

QPA

Court File No. 2012-3401(GST)G

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**TAX COURT OF CANADA**

BETWEEN:

**CLUB INTRAWEST**

- and -

TAX COURT OF CANADA COUR CANADIENNE DE L'IMPÔT	
Filed at Hearing Déposé à l'audition	
Place/ Lieu	Vancouver BC
Date	November 25, 2014
S. Lee Registrar / Greffier	

**HER MAJESTY THE QUEEN**

Respondent

**AMENDED PARTIAL AGREED STATEMENT OF FACTS AND ISSUES**

The parties hereto by their respective solicitors agree on the following facts, provided that this agreement is made for the purpose of this appeal only and may not be used against either party on any other occasion. References to "Tabs" in this Agreed Statement are to the tabs in the Joint Book of Documents.

**Club Intrawest**

1. The appellant, Club Intrawest (the "Club"), is a non-profit, non-stock corporation that was established on November 9, 1993 under the laws of the state of Delaware, USA.
2. The Club has a mailing and business address of 326 -375 Water Street, Vancouver, British Columbia.
3. The Club is a GST registrant.
4. The Club was created to facilitate the administration and operation of resort accommodations in connection with a vacation accommodation ownership plan (the Intrawest program).

### **The IntraWest Program**

5. The IntraWest program was created by IntraWest Resort Ownership Corporation (IROC) in 1993 and, since its creation, it has been (i) marketed and sold in Canada by IROC and its successor corporations, IntraWest Corporation and IntraWest ULC (the developer) and (ii) marketed and sold in the United States by IntraWest Resort Ownership U.S. Corporation and Resort Ventures L.P. (the U.S. developer).
6. Under the IntraWest program, purchasers acquire resort points and thereby automatically become members of the Club (members) which entitles the purchasers to certain rights (subject to certain restrictions) including the ability to occupy studio, 1-, 2-, and 3-bedroom, resort accommodations (vacation homes).
7. When the developer(s) transfer a vacation home, either built or acquired, to the Club, it is transferred in exchange for the number of resort points required for the right to occupy and use the vacation home for an entire year.
8. The developer(s) are members of the Club.
9. When the IntraWest program began in 1993, the vacation homes were located in one resort in Canada but since that time the IntraWest program has expanded to include vacation homes at as many as nine resorts worldwide (each a resort). The resorts are currently situated in Canada, the United States, and Mexico.
10. The IntraWest program employs a point-based system for allocating the use of the vacation homes among the members (the point system).
11. The principal features of the point system are the following:
  - (a) members can use their resort points annually to occupy the vacation homes;
  - (b) the developer(s) have assigned a point value to the right to occupy one day in each vacation home with possible variations in assigned point value for the particular vacation home depending on which of five IntraWest program seasons -

holiday season, peak season, activity season, relax season and opportunity season- the particular day falls within;

- (c) members may occupy the vacation homes during a particular year by applying their resort points available to use in that year towards a vacation home at a resort based on the assigned point values for each day and size of vacation home chosen; and
  - (d) members may, bank unused resort points from the current year into a subsequent year and borrow usage of resort points that would otherwise be usable in a subsequent year for use in the current year;
  - (e) if a member does not use their resort points to occupy vacation homes for a particular year, or does not bank the unused resort points into the subsequent year, the members right to use the resort points for that particular year expire.
12. The point values for the right to occupy and use the vacation home at a particular resort are determined before the developers transfer the vacation home to the Club.

13. The parties are satisfied that the documents at Exhibits A-1 and A-2 are materially representative of these documents for the period between 2002 and 2007.

~~13.14.~~ The Intrawest program is governed by the following documents:

- (a) the master declaration (a representative version is at ~~Tab [1]~~ Exhibit A-1 Table 1) (the master declaration);
- (b) the certificate of incorporation for the Club with amendments (at ~~Tab [1]~~ Exhibit A-1 Table 13);
- (c) the by-laws of the Club (a representative version is at ~~Tab [1]~~ Exhibit A-1 Table 13) (the by-laws);
- (d) the agreements governing the trust arrangements described below in paragraph 1918;

- (e) the guidelines setting out the rules applicable to members in connection with the Intrawest program (a representative version is at ~~Tab [1]~~ Exhibit A-1 Table 6);
- (f) the purchase and membership agreement (a representative template for the agreement is at ~~Tab [1]~~ Exhibit A-1 Table 8);
- (g) the membership certificate (a representative template for the agreement is at ~~Tab [3]~~ Exhibit A-3).

~~14.15.~~ The document at ~~Tab [4 a)]~~ is a brochure entitled “Key Elements of Your Membership” that a member enrolment representative goes through with persons who have decided to purchase prior to signing the purchase and membership agreement.

~~15.16.~~ To market the sale of the resort points in British Columbia, the developers were required to file a Disclosure Statement pursuant to the *British Columbia Real Estate Development Marketing Act* (representative copy is at ~~Tab [1]~~ Exhibit A-1) and, at one time, a Prospectus pursuant to the *Real Estate Act of British Columbia* (representative copy is at ~~Tab [2]~~ Exhibit A-2).

~~16.17.~~ When resort points are sold by the developer to persons in Canada, the developer collects and remits GST/HST. No GST/HST was collected and remitted respecting the resort fees.

17.18. The following table shows (i) the total number of resorts points in existence, (ii) the number of members other than the developer(s), (iii) the amount of unsold resort points held by the developer(s) at year-end, (iv) the number of resort points held by non-developer members at year-end, (v) the number of votes available to the developer(s) (as detailed in paragraph 4443), and (vi) the number of votes available to non-developer members at year end (as detailed in paragraph 4342):

Year	Total Resort Points	Non-Developer Members	Developer(s) Held Resort Points	Non-Developer Held Resort Points	Developer(s) Votes	Non-Developer Votes
2002	2,268,148	7,560	165,366	2,102,782	165,366	140,185
2003	2,592,694	9,097	157,777	2,434,917	157,777	162,327
2004	2,722,913	10,796	146,809	2,626,104	146,809	175,073
2005	3,243,510	12,537	169,399	3,074,111	169,399	204,940
2006	3,402,902	13,942	160,699	3,242,203	160,699	216,146
2007	3,722,259	15,236	263,846	3,458,413	263,846	230,560
2008	3,768,441	16,429	129,170	3,639,271	129,170	242,618

### **Ownership of Vacation Homes**

18.19. When the developer transferred a vacation home in Canada to the Club, legal title to the vacation home was transferred to a trust company created under Canadian law, as trustee for the Club. When the U.S. developer transferred a vacation home in the United States or Mexico to the Club, legal title to the vacation home was transferred to a trust company created under U.S. law, as trustee for the Club.

19.20. Article 4 of the master declaration addresses the addition and removal of vacation homes from the Intrawest program and, Article 4, section 4.4 of the master declaration states: “[t]he Club will hold title to all Resort Accommodation registered in its name, and to all

beneficial interest 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...”

### **Members Rights and Obligations**

~~20.21.~~ The principal rights that a member has in connection with the IntraWest program are the following:

- (a) the right to use resort points held by the member to reserve the use of the vacation homes in accordance with the Guidelines as established by the developer;
- (b) the right to vote at annual general meetings of the Club, including the election of directors of the Club and on any other Club matters that require member approval pursuant to the by-laws; and
- (c) in the event of wind-up and dissolution of the Club, the right to receive a distribution of the net proceeds from the liquidation of the assets of the Club that is in proportion to the ratio of the member’s resort points to all resort points.

~~21.22.~~ Each member is liable to pay an annual assessment to the Club to meet “Membership Costs” as defined in the master declaration.

~~22.23.~~ Special assessments are those levied by the Club in accordance with Article VII of the By-laws and Section 10.8 of the Master Declaration to cover capital improvements for which no reserves have been established or other extraordinary expenses or costs associated with the Club or the resorts.

~~23.24.~~ No special assessments have been levied by the Club against members to date.

### **Resort Fee**

~~24.25.~~ The annual resort fee payable by a member for a calendar year is a per point dollar amount (the per point rate) established by the Club for that year multiplied by the number of resort points owned by the member.

~~25.26.~~ The Club, through its board of directors, establishes the per point rate for a calendar year by dividing the budgeted membership costs for the particular year by the total amount of

resort points issued by the Club, subject to the limitations on the master declaration on the maximum per point rate that the Club is entitled to assess for a particular year.

~~26.27.~~ Section 1.33 of the master declaration defines Membership Costs as “all costs incurred by the Club for and on behalf of the Members as provided in Section 10.3 hereof.”

~~27.28.~~ Section 10.3 of the master declaration states that Membership Costs “shall include but not be limited to:”

- (a) The maintenance, repair, modification, alteration, redecoration, or replacement of any Resort Accommodation;
- (b) The maintenance, repair, modification, alteration, redecoration, replacement, and rental of the Equipment;
- (c) Insurance coverage;
- (d) A capital contribution for reserves;
- (e) Domestic services, including cleaning and maid service, the frequency which shall be determined from time to time by the Board, furnished to or on behalf of Members;
- (f) Assessment levied against Resort Accommodations by a Project or association for a Project; and
- (g) Any other costs incurred by the Club in connection with the maintenance, repair, replacement, restoration, redecoration, improvement, operation, and administration of the Resort Accommodations, or in connection with the operation or administration of the Club, which are directly attributable to the commitment of one (1) or more Resort Accommodations in accordance with the provisions [of the Master Declaration].

~~28.29.~~ Tab [17] contains copies of the Club budgeted membership costs for the relevant period which were used by the Club to set the per point rate for the applicable timeframe.

29.30. Section 9.1 of the master declaration states that “[t]he Club shall act as agent of all the Members in collecting Assessments and in paying taxes, utility costs, and other Membership Costs.”

30.31. After the Club has determined the per point rate for a calendar year, letters detailing the correlation between the resort fee and the budgeted membership costs on a per point basis for the particular year are distributed to members together with an invoice for payment. **Tabs [15a and 15b]** contain copies of the letters for the relevant period and a representative invoice.

31.32. Section 10.5 of the master declaration states that resorts fees may not exceed a certain amount (maximum resort fee) and the “Maximum Resort Fee shall be determined and shall vary in accordance with the following provisions:

- (a) The Maximum Resort Fee during each fiscal year may be increased by the Board during the same fiscal year without the vote or written assent of the Membership by a maximum of five percent (5%) of the budgeted gross expenses for the fiscal year;
- (b) The Maximum Resort Fee for each new fiscal year may be increased by the Board without the vote or written assent of the Membership by a maximum of twenty percent (20%) of the total Resort Fees for the previous fiscal year. Any such increase shall be effective at the beginning of each fiscal year; and
- (c) The Maximum Resort Fee may be increased above the limits set forth under subsections (a) and (b) above, provided that any such increase shall have the affirmative vote or written assent of a majority of the Voting Power of the Club residing in the Members other than the [developer(s)]; provided, however, that in no event shall the Maximum Resort Fee for each new fiscal year exceed one hundred and twenty five percent (125%) of the Maximum Resort Fee for the previous fiscal year;
- (d) Notwithstanding anything to contrary herein, the Maximum Resort Fee during a fiscal year or for a new fiscal year may be increased above the limitations in



subsections (a) and (b) above, respectively, without the consent of the Membership if such addition is due to (i) a change in the exchange rate between the currency of the location in which certain Resort Accommodations are located and U.S. currency, or (ii) an increase in the assessments levied against a Resort Accommodation by a Project or Project association, or as a result of an increase in the property or municipal taxes against Resort Accommodation or an increase in utility charges imposed by any public or private utility.”

~~32.33.~~ Section 10.8 of the master declaration states, in part, that special assessments may be levied and “[n]o vote or written assent of the Members shall be required for the following:

- (a) Special assessments that do not, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Club for that fiscal year;
- (b) A Special assessment for repair, rebuilding or replacement of a Resort Accommodation(s) which does not exceed ten percent (10%) of the budgeted gross expenses of the Club for that fiscal year in which the assessment is levied; and
- (c) Special assessments against a Member(s) for the purpose of reimbursing the Club for costs incurred in bringing the Member(s) into compliance with this Declaration, the By-Laws or the Guidelines.
- (d) A Special Assessment due to an expenses of any type levied against a Resort Accommodation by a Project or Project association which the Declarant has no control.”

~~33.34.~~ Special assessment(s) made to replace a vacation home(s) require the consent of the board and the members.

~~34.35.~~ Special assessments are levied in the same manner as an assessment of annual resort fees and are payable within thirty (30) days or at the direction of the developer(s).

35.36. All resort fees must be current in order for a member to make reservations using their resort points, to bank, borrow or transfer resort points, to use vacation homes, or maintain any other member rights or privileges.

36.37. Members who fail to pay their resort fees by the due date are in default. In the event of default, the Club may exercise its right to forfeit the defaulting member's membership.

37.38. The payment of the resort fees does not entitle members to any additional rights or privileges.

### **Club Operations**

38.39. The Club is governed by its board of directors (the board).

39.40. The board is elected by the members and has "all of the powers and duties reasonably necessary for the maintenance, repair, replacement, restoration, improvement and operation of the Resort Accommodations, and for the operation and administration of the Club."

40.41. Resort point holdings entitle members to vote at Club meetings and on other Club matters as provided in the by-laws.

41.42. The board is comprised of:

- (a) five directors –which can be increased to no more than seven;
- (b) each director is elected for a term of three years or until the election of a successor;
- (c) the board shall always be comprised of an odd number of directors; and
- (d) the terms of the directors are staggered.

42.43. Members have one vote for each 15 resort points they hold multiplied by the number of directors to be elected that year, as set out in paragraph ~~7~~. 18 ~~SE~~.

BS

43.44. For periods relevant to this appeal the developer(s) had one vote for each resort point they hold multiplied by the number of directors to be elected that year, as set out in paragraph ~~47~~. The developer cannot vote for the independent director described in paragraph ~~45~~. <sup>18 SC:</sup>  
<sub>410 BS:</sub>

44.45. Members can split their votes between candidates for the board.

45.46. At least one "independent director" must be elected by the members other than the developer(s).

46.47. Elections are held each year and up to two directors are elected.

47.48. Notice of elections goes out to members on the website and voting occurs by mail in ballot.

48.49. There is a call out for persons interested in a seat on the board.

49.50. In 2005 and 2008 biographies submitted by interested candidates were sent to members. No candidate biographies were sent to members in 2002, 2003, 2004, 2006 or 2007. Samples of candidate biographies are at **Tab [20]** and samples of packages sent to members regarding the election of the board are at **Tab [21]**

50.51. During the period at issue, the directors of the board were:

2002	2003	2004	2005	2006	2007	2008
Smith, Kenneth ("Independent Director")	Smith, Kenneth ("Independent Director")	Smith, Kenneth ("Independent Director")	Smith, Kenneth ("Independent Director")	Smith, Kenneth ("Independent Director")	Smith, Kenneth ("Independent Director")	Smith, Kenneth ("Independent Director")
Gibbons, James - President	Gibbons, James - President	Gibbons, James - President	Gibbons, James - President	Gibbons, James - President	Gibbons, James - President	Gibbons, James - President
Zimmer, Ron - Vice President	Zimmer, Ron - Vice President	Cardinal, René - VP and Director	Cardinal, René - VP and Director	Cardinal, René - VP and Director	Cardinal, René - VP and Director	Cardinal, René - VP and Director
Jackson, Barbara - Secretary	Jackson, Barbara - Secretary	Jackson, Barbara - Secretary	Jackson, Barbara - Secretary	Jackson, Barbara - Secretary	Jackson, Barbara - Secretary	Jackson, Barbara - Secretary
Annabele, Bob	Orr, James - Director	Orr, James - Director	Orr, James - Director	Orr, James - Director	Orr, James - Director	Orr, James - Director

51.52. In 2004:

- (a) James Gibbons was the president of the developer;
- (b) René Cardinal was the chief financial officer of the developer; and
- (c) Barbara Jackson was the vice president of member experience for the developer.

52.53. In 2004 James Gibbons and René Cardinal were acclaimed as directors of the Club for a period of three years "as they were the only Members who agreed to stand for election to the Board." In that same year the Board resolved to dispense with the written ballot for the election of members as directors of the Club.

53.54. In 2006 James Orr and Barbara Jackson were acclaimed as directors of the Club and election of directors by ballot was dispensed with.

54.55. James Gibbons and Ronald Zimmer were directors of the Board at the time of incorporation of the Club in 1993.

55.56. James Orr and Kenneth Smith were members and not otherwise affiliated with Club Intrawest or the developer(s).

56.57. The board can appoint committees that would have the same powers as the board subject to the resolutions appointing such a committee.

57.58. All of the officers of the Club – president, vice president, secretary/treasurer - were members of the board.

58.59. The Club maintains minutes of its board meetings and the documents at ~~Tab [19]~~ **Exhibit A-4** are copies of the minutes of the board meetings that took place between 2003 and 2006.

59.60. Section 7.6 of the by-laws requires the books and records of the Club to be audited in accordance with generally accepted accounting principles.

60.61. The firm PricewaterhouseCoopers has been engaged to audit the books and records of the Club and **Tabs [8 to 14]** contain a copy of the audited financial statements for the Club for the years ending December 31, 2002 to December 31, 2008.

**Club Management:**

61.62. Section 9.2 of the Master Declaration contemplates that the Club or the board can delegate any powers, duties and rights of the Club or board, respectively, to a manager.

62.63. During the relevant period, the developer was retained as the manager of the Club. The terms of the developer's engagement as manager and independent contractor were set out in a management agreement (the management agreement) (a representative version is at ~~Tab [1]~~ **Exhibit A-1 Table 10**).

63.64. According to the terms of the management agreement, the developer acts as agent of the Club in respect of the following activities:

- (a) In the employment, engagement, dismissal and control of personnel;
- (b) Causing on-site personnel to be available at all times to check members in and out;
- (c) Causing maid service to be provided;
- (d) Overseeing and supervising all Club employees.

64.65. The management agreement also provides that

- (a) the developer is to enter into contracts (and subcontracts) for services it deems necessary and appropriate, in the name of and on behalf of the Club;
- (b) the developer is to act on behalf of the Club in ensuring the vacation plan is brought into effect and maintained; and,
- (c) the Club is the developer's principal.

65.66. According to the management agreement, the developer is not liable to either the Club or the members for any losses or damage not caused by the developer's fraud, gross negligence or willful misconduct. It states that the Club and its members are to protect, defend, indemnify, and hold harmless the developer from and against all claims, liabilities, losses or expenses arising from injury to any person or property related to any resort accommodation.

#### **Advisory Committee**

66.67. The Club's advisory committee is made up of members representing various demographics within the membership selected by the director of member services who is an employee of the developer(s).

67.68. The Club is not bound to follow the suggestions of the advisory committee.

~~68-69.~~ The advisory committee does not speak at the AGM of the Club.

~~69-70.~~ The advisory committee meets quarterly by teleconference.

~~70-71.~~ There are nine members on the advisory committee.

### **Member Satisfaction Surveys**

~~71-72.~~ The Club conducted member satisfaction surveys in 2003, 2006 and 2008. The survey in 2003 was conducted by phone and 294 members were questioned. The 2006 and 2008 surveys were conducted online. For 2006, completed responses were received from 4,153 out of 16,171 members (a 25.7% response rate). For 2008, completed responses were received from 3,903 out of 19,759 members (a 19.8% response rate).

### **Non-Member Booking of Vacation Homes**

~~72-73.~~ From the time the Intrawest program was established in 1993, the developer has operated various rental programs outside of the Intrawest program under which the developer has generated revenues from renting out vacation homes (using occupancy rights associated with resort points owned by the developer).

~~73-74.~~ The Passport Membership program (the "Passport Program") is a Vacation Home rental program that the developer created in 2006 to support the developer's sales and marketing of resort points.

~~74-75.~~ Persons who attend a sales presentation for the Intrawest program but are not yet ready buy resort points are offered the opportunity to purchase a one-year right to use vacation homes (or developer-owned equivalent) under the Passport Program as a way to try vacation homes for one year without becoming a member.

~~75-76.~~ Under the Passport Program, a purchaser buys a number of points that can be redeemed with the developer (rather than the Club) to occupy vacation homes during a 12-month period. The number of points the developer requires to occupy vacation homes for a particular day of the year under the Passport Program is the same as the resort points

required by members to occupy a vacation home of the same size in the same resort within the framework of the Program.

76.77. Participants in the Passport Program do not become members by virtue of participating in the Passport Program but sometimes later become members upon purchasing resort points after participating in the Passport Program.

77.78. Participants in the Passport Program do not have the right to vote with members on Club matters or the right to elect directors of the Club or the right to receive any of the net proceeds from the liquidation of the assets of the Club upon dissolution of the Club.

78.79. Participants in the Passport Program pay a lump sum amount to the developer for their one-year right to occupy vacation homes (or developer-owned equivalent).

79.80. Passport Program participants do not pay any resort fees to the developer or the Club and have no further financial obligations to, or entitlements from, the developer or the Club in the event that actual expenses for the maintenance and operation of the vacation homes for the relevant 12-month period exceed or fall below the amounts budgeted by the Club when setting the per point rate for the resort fees of the particular year.

80.81. The document at **Tab [6]** is a sample sales contract for 160 points under the Passport Program.



## The Dispute

81-82. In August 2010, the Minister of National Revenue issued the following assessments to the Club (the assessments):

Date of Assessment	Reporting Period	Net Tax
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

82-83. Under the assessments, the Minister assessed the Club for failing to withhold and remit GST/HST on those resort fees that the Minister considered to be attributable to the supply of intangible personal property that relates to real property in Canada.

83-84. In issuing the assessments, the Minister relied on a technical interpretation dated March 6, 2006 authored by Christopher Lewis of the CRA's GST/HST Rulings Directorate, a copy of which is at **Tab [22]**, in which the CRA Rulings Directorate advised that it considered the resort fees to have been paid in consideration for the supply of a membership in the Club.

84-85. By Notices of Objection dated November 8, 2010, the Club objected to the Assessments.

85-86. By Notice of Confirmation dated May 25, 2012 and appearing at **Tab [39]**, the Minister confirmed the assessments on the basis that the Club was not in fact an agent of the members and that the resort fees are consideration for taxable supplies pursuant to section 142 of the *Excise Tax Act* (R.S.C., 1985, c. E-15 as amended)

### **Allocation Methodology Towards Taxable Supply Made in Canada**

- ~~86.87.~~ The assessments were based on the Minister's conclusion that a portion of the resort fees were paid for the supply of intangible personal property related to real property situated in Canada.
- ~~87.88.~~ To assign a portion of the resort fees to the supply on intangible personal property related to real property situated in Canada, the Minister used the ratio of resort points issued by the Club in respect of vacation homes in resorts situated in Canada to total resort points issued in respect of all vacation homes held by the Club (the Minister's methodology). Calculation of the ratio for the periods in issue can be found in Schedule 'A' of the Minister's Reply
- ~~88.89.~~ The Minister's methodology produced a GST liability for the portion of the resort fees that the Minister considered to be a taxable supply for the reporting period covered by each assessment which was ultimately reflected in the computation of the net tax owing (refund) for the reporting periods in the assessments under appeal.
- ~~89.90.~~ The Club disagrees with the Minister's conclusion that the members paid the resort fee in consideration for a taxable supply of membership in the Club. However, the Club provided the Minister with an alternative approach (the Club's methodology) for assigning the resort fees paid during each reporting period towards a taxable supply made in Canada for GST/HST purposes.
- ~~90.91.~~ Under the Club's methodology, the resort fees are allocated based on the ratio of membership costs associated with the operation of the resorts situated in Canada to total membership costs for all resorts.
- ~~91.92.~~ The Minister did not accept the Club's methodology because the Minister's conclusion is that a portion of the resort fees were paid for the supply of intangible personal property related to real property situated in Canada. In the Minister's view, the intangible personal property being taxed is the membership in the Club which affords purchasers the right to occupy and use the vacation homes. The resort fees form part of the consideration for that membership. It follows that GST collectible be calculated with reference to that

consideration as opposed to the membership costs incurred to operate the vacation homes situated in Canada.

92.93. It is the Minister's view that the supply of resort points by the developer also form part of the consideration paid for a membership in the Club. The Minister, at the proposal of the developer, has calculated GST respecting the developer's supply of resort points by ruling that the Club is liable for GST respecting the portion of the consideration paid for resort points that relate to real property situated in Canada. This calculation is the same manner in which the Minister now proposes to calculate GST collectible respecting resort points fees.

93.94. If this Court concludes that the Club made a taxable supply of the resort fees to the members, the Club's methodology produces the following net tax for the reporting periods covered by the assessments under appeal, as detailed in Schedule 'A':

Reporting Period	Net Tax
October 2002	\$237,276
October 2003	\$182,798
October 2004	\$635,011
October 2005	\$153,036
October 2006	\$216,012
October 2007	\$64,494.72
October 2008	\$139,745cr

94.95. Tab [40] contains the Club's working papers showing the application of the Club's methodology.

95.96. If this Court concludes that the Club made a taxable supply of the resort fees to the members, the Minister's methodology produces the net tax for the reporting periods as assessed and detailed in Schedule 'B'.

96.97. Tab [31] contains the Minister's working papers showing the application of the Minister's methodology.

97.98. If this Court concludes that the Club did not make a taxable supply of the resort fees to the members, the resulting liability of the Club for net tax would be:

Reporting Period	Net Tax
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

**Statement of the issues:**

98.99. The issues are:

- a. whether the resort fees are part of the consideration paid by members for membership in the Club, as maintained by the Minister, or
- b. whether the resort fees are reimbursements for expenses incurred by the Club as agent on behalf of the members, as maintained by the Club.

99.100. If the resort fees are determined not to be reimbursements for expenses incurred by the Club as agent on behalf of the members, then the issue is whether the Club's methodology is fair and reasonable or whether the Minister's methodology should be preferred.

**DATED** at the City of Vancouver, the Province of British Columbia, this 25<sup>th</sup> day of November, 2014.

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**DATED** at the City of Vancouver, the Province of British Columbia, this 25<sup>th</sup> day of November, 2014.

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**Schedule 'B' to Agreed Statement of Facts  
Club Intrawest v. HMTQ  
2012-3401(GST)G**

**Minister's Methodology**

Period End	Reported Amounts			Adjustments			Total Net Tax Liability
	GST Collectible <sup>4</sup>	ITCs	Net GST	GST Under Reported <sup>5</sup>	ITC (Additional) <sup>6</sup>	Unreported Net Tax	
2002-10-31	\$9,583.99	-\$1,649.95	\$7,934.04	\$637,732.77	-\$325,338.49	\$312,394.28	\$320,328.32
2003-10-31	\$11,604.95	-\$4,239.44	\$7,365.51	\$683,190.72	-\$413,673.40	\$269,517.32	\$276,882.83
2004-10-31	\$433,066.29 <sup>7</sup>	-\$473.69	\$432,592.60	\$713,831.67	-\$457,080.01	\$256,751.66	\$689,344.26
2005-10-31	\$2,882.86	-\$403.35	\$2,479.51	\$806,709.89	-\$530,813.06	\$275,896.83	\$278,376.34
2006-10-31	\$119,646.26	-\$59,207.30	\$60,438.96	\$732,026.93	-\$543,918.79	\$188,108.14	\$248,547.10
2007-10-31	\$8,951.92	-\$6,166.75	\$2,785.17	\$757,793.39	-\$575,523.45	\$182,269.94	\$185,055.11
2008-10-31	\$36,097.55	-\$144,014.68	-\$107,917.13	\$678,848.54	-\$702,132.84	-\$23,284.30	-\$131,201.43

TOTAL ADJUSTMENT	\$1,461,653.87
TO NET TAX	

<sup>4</sup> These collectible amounts do not include GST assessed respecting the supply of real property.

<sup>5</sup> This is the Minister's total adjustment resulting from two reassessments. There was an error in the initial reassessment of the Minister's intended adjustments. The initial reassessment used the incorrect allocation of points respecting vacation homes situated in Canada and points respecting all worldwide vacation homes. These ratio amounts are set out in Schedule 'A' of the Reply. The ratio used in the original reassessment was the ratio at the time the Club recognized its revenue which is the year following the year in which the resort fees were invoiced to members. For example, in the initial reassessment the ratio for the period ending 2008-12-31 was used to calculate the GST collectible for the period ending 2007-10-31. To correct this error the final reassessment made the adjustments necessary to account for GST collectible using the correct ratio - being the ratio for the period ending 2007-12-31 applied to the resort fees invoiced by the Club for the period ending 2007-10-31.

<sup>6</sup> The Club did not claim ITCs in respect of the expenses incurred that were reimbursed by the Members, based on the position that the expenses were incurred by the Club as agent. If, however, the Court determines that the Club made a taxable supply, the Club would be entitled to claim ITCs in respect of those expenses.

<sup>7</sup> This amount is the result of an unrelated reassessment that occurred prior to the adjustments in issue in this appeal.