



General Notes - Second Schedule to the Income Tax Act, No 58 of 1962 (the Act)

General Note 14 (Issue 2)

GENERAL SUBJECT: HOUSING LOANS AND GUARANTEES

SPECIFIC ASPECT: SECTION 99 OF ACT

STATUS: OPINION

BACKGROUND: Some approved retirement funds are providing housing loans and or guarantees in terms of section 19(5) of the Pensions Funds Act, No 24 of 1956. In the event of a member withdrawing from the fund or retiring from service or death some uncertainty exists with regard to SARS's right of attachment of such a housing loan or security for the recovery of arrear income tax in terms of section 99 of the Act.

OPINION: Section 99 of the Act provides that the Commissioner may appoint any person to be the agent of any other person for purposes of the Act who may be required to "make payment of any tax, interest or penalty due from any moneys...which may be held by him or due by him to the person whose agent he has been declared to be."

To the extent that a retirement fund granted a loan or security in terms of section 19(5) of the Pensions Funds Act, 1956 it will, however, not be considered to hold moneys on behalf of a member of the retirement fund for purposes of section 99 of the Act.

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NB: All references to the Commissioner are references to the Commissioner for the South African Revenue Service