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Our Ref: LS/56/08/AC/lcl  
Your Ref:

2 April 2008

Mrs Dorothy Guan  
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**BY FAX AND POST**  
Fax no: 6351 2828  
No. of pages: 2 page(s)  
(including this page)

Dear Sirs

### **CHANGE OF PROCEDURE ON APPOINTMENT OF AGENT**

We refer to your letter dated 10 March 2008 requesting the Law Society to provide its comments on IRAS' intention to appoint the purchaser's solicitor as agent for recovery of taxes under the various tax acts administered by IRAS.

This matter was referred to our Conveyancing Practice Committee for their views.

Our Conveyancing Practice Committee is of the view that there are many difficulties with IRAS' proposal which requires careful study. The appointment of an agent under the various tax acts administered by IRAS is an onerous one which includes the following obligations:

- (a) The agent incurs a personal liability for the tax claimed if it is held by him or due by him to the person whose agent he has been declared to be;
- (b) The agent may be required to give the Comptroller information on any moneys, funds or other assets which may be held by him for, or of any moneys due by him to any other person; and
- (c) If the agent is aggrieved by the Comptroller's declaration to be the agent of any other person, he would need to write to the Comptroller to object to the declaration and thereafter, lodge an appeal against the Comptroller's decision to the Board of Review if he is aggrieved by the Comptroller's decision upon his objection.

Primarily, the duties and responsibilities of an agent are best suited to the vendor's solicitor for the following reasons:

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1. The vendor's solicitor has an overall picture of the sale transaction and is the best person to advise his client on the payment of any tax, because it is consistent with his legal duty to advise his client, as opposed to the purchaser's solicitor who is not in a position to know or be aware of the vendor's financial position.
2. If the purchaser's solicitor is appointed as agent and retains the amount claimed by the IRAS, this may cause the sale to be inadvertently aborted due to insufficient funds available to pay the vendor's mortgagees.
3. There may be issues concerning the priority of payments to the IRAS and the vendor's mortgagees. Should the purchaser's solicitor, as agent, give priority to the payment of tax to the IRAS, this may be challenged by the vendor's solicitor. Although IRAS indemnifies the agent for making payment of the tax to the Comptroller, it is not clear whether such indemnity covers legal costs which may be incurred as a result of litigation instituted by the vendor's solicitor against the agent.
4. In default of payment by the agent of the tax due, the tax shall be recoverable from the agent. While the Comptroller may be free to appoint any person as the agent to recover taxes, the purchaser's solicitor should not be made personally liable when the vendor is not his client. Otherwise, the purchaser's solicitor, as agent, may be inclined to deduct the tax unilaterally to avoid personal liability. This is likely to increase disputes between the vendors and the purchasers that could delay or frustrate completion.

The Committee would suggest that IRAS instead streamlines the current process in the appointment of the vendor's solicitor as the agent as follows: –

- a. To encourage purchaser's solicitors to be more forthcoming with revealing the identity of the vendor's solicitor, IRAS could request the purchaser's solicitor to submit the particulars of the vendor's solicitor to IRAS within a specified time, failing which the purchaser's solicitor will be appointed as the agent; or
- b. When the purchaser's solicitors apply for property tax legal requisition, IRAS could require that they insert particulars of the vendor's solicitor's firm for the purpose of "due diligence for purchase". With these particulars, IRAS can then immediately write to the vendor's solicitor for appointment as an agent to recover taxes.

Thank you for giving the Law Society the opportunity to present our views on the matter.

Yours faithfully



Alvin Chen  
Director, Representation & Law Reform

cc. Conveyancing Practice Committee