

24 December 2020

INDUSTRY CIRCULAR
PAYMENT OF THE HOLIDAY PAY BONUS

As per the Council circular dated 17 December 2020, NBCRFLI has accepted liability to top up the payment of the holiday bonus in respect of employees who were working during the lockdown up to 100% of the holiday bonus (and up to 40% for employees who were not working during the lockdown). For clarity, this applies only in respect of employees for whom contributions were not received for a specific period.

In this regard, two scenarios were proposed:

Scenario 1 - Employers were requested to pay the portion of the bonus to be topped up to employees and then submit a claim for a refund from the NBCRFLI, where they were in a position to do so.

Scenario 2 - Where employers were not in a position to pay the portion of the bonus to be topped up to employees, NBCRFLI undertook to pay the affected employees directly not later than end January 2021.

The purpose of this follow up circular is to clarify the tax treatment under Scenario 1.

It should be noted that both the refunds to employers under Scenario 1 and the direct payments to employees under Scenario 2 will be processed by the NBCRFLI in settlement of the liabilities that have been accepted by the NBCRFLI. Where the employer makes payment to an employee under Scenario 1, it does so in terms of an agency agreement, whereby it settles in advance the liability of the NBCRFLI, on behalf of the NBCRFLI, and thereafter claims reimbursement.

NBCRFLI intends to obtain a binding private ruling from SARS in relation to various taxation issues relating to the top up in respect of Scenario 2. As part of the ruling, NBCRFLI intends to submit to SARS that the payment of the top ups by employers to employees should benefit from the tax exemption applicable to benefit fund payments, on the basis that the top ups by employers are made by the employers in terms of an agency agreement, on behalf of the NBCRFLI, and in settlement of the liability that has been accepted by the NBCRFLI. However, there is no certainty that this view will be accepted by SARS.

Employers are accordingly requested to calculate and withhold PAYE on the top up portion paid by the employers to qualifying employees. Employers are further requested to retain the portion withheld (i.e. to not pay over this portion to SARS) until the NBCRFLI obtains the private ruling envisaged. Should SARS uphold the NBCRFLI's views, the portion withheld can be paid over to the relevant employees in due course.

We trust you find the above in order and should you require clarity, please contact your local agent.

Yours Faithfully

Musa Ndlovu

National Secretary

(This document has been sent electronically and is therefore not signed)