification from SC prior to this date.

### **4. Will a VCMC be eligible to enjoy exempted income from annual management fees received from a VCC in situations where investments have not been divested or in situations where loss has been made?**

Yes, a VCMC may enjoy tax exemption income for management fees only without any carried interest or performance bonus earned in any given year of assessment. However, the VCC must have had obtained tax exemption certification from the SC.

### **5. Can a VCC be structured as an offshore limited partnership or other than a company be eligible for tax exemption?**

No, only VCCs incorporated under the Companies Act 2016 would be eligible for tax exemption.

### **6. Our VCC has received certification from the SC for tax exemption prior to the gazette of the revised tax orders. Will our VCC be eligible to claim tax exemption under this incentive?**

No, a VCC that had previously benefited from tax exemption under the previous tax orders<sup>1</sup> will not be eligible to claim tax exemption for the new incentives under the new tax orders. However, the VCC may continue to benefit from the previous tax exemption subject to annual certification by the SC.

## **TAX DEDUCTION - GENERAL**

### **7. Who would be eligible to apply for tax deduction?**

This incentive is available to a tax resident company or individual who has a source of income from a business.

### **8. I am a resident individual investor. If I do not have any income from a business, am I eligible for tax deduction claims?**

Unfortunately, only individual investors who has a source of income from a business are eligible for tax deductions under the tax orders. You are advised to seek professional

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<sup>1</sup> Income Tax (Exemption)(No.11) Order 2005 as amended by Income Tax (Exemption)(Amendment) (No.2) Order 2006 and Income Tax (Exemption)(Amendment) Order 2009

advice from a tax advisor to determine whether you have a source of income from a business.

## **TAX DEDUCTION ON INVESTMENTS IN A QUALIFIED VENTURE CAPITAL FUND**

### **9. Are commitments to a VCC considered for this tax deduction?**

No, only investments paid into a VCC will be considered eligible for tax deduction, subject to meeting the relevant requirements. The three-year holding period will begin from the respective dates of investment made into the VCC, not committed capital.

### **10. Are investments in a VCC after 31 December 2026 eligible for tax deduction claims?**

Only investments made into a VCC no later than 31 December 2026 are eligible for tax deduction claims.

### **11. Are investments into a VCC as payment for management fees or other expenses deductible?**

Only investments made into a VCC for purposes of investing into venture companies are deductible investments.

### **12. If the percentage of qualifying investments in a VCC's portfolio drops below 50% in a given year during the three-year holding period, will an investor remain eligible to claim tax deduction at the end of the third year?**

A VCC must maintain an average of at least 50% of invested funds in qualifying investments over the three-year holding period in order for its investors to be eligible to make the deductible claim.

For the purpose of illustration, a VCC percentage of qualifying investments over a three-year holding period are as follows:

- Year 1: 50%
- Year 2: 70%
- Year 3: 40%

As a result, the average percentage of qualifying investments in the VCC is 53.3% and satisfies the minimum 50% requirement for the deductible claim.

**13. Which three-year period of the VCC will be reviewed by the SC as part of the certification?**

The SC will review the three-year audited financial statements starting from the year on which the investments in VCC (capital call) was made and which the applicant is seeking certification from the SC.

For example:

Financial year of VCC	Financial year end 31 December			
	2020	2021	2022	2023
Investments in VCC/Capital call(s)	April, May			(Qualifies as holding for three years)
Audited financials required to be submitted to the SC	Yes	Yes	Yes	

**14. Are investments made into a VCC over multiple years eligible for tax deduction?**

Investments made into a VCC over multiple years are eligible for deduction. However, the three-year holding period will be assessed on each date of investment made into the VCC.

For example, the ending of the three-year holding period based on investment date are as follows:

Investment date	Three-year holding period ending
1 February 2019	31 January 2022
1 June 2020	31 May 2023

The VCC is responsible to ensure that all investments are tracked and monitored for the purposes of claiming tax deduction as applications must be submitted immediately at the end of the third year of investment for the purposes of obtaining certification.

**15. Can deduction on investments made over consecutive years be claimed cumulatively?**

No, deductions must be claimed on the third year for each year of investment.

**16. Can deductible claims be carried forward to future years of assessment?**

No, claims must be made only on the third year and cannot be carried forward to future years of assessment.

**17. Can a VCC which is not meeting the investment threshold requirements for tax exemption, apply for tax deduction?**

Yes, a VCC who do not qualify for tax exemption may wish to apply for tax deduction. However, both incentives are mutually exclusive and an applicant who has applied for tax deduction and has received certification may not apply for tax exemption.

**APPLICATION PROCEDURES**

**18. How can these tax incentives be claimed?**

Applicants must obtain certification from the SC to verify that the relevant qualifying criteria are met. Please refer to the *Venture Capital Tax Incentives Guidelines* and Application Kit for the certification procedures and documents required.

A certification letter will be issued once the SC has verified that the relevant qualifying criteria of the incentives are met. This certification letter must be retained as evidence for tax deduction claims made in the applicant's tax filing.