Due to the frequent changes in various matters concerning claiming TERS benefits, the treatment of amounts received for accounting and tax, as well as other matters that have caused plenty confusion, we at ProBeta Training have compiled a summary guide on those items that might need clarity. Please note that this document is based on research that we could obtain from the UIF and other sources, and may be subject to change should the UIF change anything from their side. Please refer to the links at the bottom of this document for the sources of information.

This document addresses the main questions that we have been dealing with recently, and starts with a recap of the rules as are currently communicated:

The only rules set out by the UIF regarding employees being paid by both the employer and UIF that we know of are the following:

1. The employer may claim TERS benefits for his employees if he has a full or partial shutdown of operations, is registered for UIF and has **affected employees** (those that will not receive salaries). Please note that, according to the Consolidated Directive, employers may also claim for employees who were required to take annual leave (even if they were paid - please refer to **Question 3** on reimbursements as well).
2. The total amounts received by the employee from his employer and TERS may not exceed the remuneration that he would normally receive – thus if the TERS benefit is R3 500 minimum, but the employee usually receives R10 000, then the employer may still opt to pay the employee the difference or a portion of it if they can afford it – the employee may just not receive more than R10 000 collectively.
3. The employer is required to keep proof of all TERS amounts paid to employees and where applicable, pay excess amounts back to the UIF.
4. The employer may, according to the MOA that we have available (communicated by the UIF as MOA A) as well as the Consolidated Directive, keep amounts received from TERS as a reimbursement if they have already paid employees equal to or a portion of that benefit amount from their side. We interpret this as a "Claim and Pay" event, where the employer claimed so long and then paid whatever they could in the meantime – please refer to **Question 1** for an expanded explanation on this.

1. How will the UIF calculate the benefit if employees are being paid partially?

The UIF has communicated, by way of their FAQ document published on the DOL's website (page #7) that the benefit calculations will incorporate amounts paid by employers.

Example: From scenario 2 above;

Normal Remuneration is R 18 640.76; Determine Daily Income: 17 712 x 12/365 = R 582.31*38% = R 221.28

SALARY DURING LOCK DOWN: R10 000.00

	30 Days
Benefit amount	R 6 638.40

The amount to be paid by uif to the client will be **R6 638.40**.

Salary during lockdown: **R15 000.00**

The amount to be paid by uif to the client will be R3 640,76 (R18 640.76 – R15 000.00)

NB: The benefit amount (R6 638.40) Which uif must pay as per the directive added together what the employer paid (R15 000.00) Should not be more than the employee remuniration if there was no lockdown.

In addition to this, the TERS Directive states the following:

The salary to be taken into account in calculating the benefits will be capped at a maximum amount of R17,712.00 per month, per employee and an employee will be paid in terms of the income replacement rate sliding scale (38%-60%) as provided in the UI Act. - Par 3.4, Consolidated Directive

Should an employee's income determine in terms of the income replacement sliding scale fall below R3500, the employee will be paid a replacement income equal to that amount. - Par 3.5, Consolidated Directive

Qualifying employees will receive a benefit calculated in terms of Sections 12 and 13 (1) and (2) of the UI Act, provided that an employee shall receive a benefit of no less than R3 500. - Par 3.6, Consolidated Directive

***Subject to the amount of the benefit contemplated in clause 3.6**, an employee may only receive covid-19 benefits in terms of the Directive if the total of the benefit together with any additional payment by the employer in any period is not more than the remuneration that the employee would ordinarily have received for working during that period.* - Par 5.3, Consolidated Directive

Based on the above, we have come to the following conclusions:

1. There is no "maximum" amount of salary, which would disqualify you from claiming if you normally earn in excess of this amount, as the UIF already has a cap placed on the benefit calculation itself.
2. It would seem that the minimum wage threshold **might** be overruled if the amount to be paid by the UIF would cause an employee to receive more than he normally receives. Thus, if the amount that the UIF would have paid in the above example of R6 638,40 had to be reduced to R2 640,76 instead of R3 640,76 due to the employer already paying R16 000, the minimum wage of R3 500 might not apply in terms of Par 3.6. **However,** because Par 5.3 is subject to Par 3.6, there is still a possibility that it would apply - **in this case**, the employer might need to refund the excess benefit above the remuneration normally received, as the employer has already paid something from his side. Please refer to **Question 6** on refunds.
    a. However, if an employee **normally receives less than the minimum wage** of R3 500, or he **would have received less than the minimum wage in total** from both his employer and the calculated TERS benefit, it is our understanding that they would still be paid a benefit of R3 500 minimum, and that the above adjustment might not be made by the UIF regardless of the fact that the employer pays a portion of remuneration from his side, because the Directive indicates that employees shouldn't receive a benefit less than the R3 500. Once more, if the employer has already made payment from their side, any excess might still become due based on Par 5.3. Please refer to **Question 6** on refunds.
    b. Thus, the minimum benefit that the UIF will pay out is R3 500 - for employers that have already paid some portion from their side, they might need to refund the excess benefit to the UIF if they do not keep it as a reimbursement. **If the employer has made no payment from their side**, the UIF shouldn't be requesting refunds if the minimum benefit is paid out, in accordance with Par 3.6.
3. The UIF would only have been able to adjust their calculation and come to the above conclusion if the employer indicated on his submission that he was going to pay the employee a certain amount. If the employer thus indicated that he would be paying R0 from his side, the UIF would not have been able to make this adjustment.

We are aware that the UIF might have previously communicated a different version of this calculation - please note that the UIF has indicated that applicants are not required to resubmit at this stage, the UIF will make corrections from their side.

The problem: what if employers indicated that they would pay R0 but then decide to make a payment after claiming (but before receiving claims - thus paying "in the meantime") or a top-up payment (after TERS benefits have already been received and distributed to employees)? Or what if they based payments from their side on an expected benefit amount and they receive a different benefit amount from the UIF?

There are many instances where employers have claimed due to uncertainty of whether they would be able to pay salaries at the end of the month, and these applications should have been based on the best estimate the employer could make at the time (there are no guidelines or rules in the Directive regarding this “estimate”, this is just practically how we would interpret it). I can understand that, from the perspective of the employer, they might have completed the form with R0 salaries paid by the employer during lockdown, as they might have had too much uncertainty on what would happen by the end of the month and it might have been easier to claim based on the presumption that they would not be able to pay any salaries at all.

Of course, if the employer paid full salaries before they claimed for TERS, the UIF would probably disallow the claim as they might interpret it as there being no shortage. However, taking into account the reimbursement provisions and as the Directive allows claims for employees that were placed on annual leave, employers that are paying employees on leave, might still need to indicate R0 as amounts received, otherwise the UIF might reduce the benefit which would then defeat the purpose of the claim. We simply advise that employers that can afford to pay should not also claim and indicate that they will not pay anything, and that employers that plan to pay a portion attempt to determine the benefit that would be received, and plan and indicate their top-up around that, as the UIF will then also be able to incorporate it accordingly into their calculation. Please refer to the UIF calculator for determining the possible benefit an employee could receive.

We have broken down the "Claim and Pay" principle between the three possible scenarios on the next page for demonstration purposes, based on the above and the following paragraphs from MOA A and the Consolidated Directive. Please note that "payments made by employers" could also include leave paid.

Payment of benefits

11. The Employer must pay its employees their benefits within 2 days of receipt of funds from the UIF in accordance with the spread sheet or confirmation contemplated in clause 10 unless it has already paid part or all of the benefits in accordance with the spread sheet or confirmation, in which case the Employer may –

    11.1. recover the amounts so paid from the funds deposited in terms of clause 11; and

    11.2. pay the balance, if any, to the employees.

12. The Employer must submit proof of payment to the UIF within 5 days of the receipt of funds from the UIF in terms of clause 10.

13. The employer must return any unutilized funds, including interest, to the UIF within 10 days of the recommencement of its business operations, or the termination of this agreement, whichever is the earlier.

5.4 An employer, who has required an employee to take annual leave during the period of the lockdown in terms of section 22(1)(b) of the Basic Conditions of Employment Act, 1997 (Act 75 of 1997), may set off any amount received from the UIF in respect of that employee's COVID 19 benefit against the amount paid to the employee in respect of annual leave provided that the employee is credited with the proportionate entitlement to paid annual leave in the future.

5.5 To speed payment of COVID 19 benefits to employees, employers are urged to pay employees based on clause 3.4 of the Directive and reimburse or set off such with COVID 19 benefits claim payments from UIF.

For an employee that normally receives R10 000 (It is advised that wherever possible, amounts be paid to employees, as that is the main purpose of the benefit fund):

1. If the employer paid R6 500 in the meantime, and TERS pays R3 500, then the employer may either keep the full R3 500 as a reimbursement (because they have already paid R3 500 along with the R6 500 to the employee) or choose to also pay the full amount to the employee, as this would amount to the normal R10 000 the employee would have received. **(Journal 1)**
2. If the employer paid R7 500 in the meantime and TERS pays R3 500, the employer may only pay the employee a further R2 500 (total of R10 000), but may opt to keep the remaining R1 000 as a reimbursement (because they have already paid R3 500 included in the R7 500 to the employee). They may also opt to keep the entire R3 500 as reimbursement based on the same principle. If they do not rely on the reimbursement, the R1 000 needs to be refunded to the UIF. **(Journal 2)**
3. If the employer paid R3 500 in the meantime and TERS pays R5 000, the employer may pay the full R5 000 to the employee (total receipts of R8 500) but may also opt to keep R3 500 of the R5 000 benefit (because they have already paid R3 500 to the employee) and pay the remainder (R1 500) to the employee. If they do not pay the R1 500 to the employee, they have to repay it to the UIF. **(Journal 3)**

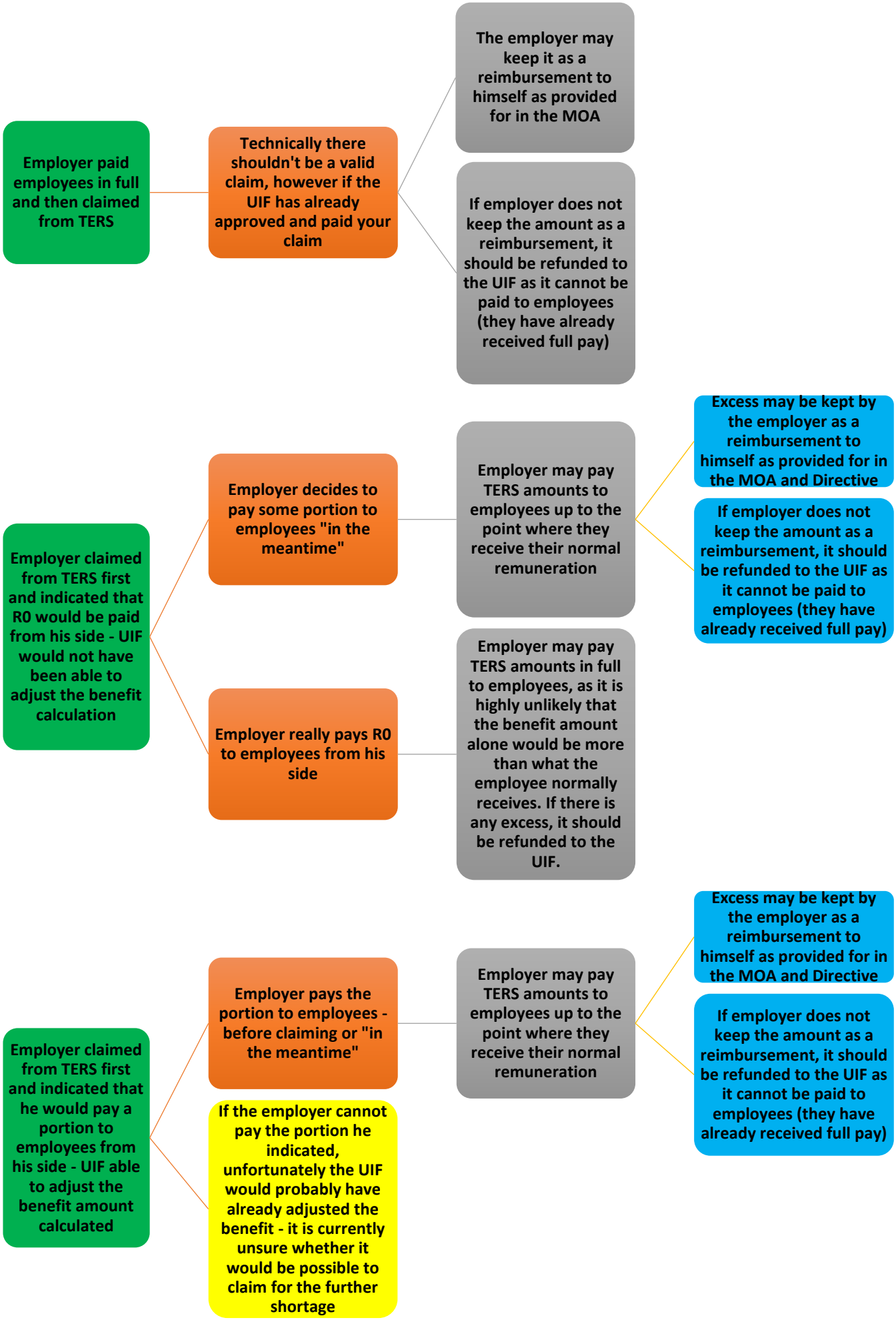
Transaction	Possible journal	Employer pays more than UIF		UIF pays more than employer
		Journal 1	Journal 2	Journal 3
Payment "in the meantime"	Dt Salaries / Employee cost Cr Bank	Dt 6 500 Cr 6 500	Dt 7 500 Cr 7 500	Dt 3 500 Cr 3 500
Initial receipt	Dt Bank Cr TERS Benefit received	Dt 3 500 Cr 3 500	Dt 3 500 Cr 3 500	Dt 5 000 Cr 5 000
Reclassifying as employee cost – please note that these amounts are **not** remuneration as defined, however may still be classified as employee costs	Dt TERS Benefit received Cr Salaries / Employee cost Dt TERS Benefit received Cr Salaries / Employee cost	Dt 3 500 Cr 3 500	Dt 2 500 Cr 2 500 Dt 1 000 Cr 1 000	Dt 3 500 Cr 3 500 **Dt 1 500** **Cr 1 500**
Refund to the UIF (where applicable – this would replace the R1 500 that would have gone to employee cost)	Dt **TERS Benefit received** Cr Bank			**Dt 1 500** **Cr 1 500**

TERS Benefit account should be R0 after all transactions – no tax to be paid, no tax deduction to be claimed

Effectively reducing actual salaries, whether the employer pays the TERS amount to employee or keeps it as "reimbursement" – impact on tax

We think the idea was that if the employer claimed but would also pay the full or a portion of the salary in the meantime, the reimbursement would become available, however the MOA only states that the employer may keep the amounts that the UIF pays if he has already paid "**that amount**" to the employee, that is why we have broken it down in the above scenarios, where the employer may only keep amounts insofar he has already paid amounts equal to the full or a portion of the benefit amounts to the employee from his side. Further to this, the Consolidated Directive states that employers are urged to pay employees the amounts as per clause 3.4, which is technically the calculated benefit - however most employers might not have known how to calculate this by the time they made payment from their side. Please refer to the UIF calculator for determining the possible benefit an employee could receive.

The following diagram summarises the options available based on each instance.



2. Are employers allowed to make top-up payments to employees who also receive TERS benefits?

We understand that, for some employees, the TERS benefit will not be enough to survive on, and employers are trying to accommodate them as best they can.

There is nothing in the UIF documents or the TERS Directive that prohibits this. In fact, the consolidated directive actually provides for top-up payments in a sense - refer back to Par 5.3, which indicates *"additional payment by the employer"*.

Thus, as long as the requirements of Par 5.3 are met, and the employee does not receive more from his employer and TERS in total than what he would normally have received, a top-up should still be allowed.

The net effect of the calculation would be the same (whether the employer makes a top-up after the claims are received or whether the UIF adjusts their calc) – the employee would still only be able to receive a maximum of his normal remuneration. The issue is maybe who will effectively be paying more from their side, the employer or the UIF – however this is not addressed in any of the UIF documents we have available, and employers cannot be prohibited to make top-up payments based on this logic alone.

We doubt that the UIF will argue with the employer that the employees received more benefits than they should have if an employer subsequently tops up the amount received from the UIF, based on the above measures they have set in place for reimbursements and refunds. They have communicated that they will require proof of payment and other supporting information to confirm that benefits have been effectively distributed to employees (whether the employer paid and reimbursed himself or paid the benefits straight to employees).

3. When may the employer keep TERS benefits received as a reimbursement for himself?

Based on the information as set out above, there are certain circumstances where employers may rely on the provisions in the MOA and the Consolidated Directive for a reimbursement. Please refer to the discussion in **Question 1.** Also refer to the new document on the DOL's website "Consolidated Directives", which now indicates that for **employees who were required to go on paid leave, the benefit may still be claimed,** and any reimbursements to the employer should have the effect that employees are credited with leave days for the future (as the employer will then effectively be reimbursed for the leave he paid to employees).

4. How do I treat the TERS benefit received on payslips?

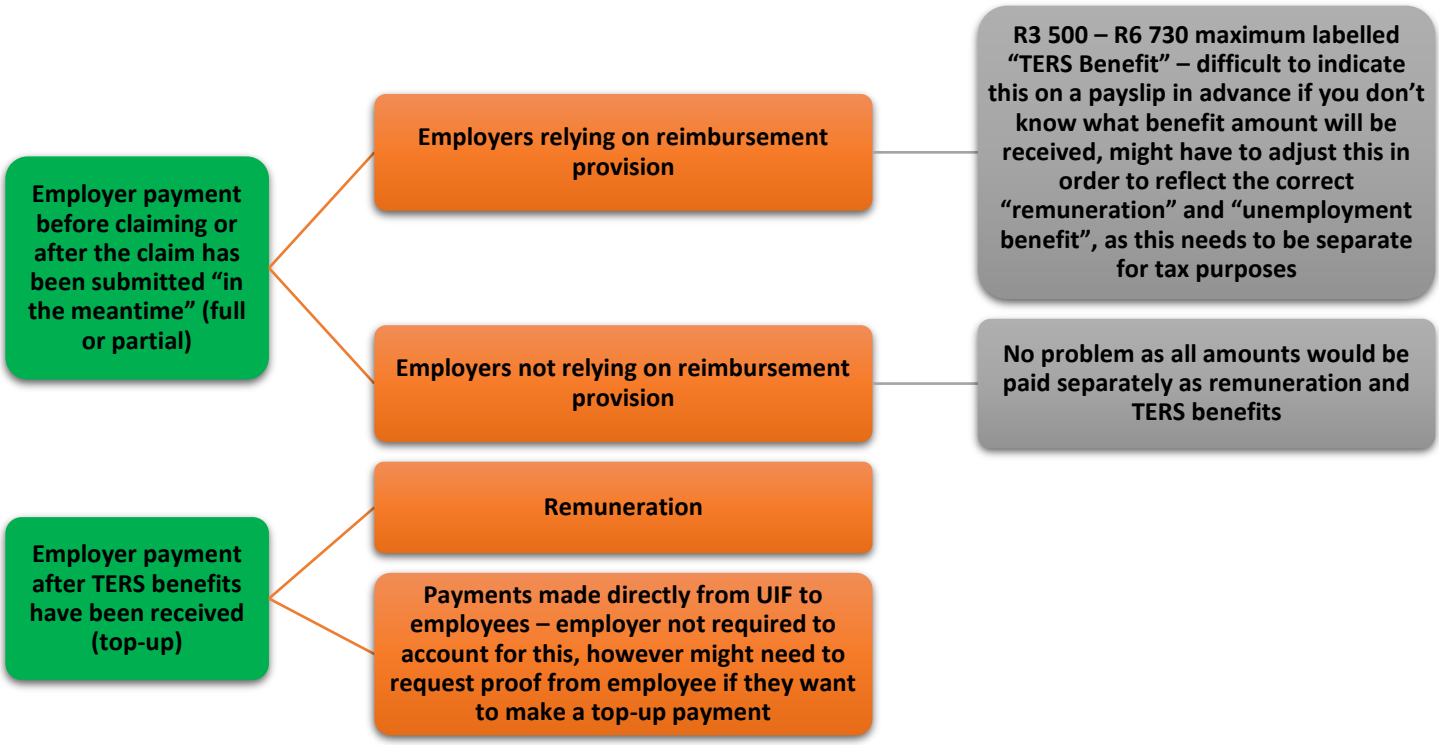
We would advise that top-up amounts paid by employers (**after the TERS benefits have been received and distributed to employees**) should be treated as normal remuneration (unless it's a no-value fringe benefit or allowance, or alternatively employee costs such as advances or loans, however if the employer will not require the employee to repay anything or reduce his salary in the next month, this would be normal salaries) and that it be submitted on the EMP201 with the appropriate deductions. It would be better to be honest about it, rather than having to argue with SARS about non-compliance and penalties.

If the employer paid amounts **before the TERS benefits are received (before claiming or "in the meantime") and plans to keep it as a reimbursement**, we would advise that these amounts be labelled as TERS benefits in order to rely properly on the reimbursement rule.

If they **do not plan on keeping it as a reimbursement**, all employer paid amounts should then be normal remuneration.

TERS benefits that are paid in full to employees should be indicated as such on the payslip, as it is not remuneration but rather an unemployment benefit.

The reason for distinguishing between these two types, is that remuneration is taxable and unemployment benefits are not.



5. How do I treat the TERS benefit received on the EMP 201 submission?

Please refer back to Question 4 on this matter. If an amount is remuneration, it should be declared as such. If it is an unemployment benefit, it should not be declared as remuneration.

6. When would I need to refund amounts to the UIF?

Refunds would only become due under the current rules if:

1. The employer cannot pay benefit amounts out to employees due to the "total" limitation (employees cannot receive more from their employer and TERS than they normally receive), **and**
2. The employer is **not going to rely on the reimbursement** rule and keep the funds to himself if he has already paid employees some portion of the remuneration from his side.
3. If the employer has not already paid any amounts from his side, refunds would only become due if the TERS amount exceeds the employee's total remuneration that he would normally have received (subject to the minimum wage rules in Par 3.6).

The employer cannot refund the UIF more than what was received as TERS benefits, and can also refund it from the actual benefits received.

7. Can an employee apply as an individual for TERS benefits if his employer fails to do so?

Please note that the entire application process for employers has now been incorporated onto the online platform, and now only requires the bank letter of the employer and employee details - all other documents have been incorporated into the system itself. **For employees claiming for themselves, the application process is facilitated straight from the Ufiling platform, not from the TERS online platform - please refer to links below in Sources for guidance on how to claim individually.**

3.9 An employee may individually apply for COVID-19 benefits if-

3.9.1 the employee meets the requirements of clause 2.1.1(a) of this Directive;

3.9.2 no bargaining council or entity has concluded a MOA with the UIF in terms of clause 3.8; and

3.9.3 the employee's employer has failed or refused to apply for COVID-19 benefits in terms of clause 3.1.

3.10 This Directive, including any amendments made to it, takes effect from 27 March 2020.

Based on the above extract from the Consolidated Directive, it is clear that where an employer is not assisting his employees with claiming for this benefit, the employee still has an option to claim for himself, provided that they meet the same requirements:
Par 2.1.1(a): "*lost income or have been required to take annual leave...due to Covid-19 pandemic*"

Employees still need to be registered as UIF contributors, and would need their employer's UIF details in order to apply.

Sources:

UIF FAQ and Consolidated TERS Directive:
http://www.labour.gov.za/DocumentCenter/Pages/Publications.aspx?RootFolder=%2FDocumentCenter%2FPublications%2FUnemployment%20Insurance%20Fund&FolderCTID=0x0120005A2E39FE57537248A3B1DDD098F12CF1&View={133E56E7-64DB-4500-B4E6-1F4D140585BA}

Employer MOA:
Unfortunately this is not available other than on the TERS online platform, which employers would have accepted upon claiming.

Link to TERS claims made by **employers:**
https://uifecc.labour.gov.za/covid19/

Link to TERS claims made by employees:
User must login or register to uFiling. Please refer to the user guide issued by the UIF:
https://www.ufiling.co.za/docs/COVID19%20TERS%20EMPLOYEE%20FINAL%20USER%20GUIDE.pdf