

TAX COURT OF CANADA

NOTICE OF APPEAL – GENERAL PROCEDURE

BETWEEN:

CLUB INTRAWEST

APPELLANT

And

HER MAJESTY THE QUEEN

RESPONDENT

NOTICE OF APPEAL

A. THE APPELLANT

The Appellant, Club Intrawest (the “Club”), is a Delaware, U.S., non-profit, non-stock corporation. The Club is a non-resident of Canada that is registered under the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended (the “Act”).

B. ASSESSMENTS UNDER APPEAL

This appeal is in respect of Notices of (Re)Assessment under the Act dated August 18, 2010 for the Club’s October 2008 monthly reporting period, August 19, 2010 for the Club’s October 2007 monthly reporting period, and August 20, 2010 for the Club’s October monthly reporting period in the years 2002-2006 (the “Assessments”). The central issue is whether the amounts paid to the Club that were the subject of the Assessments were for taxable supplies rather than reimbursements for expenses incurred as agent.

C. MATERIAL FACTS RELIED ON

The Club

1. The Club was established in 1993 to hold condominium units at vacation properties (the “Resort Accommodations”) in trust for its members (the “Members”).
2. The Resort Accommodations are located in British Columbia, Ontario and Québec, and in Mexico and the United States.
3. The Club is governed by a Board of Directors elected by the Members.

4. Pursuant to the Master Declaration for Club Intrawest, as amended (the “Master Declaration”), Resort Accommodations were transferred to the Club in trust (or to a trustee for the benefit of the Club) for the benefit of the Members.
5. Section 4.4 of the Master Declaration states, in part:

The Club will hold title to all Resort Accommodation registered in its name, and to all beneficial interests in the Trust or other similar holding vehicle to which title to Resort Accommodation may be transferred, in trust, for the benefit of the Members and the value of each Member’s beneficial interest in the Resort Accommodation shall be paid out and distributed to each Member of the Club in accordance with Article X of the Bylaws of the Club.
6. The Club acts as agent for the Members in incurring various costs and expenses relating to the maintenance and operation of the Resort Accommodations (the “Membership Costs”).
7. Section 9.1 of the Master Declaration states, in part:

The Club shall act as the agent of all of the Members in collecting Assessments and in paying taxes, utility costs, and other Membership Costs.
8. The term “Membership Costs” is defined in article 1 of the Master Declaration as follows:

“Membership Costs” means and includes all costs incurred by the Club for and on behalf of the Members as provided in Section 10.3 hereof.
9. Section 10.3 of the Master Declaration states that “Membership Costs” include various types of expenses including maintenance, repair costs, insurance, a capital contribution for reserves, domestic services (including cleaning and maid services) and other costs incurred in connection with the operation and administration of the Resort Accommodations.
10. The Club paid GST when it incurred the Membership Costs that were taxable supplies made in Canada.

The Members

11. Pursuant to purchase and membership agreements (each a “Purchase and Membership Agreement”), proportional beneficial ownership of and rights to occupy the Resort Accommodations were sold to individuals in the form of “Resort Points”.
12. The Resort Points were sold to the individuals by the developer of the Resort Accommodations, which was:
 - (a) Intrawest Resort Ownership Corporation prior to May 31, 2004,
 - (b) Intrawest Corporation from May 31, 2004 to October 27, 2006; and

- (c) Intrawest ULC after October 27, 2006.
13. When an individual purchases Resort Points, the individual:
- (a) becomes a Member;
 - (b) agrees to be bound by, to be subject to and to abide by the provisions of all “Club Instruments” (defined in article 1 of the Master Declaration to include, *inter alia*, the Master Declaration and the Purchase and Membership Agreement) as they may be amended from time to time;
 - (c) agrees that the Club will act as agent for the Members in incurring the Membership Costs; and
 - (d) agrees to reimburse the Club on a cost sharing basis for his or her share of the Membership Costs.
14. Section 7 of the Purchase and Membership Agreement states:
- The Purchaser understands and agrees that the Club will incur Membership expenses as agent for all Members in accordance with their proportionate share of the Resort Points issued by the Club. The Purchaser agrees to reimburse the Club on a cost-sharing basis for the Purchaser’s share of the Membership expenses as determined annually by the Club and referred to as the Resort Fee and to pay Special Assessments for capital improvements and other extraordinary expenses or costs and Personal Charges.
15. The Club, by virtue of its role as agent, passed through any GST payable on such expenses as part of the Membership Costs, did not claim input tax credits on the GST payable on the expenses, and did not charge GST on the amounts paid by the Members to reimburse the Club for incurring the Membership Costs (the “Reimbursement Amounts”).

CRA Assessments

16. In August 2010, the CRA issued the Assessments:

<u>Date of Assessment</u>	<u>Reporting Period</u>	<u>Net Tax</u>
August 20, 2010	October 2002	\$320,327.97
August 20, 2010	October 2003	\$276,882.83
August 20, 2010	October 2004	\$689,344.26
August 20, 2010	October 2005	\$278,376.34
August 20, 2010	October 2006	\$248,547.10
August 19, 2010	October 2007	\$185,055.11
August 18, 2010	October 2008	\$131,201.43Cr

17. The Assessments in respect of the October monthly reporting period in the 2002-2007 years replaced assessments issued in January and April, 2010. By Notices of Objection, the Club duly objected to the previous assessments.
18. The Assessments were issued in respect of GST allegedly collectible by the Club on the Reimbursement Amounts. Certain input tax credits for GST paid on taxable components of Membership Costs incurred by the Club on behalf of the Members were offset against the GST calculated on the Reimbursement Amounts in arriving at the net tax assessed.
19. The Assessments were issued based on the CRA conclusion that the Reimbursement Amounts represented consideration for supplies of memberships in the Club rather than the reimbursement of expenses incurred as agent as provided by the Club Instruments.
20. The CRA proposal letter dated July 22, 2010 stated:
- The purpose of this Proposal is to assess for the GST/HST on Resort Fees to the extent that the amounts are consideration for supplies of Memberships made in Canada.
21. In issuing the Assessments, the CRA calculated the amount of the Reimbursement Amounts that related to Resort Accommodations located in Canada on the basis of the ratio of Resort Points issued in respect of Resort Accommodations located in Canada to the total number of Resort Points issued for all Resort Accommodations.
22. During the course of the audit, the Club proposed an alternative allocation method based on the actual Membership Costs relating to Resort Accommodations located in Canada and an allocation of head office costs. The CRA refused to apply the allocation method proposed by the Club.

23. By Notices of Objection dated November 8, 2010, the Club duly objected to the Assessments.
24. By letters dated May 25, 2012, the Minister confirmed the Assessments.
25. The Club now appeals the Assessments to this Honourable Court.

D. ISSUES

26. The issues are as follows:

- (a) whether the Reimbursement Amounts paid to the Club were reimbursements for expenses incurred as agent rather than consideration for supplies of memberships; and
- (b) even if GST applies to the Reimbursement Amounts paid to the Club by the Members (which is not admitted but denied), whether the allocation based on actual Membership Costs relating to Resort Accommodations located in Canada is more appropriate than Resort Points attributable to Resort Accommodations located in Canada?

E. STATUTORY PROVISIONS RELIED UPON

27. The Club relies on, *inter alia*, subsections 142(1) and (2), subsections 165(1), 296(6) and 298(1), and sections 306, 307 and 309 of the Act.

F. REASONS THE CLUB INTENDS TO RELY ON

(a) *GST Treatment of Membership Costs*

28. The legal relationships created under the Club Instruments must be respected.
29. Under the contracts between the Club and the Members, the Club incurred the Membership Costs as agent for the Members.
30. The amounts paid to the Club by the Members were reimbursements of the Membership Costs incurred by the Club as agent for the Members.
31. Accordingly, the Reimbursement Amounts paid to the Club by the Members were not consideration for supplies of memberships in the Club.
32. The taxable event for purposes of the Act occurred when the Club incurred, as agent for the Members, the Membership Costs that are taxable supplies made in Canada, and such GST has been fully paid.

(b) *Appropriate Allocation Method*

33. Even if GST applies to the Reimbursement Amounts paid to the Club by the Members (which is not admitted but denied), the allocation method proposed by the Club is more appropriate than the points-based method used by the CRA because the Club's proposed

method is based on actual Membership Costs relating to Resort Accommodations located in Canada. In addition, the method proposed by the Club eliminates distortions due to exchange rate variations which is not the case with the CRA method.

34. Accordingly, the Assessments must be varied on the basis of the actual Membership Cost allocation method proposed by the Club.

G. RELIEF SOUGHT

35. The Club respectfully requests that this appeal be allowed with costs and that the Assessments be referred back to the Minister for reconsideration or reassessment so as to:

- (a) vary the net tax to the following amounts:

<u>Reporting Period</u>	<u>Net Tax</u>
October 2002	\$7,934.04
October 2003	\$7,365.51
October 2004	\$432,592.60
October 2005	\$2,479.51
October 2006	\$60,438.96
October 2007	\$2,785.17
October 2008	\$107,917.13Cr

- (b) vacate the interest and penalties.

36. In the alternative, to the extent that the Reimbursement Amounts paid to the Club by the Members are determined to be subject to GST, the Club respectfully requests that this appeal be allowed with costs and that the Assessments be referred back to the Minister for reconsideration or reassessment so as to:

(a) vary the net tax to the following amounts:

<u>Reporting Period</u>	<u>Net Tax</u>
October 2002	\$237,275.55
October 2003	\$182,798.11
October 2004	\$635,011.59
October 2005	\$153,036.45
October 2006	\$216,012.17
October 2007	\$63,494.72
October 2008	\$139,744.97Cr

(b) vary the associated interest and penalties.

DATED at the City of Toronto, Ontario, this August 20, 2012.

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