14 JULY 2021

CIRCULAR TO THE INDUSTRY

TAX IMPLICATIONS OF THE 2020 HOLIDAY PAY BONUS

As per the NBCRFLI circular dated 17 December 2020, the NBCRFLI resolved to top up the payment of the holiday bonus in full in respect of employees who were working during the lockdown period and up to 40% in respect of employees who were not working during the lockdown period. The payments were made under the following two proposed scenarios:

- **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, the NBCRFLI undertook to pay the affected employees directly not later than end January 2021.

We confirm the tax treatment of Scenario 1:

The tax treatment under Scenario 1 was clarified in the NBCRFLI circular dated 24 December 2020. It was suggested in that circular that 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. It was further advised in that circular that the NBCRFLI intended to obtain a binding private ruling from SARS and that as part of that ruling it would be submitted to SARS that the payment of the top ups by

employers to employees should benefit from the tax exemption applicable to benefit fund payments, based on this interpretation. Employers were accordingly requested to calculate and withhold PAYE on the top up portion paid by the employers to qualifying employees, until the NBCRFLI obtains the private ruling envisaged.

We are pleased to inform you that SARS has upheld the NBCRFLI's views and confirmed that no PAYE needs be withheld in respect of the top up portion paid by the employers to qualifying employees.

As per the SARS' opinion:

"*The payments made by the relevant employers, as an agent…, to employees under [Scenario 1] are exempt from tax when received by the employees as if they were paid by the NBCRFLI's HPBF itself. They are not treated as a taxable benefit in terms of paragraph 2(m) of the Seventh Schedule to the Act and do not fall within the definition of "remuneration" as defined in paragraph 1 of the Fourth Schedule to the Act.*"

Employers that calculated and withheld PAYE on the top up portion that they paid to qualifying employees under Scenario 1 are accordingly requested to pay over the withheld PAYE portion to the employees.

The SARS' Opinion went on to confirm that:

"*There are no tax consequences of the refund payable by the NBCRFLI's HPBF to the relevant employers under [Scenario 1]. This is a reimbursement only and does not form part of gross income of the employers.*"

Employers are accordingly recommended to not account for the refund as part of their gross income.

We confirm the tax treatment of Scenario 2:

The tax treatment under Scenario 2 was clarified in the NBCRFLI circular dated 5 February 2021. It was advised that top up payments made to employees by NBCRFLI would be subject to the withholding of PAYE liability at 20% of the amount payable, pending SARS' Opinion.

We are pleased to inform you that SARS has upheld the NBCRFLI's views and confirmed that no PAYE need be withheld in respect of the top up portion paid by NBCRFLI directly to qualifying employees.

As per SARS' Opinion:

> "*The payments to be made to employees by the NBCRFLI's HPBF under [Scenario 2] are exempt from tax, as provided for in the Act in ordinary circumstances as contemplated in section 10(1)(gJ).*"

Any PAYE portion that was withheld by NBCRFLI will be paid over to the relevant employees. The employees will not be taxed on the payments made under Scenario 2.

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

Yours Faithfully

Musa Ndlovu

National Secretary

(This document is sent electronically, therefore it is not signed)