Docket: 2013-1914(GST)G

BETWEEN:

SLFI GROUP - INVESCO CANADA LTD. - INVESCO CANADA FUNDS INCLUDING EACH FUND LISTED IN SCHEDULE "A",

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2014-1941(GST)G

AND BETWEEN:

INVESCO CANADA LTD. / INVESCO CANADA LTÉE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2014-1943(GST)G

AND BETWEEN:

INVESCO CANADA MONEY MARKET FUND
(FORMERLY AIM CANADA MONEY MARKET FUND)
AND EACH OF THE OTHER FUNDS LISTED IN SCHEDULE “B”

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 14-15-16, 2015 and December 14, 2015, at Toronto, Ontario

Before: The Honourable Justice Valerie Miller

Appearances:

Counsel for the Appellant:	John Tobin Lisa Talbot
Counsel for the Respondent:	Marilyn Vardy Andrea Jackett

JUDGMENT

The appeal from the assessments under the *Excise Tax Act* for the period from December 1, 2002 to December 31, 2011 is dismissed in accordance with the attached Reasons for Judgment.

The appeal with respect to the PVAT assessments on the Earned Daily Fees for the period July 1, 2010 to December 31, 2011 is quashed as the Appellants did not file a notice of objection to the assessments.

Costs are awarded to the Respondent.

Signed at Ottawa, Canada, this 25th day of May 2017.

"V.A. Miller"

V.A. Miller J.

Citation: 2017TCC78
Date: 20170525
Docket: 2013-1914(GST)G

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Appellant,

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AND BETWEEN:

INVESCO CANADA MONEY MARKET FUND
(FORMERLY AIM CANADA MONEY MARKET FUND)
AND EACH OF THE OTHER FUNDS LISTED IN SCHEDULE “B”

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

V.A. Miller J.

I. OVERVIEW

[1] This consolidated appeal involves retail mutual funds offered under the Invesco, Aim, Trimark and Powershares brands (the "Funds"). The manager of the Funds changed from Aim Funds Management Inc. in 2002 to Invesco Trimark Ltd. on August 11, 2008 to Invesco Canada Ltd. on July 29, 2011 (the "Manager").

[2] The Appellants in this appeal are the Funds and the Manager.

[3] The Appellants are appealing from assessments by the Minister of National Revenue (the "Minister") made under the *Excise Tax Act* (the "*Act*") for the period from December 1, 2002 to December 31, 2011. The aggregate amount of goods and services tax ("GST") at issue is $44,709,717.16.[1]

[4] This appeal relates to a financing transaction between the Appellants, Canada Funding Corp I ("Funding Corp") and Citibank, N.A. ("Citibank"). The question under appeal is whether the Appellants received an "imported taxable supply" as a result of the financing transaction that occurred during the period.

[5] I have concluded that they did.

II. FACTS

A. The Appellants

[6] The only witness at the hearing was Mr. David Warren, Executive Vice-President and Chief Financial Officer of Invesco Canada Ltd. ("Invesco"). He gave his evidence in a straight forward and credible manner.

[7] The Funds are investment vehicles that are pooled for the benefit of their investors who hold units in the case of trust Funds, and shares in the case of corporate Funds. In this appeal, most of the Funds are mutual fund trusts; two of the Funds are mutual fund corporations; and, one Fund, Invesco Allocation Fund, is a unit trust.

[8] The Funds are regulated under Canadian securities law. A simplified prospectus and an Annual Information Form are published annually. Although these documents must contain prescribed information about the Funds, they are written in plain language with the investor in mind.

[9] The Manager is a corporation incorporated under the laws of Ontario. At all relevant times, the Manager was registered for GST/HST. As well as being the Manager of the Funds, Invesco was also the trustee of each Fund that was a mutual fund trust and trustee of the unit trust.

[10] On July 1, 2010, each Fund became a selected listed financial institution ("SLFI") and a party to a consolidated group filing election.

[11] The Funds had no employees and the Manager provided management and administrative services (the "Management Services") to each Fund pursuant to the terms of a management agreement (the "Management Agreement").

[12] The Manager is also the principal distributor for the Funds and as such, it ensures that the securities of each Fund are properly issued; the amounts paid for the securities are invested; and, redemption proceeds are paid to the investor.

[13] Mr. Warren described the Manager's role with respect to the Funds as (1) managing the money; (2) distribution; and, (3) either performing or arranging for the administration of the Funds.

[14] In return for its Management Services, the Manager charged fees plus the applicable GST/HST to each Fund.

B. The Funding of the DSC Commissions

[15] The Funds offered their investors the option of deferring the broker/dealer commissions when purchasing certain securities. The commissions were deferred to the investors provided they held their investment for a specified period of time. This was referred to as the "deferred sales charge" ("DSC") option. The Funds offered three different DSC options. They were (i) the Standard DSC where the commission was generally 4.9% of the purchase price of the investment and the investor was subject to a fee if he or she redeemed within the first six years after purchasing the security; (ii) the Lower-Load 4 ("LL4") option where the commission was generally 4.5% and the investor had to hold the investment for 4 years to avoid paying the commission fee; and, (iii) the Low-Load (LL) option

where the commission was 1% and the investor was subject to a redemption fee if the investment was redeemed within the first two years.

[16] In this appeal, the term "DSC Commissions" refers to the commissions on the Standard DSC securities and the LL4 securities.

[17] Although the commissions were deferred as far as the investor was concerned, the brokers/dealers were paid their commissions at the time or shortly after the securities were purchased.

[18] Prior to and subsequent to the period in issue, the Manager funded the broker/dealer commissions.

[19] Mr. Warren testified that over the period 1998 to 2000, the Manager amalgamated and merged with other companies. The assets it administered in the Funds grew from approximately $10 billion to about $35 billion. The Manager had to borrow from its parent company in the United States to be able to fund the DSC Commissions and to obtain capital to meet its own regulatory capital obligations.

[20] The Manager, expecting its business to grow exponentially, decided that its continued funding of the DSC Commissions was not the best use of its capital. It looked for alternative sources to finance the DSC Commissions.

[21] However, there were limitations imposed by legislation on how the commissions could be financed. Ontario securities laws prohibited the Funds from paying broker/dealer commissions directly and from borrowing money to pay the commissions. Also, the Manager placed its own limitation on the financing of the commissions because it did not want the funding to appear on its balance sheet or on the Funds' balance sheet.

[22] With these constraints in mind, in early 2001, the Manager agreed with a proposal made by Citibank. Pursuant to this proposal, the Funds and the Manager entered into a single recurring financing transaction (the "Financing Transaction") which was carried out daily from April 1, 2002 to September 30, 2009 to finance the DSC Commissions. The parties who participated in the Financing Transaction were the Funds, the Manager, Citibank, Citicorp North America, Inc. ("Citicorp"), and Funding Corp.

[23] A description of Citibank, Citicorp and Funding Corp (collectively "the Citibank Entities") follows.

[24] Citibank is a United States ("US") national financial institution that provides or arranges for credit. Citibank provides financing in the mutual fund industry through its securitization group. It had arranged a similar financing transaction for an affiliate of the Manager in the US.

[25] Citicorp was the "Program Agent" and as such was the agent for both Funding Corp and Citibank in the Financing Transaction.

[26] Funding Corp is a US corporation that was established by Citibank as a single purpose, bankruptcy remote securitization entity. Its sole purpose was to participate in the funding arrangement that is the subject of this appeal. At all relevant times, Funding Corp was a non-resident of Canada; it dealt at arm's length with each Fund and with the Manager. Funding Corp had no employees. It was not registered for GST and it performed all of its services outside Canada.

[27] According to the contracts between the parties, Funding Corp agreed to arrange for the funding of the DSC Commissions and, as consideration, the Funds agreed to pay Funding Corp a fee (the "Earned Fees") that accrued in respect of each funded DSC security.

[28] The Earned Fees consisted of a single consideration which had two components: an "Earned DSC Fee" and an "Earned Daily Fee". The Earned DSC Fee was an amount equal to the redemption fees payable by an investor on early redemption of the securities. The Earned Daily Fee was equal to a percentage of the value of the securities whose commission was financed by the money received as a result of the Financing Transaction.

[29] The Financing Transaction replaced the financing that had been provided by the Manager for all DSC options except for the commissions on the LL securities. The Manager continued to finance these commissions.

C. The Financing Transaction

[30] The Financing Transaction resulted from an integrated group of commercial agreements. The key agreements were: the Fee Payment Agreement, the Purchase and Sale Agreement, the Servicing Agreement, and the Funding Percentage Letter Agreement (collectively, referred to as the "Financing Agreements"). The Financing Agreements were structured to provide for a financing program that was unlike a loan or debtor/creditor arrangement. Each of the agreements was dated as of March 26, 2006.

[31] The Financing Transaction provided the money needed to pay the DSC Commissions (the "Funding Amounts") on a daily basis. In return, Citibank received the Earned Fees.

[32] A description of the Financing Agreements follows:

(1) The Fee Payment Agreement

[33] The Fee Payment Agreement was made between Funding Corp, Citicorp, the Funds, and the Manager. In this agreement, Funding Corp agreed to arrange for the payment of daily Funding Amounts, by wire transfer, into the applicable Fund Accounts (the "Dealer Commission Trust Accounts"). The Manager, on behalf of the Funds, agreed to provide Funding Corp and Citicorp with a notice containing the amount required for the daily Funding Amount (a "Funding Notice"). The Manager faxed the Funding Notice to Funding Corp, Citicorp and the Collection Agent[2] prior to 9:00AM (New York City time) and the Funding Amount was deposited into the applicable Dealer Commission Trust Account on or prior to 5:00PM (New York City time) that same day.

[34] As consideration for agreeing to arrange for the payment of the Funding Amounts, the Funds agreed to pay Funding Corp the Earned Fees accruing in respect of each of their funded DSC securities outstanding from time to time.

[35] Paragraph 2.03 of the Fee Payment Agreement dealt with the Funds obligations and Funding Corp's rights under the agreement. The preamble to the paragraph read:

> "In order to induce Funding Corp to accept the obligation of each Fund to pay the Earned Fees as consideration for Funding Corp's undertakings hereunder, each Fund agrees as follows:"

[36] Paragraph 2.03(a) specified that Funding Corp's right to the Earned Fees was enforceable against each Fund and its property directly but not against the Manager in its individual capacity.

[37] Paragraph 2.03(d) stated that "the Earned Fees are fees paid for services to the Fund rendered by Funding Corp in the Unites States in arranging for the funding of the Funding Amounts…".

[38] The obligation to pay the Earned Fees was an absolute and unconditional obligation of the Funds regardless if it was later found that the Manager was unable to compute the amount due or was unable, for any reason, including any requirement of Applicable Law[3], to perform the actions required to effect the payment.

[39] The Manager's agreements with Funding Corp were provided in section 2.04 of the Fee Payment Agreement. The Manager relinquished its rights to the Earned Fees and agreed that its management fee would automatically be reduced by the amount of the Earned Daily Fee payable by the Fund to Funding Corp. The Manager also agreed that "the Earned Fees are fees paid by the Funds for services to the Fund rendered by Funding Corp in the United States in arranging for the funding of the Funding Amounts…".

[40] In section 5.05, one of the covenants made by the Manager was that it would not change the investment objectives of the Funds unless it had written consent of Citicorp, the program agent for Funding Corp. The Funds made a similar covenant in section 5.06 of the Fee Payment Agreement.

[41] Funding Corp covenanted that as long as any amount remained payable under the agreement, (a) it would not maintain an office in Canada; (b) it would execute and deliver this agreement in the US; (c) it would arrange for the payment of the Funding Amount by entering into a Purchase Agreement[4] in the US; and, (d) it would not perform any services in Canada. It was understood for the purposes of this covenant that the activity described in clause (c) was not deemed to be the performance of services in Canada. (Section 5.08 of the Fee Payment Agreement)

[42] Mr. Warren testified that the Manager agreed to become a party to the Fee Payment Agreement for two reasons: first, Citibank insisted that it do so; and second, the Manager wanted to offload the "responsibility for funding sales commissions" and it was in the Manager's best interest to sign the agreement.

(2) <u>The Purchase and Sale Agreement</u>

[43] The Purchase and Sale Agreement was made between Funding Corp, Citibank, and Citicorp. Pursuant to this agreement, Funding Corp sold its rights to the Earned Fees to Citibank. The Purchase and Sale Agreement provided that, on each date that Funding Corp was required to arrange for payment into the Dealer Commission Trust Account, it sold its rights to the Earned Fees to Citibank for a purchase price equal to the Funding Amount for the relevant day. Citibank agreed

to pay the Funding Amount by wiring the money directly to the relevant Dealer Commission Trust Account.

[44] The Dealer Commission Trust Accounts were held in the Manager's name.

[45] Section 2.02 of the Purchase and Sale Agreement stated that "With respect to the Earned Fees to be purchased on any Funding Date, immediately upon its receipt of a Funding Notice, Funding Corp shall transmit or shall cause to be transmitted to the Purchaser (with a copy to the Collection Agent) on such proposed Funding Date by facsimile transmission, a copy of such Funding Notice." The Purchaser was Citibank. However, Mr. Warren testified that it was actually the Manager who sent the Funding Notices, on behalf of Funding Corp, to Citibank and the Collection Agent.

[46] This sale by Funding Corp to Citibank was an integral part of the Financing Transaction and was included in both the recitals and section 5.08 of the Fee Payment Agreement.

(3) The Servicing Agreement

[47] The Servicing Agreement was made between Citibank, Citicorp, and the Manager. Pursuant to this agreement, the Manager agreed to provide numerous services to the Citibank Entities. Those services included ensuring that the Funds paid the Earned Fees into Citibank's account with Bankers Trust Company in New York; calculating and reporting on the Earned Fees from the Funds to Citibank; furnishing monthly reports and statements relating to the Earned Fees as required by the Servicing Agreement and the other Financing Agreements. The Manager, on behalf of the Funds, collected the Earned Fees out of the assets of the Funds and remitted them on behalf of the Funds as required by the Fee Payment Agreement.

[48] Citibank paid the Manager a monthly fee for its services under the Servicing Agreement.

(4) The Funding Percentage Letter Agreement

[49] The Funding Percentage Letter Agreement was between Citicorp, the program agent, and the Manager. The Funding Percentage was applied to the securities in all Funds involved in the Financing Transaction to determine the Funding Amounts. Although the actual commission rates for the Funds ranged from 4.25% to 4.9%, it was agreed by the parties that the Funding Percentage

would be 4.9%, the standard rate preferred by Citibank. As a result, the Funding Amounts sometimes exceeded the actual commissions paid. This excess was paid to the Manager and reported by it as fee income for accounting purposes.

(5) The Management Agreement

[50] Prior to the relevant period, each Fund had a separate Management Agreement but it was intended that the terms of each Management Agreement were to be identical.

[51] The Manager's duties in the Management Agreement dated January 5, 1995 (amended and restated October 20, 2000) between the Manager and the corporate Funds included the following:

> 3. The Manager shall, during the term of this Agreement:
>
> a) provide, or arrange for the provision of, portfolio advisory and investment management services with respect to the investment portfolio of each Class and make decisions as to the purchase and sale of portfolio securities, other dealings with the assets in the portfolio and execution of all portfolio transactions, including selection of market, dealer or broker and the negotiation, where applicable, of commissions, subject always to the direction of the Fund and the Board of Directors and the provisions of the Articles of Incorporation;
>
> b) supervise any investment or portfolio advisors appointed in respect of the Classes;
>
> …
>
> d) calculate, or cause to be calculated, as often as may be required by the Fund, the net asset value of the Fund, the net asset value of each Class and the series net asset value per share of each series offered by each Class;
>
> …
>
> f) provide, or cause to be provided, services in respect of any or all of the Fund's daily operations, including the processing of subscriptions for shares, the collection, and remission to the custodian of the Fund, of the moneys received by virtue of such subscriptions, the processing of requests for redemptions of shares and the processing of requests for the change of shares of any series if permitted under the eligibility criteria set out in the prospectus;
>
> …

> h) provide, or cause to be provided, to the Fund all other administrative and other services and facilities required by the Fund in relation to its shareholders, including the preparation for and holding of meetings of shareholders of the Fund, of a Class or of a series of a Class, the maintenance of records regarding transactions of shareholders, registry and transfer agency services, services pertaining to distribution of income and gains to shareholders and other services for the provision of tax reporting and other information to shareholders;
>
> …
>
> l) provide, or cause to be provided, to the Fund all other services necessary or desirable to conduct and operate the Fund's business in an efficient manner.

[52] The Manager was able to delegate its responsibilities according to paragraph 4 of this Management Agreement as follows:

> In connection with the duties of the Manager herein specified, the Manager may, subject to the provisions of the Act and the Articles of Incorporation, engage or employ any persons as agents, representatives, employees or independent contractors, including, without limitation, lawyers, bankers, portfolio advisers, notaries, registrars, underwriters, accountants, brokers or dealers in one or more capacities and any other advisers or other professionals which the Manager deems advisable and may delegate any of the powers and duties of the Manager hereunder to any agents, representatives, officers, employee, independent contractors or other persons. The Fund acknowledges that the Manager proposes to retain State Street Trust Company Canada or another qualified financial institution act as custodian for the assets of the Fund in relation to each Class. The Fund further acknowledges that the Manager proposes to retain various investment management firms from time to time which it will select to act as portfolio advisors for each Class.

[53] The Master Management Agreement between the Manager and the trust Funds contained the same paragraphs as above.

[54] The Master Management Agreement ("Amended Management Agreement") was amended as of March 27, 2002 and amended and restated to August 9, 2002 and to October 4, 2002 so that it referred to the Financing Transaction. According to this Amended Management Agreement, the Manager became the principal Distributor for the Funds.

[55] The Manager was appointed pursuant to the Amended Management Agreement "with full authority and responsibility to provide or cause to be provided to the Fund the management and administrative services and facilities hereinafter set forth". The "Duties of the Manager" included the following:

> (g) make, or cause to be made, arrangements as may be necessary or desirable for the distribution and sale of units by duly qualified investment dealers, brokers, mutual fund dealers, life insurance agents and others (collectively, "sales agents") on such terms as the Manager may determine, subject to the terms hereof, the Declaration of Trust and the prospectus, **provided that each of the Funds may make arrangements relating to funding or payment of sales commission or other compensation to such sales agents;** (emphasis added)
>
> …
>
> (o) provide, or cause to be provided, to each Fund all other services necessary or desirable to conduct and operate the Fund's business in an efficient manner.

[56] Paragraph 8 of the Amended Management Agreement addressed the Fees paid to the Manager and the Financing Transaction. It reads:

> 8. In consideration of the duties performed by the Manager pursuant to the terms of this Agreement, the Manager shall receive from each Fund fees in respect of any series A units, series F units, series SC units or series DSC units offered by the Fund as set forth in Schedule "A" hereto. No fees shall be payable to the Manager by any Fund in respect of any series I units offered by the Fund.
>
> The Funds may make arrangements to fund the payment of commissions to registered dealers in connection with the distribution of units of the Funds. The parties hereto agree that the Funds may pay an amount directly to a third party with respect to those units subject to funding arrangements, in which circumstances the management fee payable to the Manager shall be reduced by the amounts paid to such third parties. Neither the Manager, nor any affiliate of the Manager, nor any person claiming through any thereof, including any liquidating trustee or court with jurisdiction over any bankruptcy, insolvency, reorganization or similar proceeding in respect of any thereof, will have any right, title or interest in such amount.

[57] Over the period from April 1, 2002 to September 30, 2009, the Funds received Funding Amounts which totaled $640 million and the Earned Fees paid by the Funds for this same period totaled more than $717 million. By the conclusion of the trial for this appeal, the amount of Earned Fees paid by the Funds was over $800 million.

D. Filing and Assessing History

[58] There were three distinct periods with respect to the filing and assessing history of the Appellants.

(a) December 1, 2002 to June 30, 2010

[59] Prior to July 1, 2010, none of the Funds had a GST/HST registration number.

[60] During the period April 1, 2002 to June 30, 2010, the Manager self-assessed Division IV tax on the Earned Daily Fees on behalf of the various Funds and included the tax in its own GST returns. The Earned Daily Fees were treated as consideration for an imported taxable supply. The Minister processed the returns as filed.

[61] The Manager filed rebate applications for GST that it said was "paid in error". The rebate applications were filed under the Manager's business number and the total rebates claimed for the period April 1, 2002 to June 30, 2010 were $29,890,510.15.

[62] The Minister denied the rebate applications by notices of assessment dated February 18, 2014.

(b) April 1, 2002 to June 30, 2010

[63] During the period April 1, 2002 to June 30, 2010, the Manager did not self-assess Division IV tax on the Earned DSC Fees on behalf of the Funds. By notices dated March 4, 2014, the Minister assessed 20 selected Funds for GST payable on the Earned DSC Fees for the period April 1, 2002 to June 30, 2010. According to the assessments, the total GST payable on the Earned DSC Fees was $6,054,502.41.

[64] The Funds objected to the assessment and the Minister confirmed the assessments on May 2, 2014.

(c) July 1, 2010 to December 31, 2011

[65] Effective July 1, 2010, the Funds were registered for GST/HST under a single GST/HST registration number. The Funds as a group became a "selected listed financial institution" group (the "SLFI Group") for GST/HST purposes and it filed its GST/HST returns on an annual basis.

[66] For the period July 1, 2010 to December 31, 2010, the SLFI Group self-assessed GST/HST in the amount of $1,489,488.36 on its Earned Daily Fees.

[67] For the period January 1, 2011 to December 31, 2011, the SLFI Group self-assessed GST/HST in the amount of $2,294,397.42 on its Earned Daily Fees.

[68] The returns were assessed as filed and the SLFI Group objected to the assessments.

[69] The SLFI Group did not self-assess GST on the Earned DSC Fees for the period July 1, 2010 to December 31, 2011 and the Minister assessed GST in the amount of $552,193.55 for this period.

[70] The SLFI Group objected to the assessment.

[71] The SLFI Group filed rebate applications for the periods from July 1, 2010 to December 31, 2011. The rebate application for the period July 1, 2010 to December 31, 2010 was filed on June 22, 2012 and the rebate applications for the period January 1, 2011 to December 31, 2011 were filed on November 16, 2012. The Minister denied these rebate applications in full as well.

(d) PVAT Assessments – July 1, 2010 to December 31, 2011[5]

[72] On November 9, 2011, the Minister assessed the provincial portion of the Harmonized Sales Tax (the "PVAT") on the Earned Daily Fees to the Manager in the amount of $1,524,504.54 for the period July 1, 2010 to December 31, 2010.

[73] For the period January 1, 2011 to December 31, 2011, the Minister assessed PVAT on the Earned Daily Fees to the Manager in the total amount of $2,335, 503.79.

[74] The Manager did not object to the PVAT assessments on the Earned Daily Fees.

[75] The Minister assessed PVAT in the amount of $568,616.48 on the Earned DSC Fees to the Manager for the period July 1, 2010 to December 31, 2011. The Manager objected to the assessments and the Minister confirmed them.

[76] At the hearing on December 14, 2015, counsel for the Appellants advised that the Manager was no longer seeking to vacate the assessments made against it for the PVAT.

III. ISSUES

[77] The issues were framed by the parties as follows:

a) Whether Funding Corp made a taxable supply to the Appellants; and,

b) If the Appellants did not receive a taxable supply, whether subsection 261(2) of the *Act* prevents the Appellants from receiving rebates for the reporting periods February 1, 2007 to June 30, 2010.

[78] According to the Appellants, there are three distinct relief periods:

a) The Pre-Standardized Period – 2002 to June 30, 2007;

b) Standardized Period – July 1, 2007 to June 30, 2010; and,

c) SLFI Period – July 1, 2010 to December 31, 2011.

IV. LAW

[79] I have included all of the relevant statutory provisions as an Appendix to these reasons. When I discuss a particular provision, I will include it at the beginning of the paragraph for ease of reference.

V. POSITION OF THE PARTIES

A. Appellants' Position

[80] The Appellants submitted that the Financing Transaction was not a supply but was the payment of money. They argued in the alternative that, if there was a supply of a service by Funding Corp, it was the supply of an exempt "financial service" within the definition of that term in section 123 of the *Act*. In particular, it was the payment of money in accordance with paragraph (a) of that definition; or, it was the issuance of a debt security in accordance with paragraph (d); or, it was the arranging for the payment of money or the issuance of a debt security in accordance with paragraph (l) of that definition.

[81] The Appellants further submitted that the service of arranging to have the commission fees paid was not a management or administrative service and therefore paragraph (q) of the definition of "financial service" did not apply in the circumstances of this appeal.

B. Respondent's Position

[82] It was the Respondent's position that Funding Corp made a supply of a service to the Funds that was not an exempt service within the definition of "financial service" in the *Act*. Alternatively, if the service was an exempt financial service, it was excluded from that definition because Funding Corp provided other management or administrative services in accordance with paragraph (q) of the definition of "financial service". The provision of management or administrative services to the Funds is a taxable supply.

VI. ANALYSIS

[83] The determination of whether the Appellants are liable to pay GST as a result of the Financing Transaction requires an interpretation and analysis of the Financing Agreements together and not just an analysis of the Fee Payment Agreement between Funding Corp and the Appellants.

[84] It is my view that I must consider all of the Financing Agreements and the entire Financing Transaction. The agreements were integral to one another. I must consider whether there were services provided by the Citibank Entities to the Funds; and, if there were, what those services were.

[85] In *Creston Moly Corp v Sattva Capital Corp*, 2014 SCC 53, at paragraph 47, Rothstein J. described the modern approach to contractual interpretation as one in which a contract should be read as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time the contract was formed. At paragraph 50 of that decision, he concluded:

> [50] With respect for the contrary view, I am of the opinion that the historical approach should be abandoned. Contractual interpretation involves issues of mixed fact and law as it is an exercise in which the principles of contractual interpretation are applied to the words of the written contract, considered in light of the factual matrix.

[86] There is a thread that connects all of the Financing Agreements. According to Mr. Warren, they were written contemporaneously by teams of Canadian and US lawyers working together. The agreements were each dated March 26, 2002. They were written so that they referenced each other and depended on each other. For example, the recitals to the Fee Payment Agreement stated that Funding Corp had entered into the Purchase Agreement to sell its rights to the Earned Fees to

Citibank on the same day that it contracted with the Funds to arrange for the payment of the Funding Amounts. Each of the agreements used the same terminology and each had a "Definitions List" so that the terms used in the various agreements had the same meaning. The Purchase and Sale Agreement referred to the Fee Payment Agreement. The Manager's duties in the Servicing Agreement were with respect to its duties under the Fee Payment Agreement.

[87] The terms and conditions contained in these agreements were necessarily intertwined, interdependent and integral to each other: *Great-West Life Assurance Co v Canada,* 2015 TCC 225 at paragraph 65.

[88] The parties to this appeal did not agree on whether any services were provided to the Funds. The Appellants argued that the Funds only received money and money is not a supply. The Respondent submitted that Funding Corp supplied a service or services to the Funds under the terms of the Fee Payment Agreement.

[89] It is my view that the services were:

i. Funding Corp provided a service "in arranging for the funding of the Funding Amounts". Both paragraphs 2.03(d) and 2.04(e) of the Fee Payment Agreement include the following sentence:

> "…the Earned Fees are fees paid by the Funds for services to the Funds rendered by Funding Corp in the United States in arranging for the funding of the Funding Amounts…"(emphasis added).

ii. On a daily basis, Funding Corp was responsible to receive, process and transmit (or cause to be transmitted) the Funding Notices it received from the Manager to Citibank, Citicorp and the Collection Agent: See paragraph 2.02 of the Purchase and Sale Agreement. It effected this service by causing the Funding Notices to be transmitted by the Manager to Citibank, Citicorp and the Collection Agent.

iii. On a daily basis, Citibank deposited the Funding Amounts in the Dealer Commission Trust Accounts.

[90] In *Calgary (City) v Canada*, 2012 SCC 20, Rothstein J. discussed the decision in *O.A. Brown Ltd v Canada*, [1995] GSTC 40 (TCC). He stated:

> 33 In *O.A. Brown*, the appellant O.A. Brown Ltd. ("OAB") bought livestock for customers, but on its own account and at its own risk, not as agent for its

customers. Customers would contact OAB's salesman to place an order specifying the type of cattle they required. OAB charged its customers disbursements, such as the cost of branding and inoculations, and a clearing commission, in addition to the cost of livestock. Livestock is a zero-rated supply for GST purposes, which means that the vendor neither pays GST on his acquisition of the livestock, nor collects it from his customers. The Minister assessed GST on the commission and the other disbursements. The main issue in the appeal was whether OAB supplied a service of acquiring livestock according to its customers' specifications, or whether it was supplying livestock and other supplies, in which case it should have collected and remitted GST on the other supplies.

34 Justice Rip found that the *Value Added Tax* statute in the United Kingdom contained many provisions similar to our GST (*Value Added Tax Act* (UK), 1983, c. 55). In the English cases the issue had been defined as whether the supply in question comprises a compound supply or a multiple supply. A compound supply is a single supply with a number of constituent elements which, if supplied separately, some would have been taxed and some not. Multiple supplies are made and taxed separately.

35 *O.A. Brown* established the following test to determine whether a particular set of facts revealed single or multiple supplies for the purposes of the *ETA*: The test to be distilled from the English authorities is whether, in substance and reality, the alleged separate supply is an integral part, integrant or component of the overall supply. One must examine the true nature of the transaction to determine the tax consequences. [p. 40-6]

36 When reaching his decision, Justice Rip made the following observation:... one should look at the degree to which the services alleged to constitute a single supply are interconnected, the extent of their interdependence and intertwining, whether each is an integral part or component of a composite whole. [p. 40-6] (Citing *Mercantile Contracts Ltd. v. Customs & Excise Commissioners*, File No. ON/88/786, U.K. (unreported).)

37 Justice Rip also noted the importance of common sense when the determination is made. McArthur T.C.J. made a similar observation in *Gin Max Enterprises Inc. v. R.*, 2007 TCC 223, [227] G.S.T.C. 56 (T.C.C. [Informal Procedure]), at para. 18:

From a review of the case law, the question of whether two elements constitute a single supply or two or multiple supplies requires an analysis of the true nature of the transactions and it is a question of fact determined with a generous application of common sense...

38 Applying the test, Justice Rip found that the disbursements and commission were not charged for services that were "distinct supplies, independent of the whole activity" (p. 40-8) Only if taken together did the

> activities of buying, branding, inoculation, and other disbursements form a useful service. He concluded:
>
> > In substance and reality, the alleged separate supply, that of a buying service, is an integral part of the overall supply, being the supply of livestock. The alleged separate supplies cannot be realistically omitted from the overall supply and in fact are the essence of the overall supply. The alleged separate supplies are interconnected with the supply of livestock to such a degree that the extent of their interdependence is an integral part of the composite whole. ... The appellant is making a single supply of livestock and the commission and disbursements charged are part and parcel of the consideration for that supply. They do not amount to separate supplies. [pp. 40-8 to 40-9]
>
> 39 In *O.A. Brown*, Rip J. characterized the commission, inoculation, branding and transportation costs not as distinct services but as inputs for the cattle and part of the cost of supplying the cattle. If this approach is followed, the public transit facilities would not be a separate supply, but would be an input to, or part and parcel of, the supply of the municipal transit service to the Calgary public.

[91] It is my view that the supplies in the present case were not multiple supplies. Common sense dictates that these supplies were a single compound supply: *O A Brown Ltd v Canada*, [1995] GSTC 40 (TCC) at paragraph 31. Each supply is an integral part or component of the overall supply: *Calgary (City) v Canada*, 2012 SCC 20 at paragraph 34 to 36. As in *Great-West Life (supra)*, because these services were provided as an "intertwined, interrelated and integral whole", the single compound service must be considered in determining whether the service is taxable.

[92] The Appellants submitted that if the Funds received services, it was an exempt financial service. In *Global Cash Access (Canada) Inc v The Queen*, 2013 FCA 269 at paragraph 26, the Court gave the following test to determine whether a single supply is within the definition of "financial services":

> 26 To determine whether that single supply falls within the statutory definition of "financial service", the questions to be asked are these: (1) Based on an interpretation of the contracts between the Casinos and Global, what did the Casinos provide to Global to earn the commissions payable by Global? (2) Does that service fall within the statutory definition of "financial service"?

[93] Accordingly, the question I must answer is what did the Citibank Entities provide to the Funds to earn the Earned Fees? The first step is to determine the

dominant element of the supply and then to analyze it with respect to the definition of "financial service".

[94] Considering the factual matrix surrounding the Financing Agreements and the testimony of Mr. Warren, it is clear that the parties to those agreements understood that the purpose of the Financing Transaction was to ensure that the DSC Commissions were adequately and timely funded.

[95] The dominant element of the single supply was the daily payment of the Funding Amounts with immediately available funds. All other services were ancillary and simply support this purpose.

[96] In accordance with the definitions of "property", "supply", and "service" in subsection 123(1) of the *Act*, money is not a supply. Those definitions are:

> **property** means any property, whether real or personal, movable or immovable, tangible or intangible, corporeal or incorporeal, and includes a right or interest of any kind, a share and a chose in action, but does not include money;
>
> **supply** means, subject to sections 133 and 134, the provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition;
>
> **service** means anything other than
>
> - (a) property,
> - (b) money, and
> - (c) anything that is supplied to an employer by a person who is or agrees to become an employee of the employer in the course of or in relation to the office or employment of that person; (emphasis added)

[97] However, the drafters of the *Act* included the payment of money in the definition for "financial services". The definition is contained in subsection 123(1) of the *Act* and a "financial service" is an exempt supply under section 1 of Part VII of Schedule V. The sections of the definition relied on by the parties are as follows:

> ***financial service*** means

- (a) the exchange, payment, issue, receipt or transfer of money, whether effected by the exchange of currency, by crediting or debiting accounts or otherwise,

- (d) the issue, granting, allotment, acceptance, endorsement, renewal, processing, variation, transfer of ownership or repayment of a financial instrument,

- (l) the agreeing to provide, or the arranging for, a service that is

    (i) referred to in any of paragraphs (a) to (i), and

    (ii) not referred to in any of paragraphs (n) to (t), or

but does not include

- (n) the payment or receipt of money as consideration for the supply of property other than a financial instrument or of a service other than a financial service,

- (q) the provision, to an investment plan (as defined in subsection 149(5)) or any corporation, partnership or trust whose principal activity is the investing of funds, of

    (i) a management or administrative service, or

    (ii) any other service (other than a prescribed service),

    if the supplier is a person who provides management or administrative services to the investment plan, corporation, partnership or trust,

[98] In order to determine whether the supply is included in the definition of "financial service", I must only consider whether the dominant element of the supply fits within the inclusions and exclusions of that definition: *The Great-West Life Assurance Company v The Queen*, 2016 FCA 316 at paragraph 48.

A. "the payment …of money"

[99] Services which have been included in paragraph (a) of the definition of "financial service" include cashing cheques, converting currency, exchanging money and the simple debiting and crediting of accounts: *Banque Canadienne Imperiale de Commerce v Canada*, 2006 TCC 336 at paragraph 17. The use of automated banking machines is also a financial service in accordance with

paragraph (a) of the definition: *Mac's Convenience Stores Inc v R*, 2012 TCC 393 at paragraph 22.

[100] "Payment" is defined in *Black's Law Dictionary* as "The performance of a duty, promise, or obligation, or discharge of a debt or liability, by the delivery of money".

[101] Clearly, the dominant element of the single supply is included in paragraph (a) of the definition for "financial service". The Funding Amounts were paid into the Dealer Commission Trust Accounts in accordance with the Finance Agreements. The dominant element is an exempt financial service unless it is excepted by any of paragraphs (n) to (r.5) of the definition of "financial service".

[102] It is the Respondent's position that the service provided to the Funds was a management or administrative service and it is excepted under paragraph (q).

> • (q) the provision, to an investment plan (as defined in subsection 149(5)) or any corporation, partnership or trust whose principal activity is the investing of funds, of
>
> (i) a management or administrative service, or
>
> (ii) any other service (other than a prescribed service),
>
> if the supplier is a person who provides management or administrative services to the investment plan, corporation, partnership or trust

[103] The Appellants agreed that the Funds are investment plans. This satisfies the opening sentence in paragraph (q) above.

[104] The Manager arranged for the funding of DSC Commissions both before and after the period in issue. The Manager had the duty to manage all aspects of the Fund's business and undertakings. The Funds had no employees. In this regard, Mr. Warren stated:

> Q. And what does it mean to be the manager?
>
> A. Well, the manager -- I mean, mutual funds do not have employees, so ultimately the job of the manager is really to provide all of the services or arrange to get the services necessary for the funds to operate their businesses.

[105] According to Mr. Warren, the Funds could not borrow money to pay the DSC Commissions and they could not pay them out of their own assets. The Funds could only pay the Earned Fees because they were allowed to pay management fees. These management fees were used to pay the funding costs.[6]

[106] In her Written Submissions, counsel for the Respondent wrote:

> 73. The management fee was consideration payable by the Funds to the Manager for the service of funding the deferred sales charge commissions, in addition to the various other management and administrative services provided by the Manager to the Funds under the Management Agreement.

[107] During the period in issue, the Manager reduced the amount of management fees it received from the Funds so that the Earned Daily Fees could be paid to Funding Corp.

[108] The following is written in the Simplified Prospectus dated August 12, 2005 for the Aim and Trimark Funds: "The manager is responsible for the day-to-day business and operations of the Funds and for appointing any sub-advisors. We may hire third parties to perform some of our services." (emphasis added)

[109] The "arranging for the payment" of commissions and the payment of commissions was integral to the day-to-day business and operations of the Funds. This was a Management duty. That the Manager may have hired third parties to perform some of its duties did not alter the fact that the duties performed continued to be a management service.

[110] It is my view that the dominant service provided by the Citibank Entities was a management duty and delegating that duty to Citibank Entities did not change the nature of the duty. Paragraph 123(q) applies and the transaction is excepted from being a "financial service".

CONCLUSION

[111] The appeal with respect to the PVAT assessments on the Earned Daily Fees is quashed as the Appellants did not file a notice of objection to the assessments.

[112] The Financing Transaction was an imported taxable supply. The appeal is dismissed with costs to the Respondent.

Signed at Ottawa, Canada, this 25th day of May 2017.

"V.A. Miller"

V.A. Miller J.

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[1] I note that there is a difference of .46 between this amount and the total of the assessments listed below.

[2] The Collection Agent is defined in the agreement as "Bankers Trust Company, as collection agent under the Collection Agency Agreement, together with its successors and assigns in such capacity."

[3] Applicable Law was defined as "any Law, whether domestic or foreign, including all federal and provincial banking or securities laws, to which the Person in question or the securities it offers or issues is subject or by which its property is bound."

[4] Purchase Agreement was defined in the Fee Payment Agreement as the "Purchase and Sale Agreement dated as of the date of the Fee Payment Agreement among Funding Corp, the Purchaser and the Program Agent." The Purchaser was Citibank.

[5] At the hearing on December 14, 2015, counsel for the Appellants advised the Court that they were no longer seeking to vacate the assessments made against the Manager for the PVAT.

[6] Transcript September 15, 2015 at page 282 to page 283.

Appendix

Subsection 123(1) – Division I – Interpretation – Definitions

Definitions

123 (1) In section 121, this Part and Schedules V to X,

…

commercial activity of a person means

(a) a business carried on by the person (other than a business carried on without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the business involves the making of exempt supplies by the person,

(b) an adventure or concern of the person in the nature of trade (other than an adventure or concern engaged in without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the adventure or concern involves the making of exempt supplies by the person, and

(c) the making of a supply (other than an exempt supply) by the person of real property of the person, including anything done by the person in the course of or in connection with the making of the supply;

…

debt security means a right to be paid money and includes a deposit of money, but does not include a lease, licence or similar arrangement for the use of, or the right to use, property other than a financial instrument;

...

exempt supply means a supply included in Schedule V;

…

financial instrument means

(a) a debt security,

(b) an equity security,

(c) an insurance policy,

(d) an interest in a partnership, a trust or the estate of a deceased individual, or any right in respect of such an interest,

(e) a precious metal,

(f) an option or a contract for the future supply of a commodity, where the option or contract is traded on a recognized commodity exchange,

(g) a prescribed instrument,

(h) a guarantee, an acceptance or an indemnity in respect of anything described in paragraph (a), (b), (d), (e) or (g), or

(i) an option or a contract for the future supply of money or anything described in any of paragraphs (a) to (h);

…

financial service means

(a) the exchange, payment, issue, receipt or transfer of money, whether effected by the exchange of currency, by crediting or debiting accounts or otherwise,

(b) the operation or maintenance of a savings, chequing, deposit, loan, charge or other account,

(c) the lending or borrowing of a financial instrument,

(d) the issue, granting, allotment, acceptance, endorsement, renewal, processing, variation, transfer of ownership or repayment of a financial instrument,

(e) the provision, variation, release or receipt of a guarantee, an acceptance or an indemnity in respect of a financial instrument,

(f) the payment or receipt of money as dividends (other than patronage dividends), interest, principal, benefits or any similar payment or receipt of money in respect of a financial instrument,

(f.1) the payment or receipt of an amount in full or partial satisfaction of a claim arising under an insurance policy,

(g) the making of any advance, the granting of any credit or the lending of money,

(h) the underwriting of a financial instrument,

(i) any service provided pursuant to the terms and conditions of any agreement relating to payments of amounts for which a credit card voucher or charge card voucher has been issued,

(j) the service of investigating and recommending the compensation in satisfaction of a claim where

(i) the claim is made under a marine insurance policy, or

(ii) the claim is made under an insurance policy that is not in the nature of accident and sickness or life insurance and

(A) the service is supplied by an insurer or by a person who is licensed under the laws of a province to provide such a service, or

(B) the service is supplied to an insurer or a group of insurers by a person who would be required to be so licensed but for the fact that the person is relieved from that requirement under the laws of a province,

(j.1) the service of providing an insurer or a person who supplies a service referred to in paragraph (j) with an appraisal of the damage caused to property, or in the case of a loss of property, the value of the property, where the supplier of the appraisal inspects the property, or in the case of a loss of the property, the last-known place where the property was situated before the loss,

(k) any supply deemed by subsection 150(1) or section 158 to be a supply of a financial service,

(l) the agreeing to provide, or the arranging for, a service that is

(i) referred to in any of paragraphs (a) to (i), and

(ii) not referred to in any of paragraphs (n) to (t), or

(m) a prescribed service,

but does not include

(n) the payment or receipt of money as consideration for the supply of property other than a financial instrument or of a service other than a financial service,

(o) the payment or receipt of money in settlement of a claim (other than a claim under an insurance policy) under a warranty, guarantee or similar arrangement in respect of property other than a financial instrument or a service other than a financial service,

(p) the service of providing advice, other than a service included in this definition because of paragraph (j) or (j.1),

(q) the provision, to an investment plan (as defined in subsection 149(5)) or any corporation, partnership or trust whose principal activity is the investing of funds, of

(i) a management or administrative service, or

(ii) any other service (other than a prescribed service),

if the supplier is a person who provides management or administrative services to the investment plan, corporation, partnership or trust,

(q.1) an asset management service,

(r) a professional service provided by an accountant, actuary, lawyer or notary in the course of a professional practice,

(r.1) the arranging for the transfer of ownership of shares of a cooperative housing corporation,

(r.2) a debt collection service, rendered under an agreement between a person agreeing to provide, or arranging for, the service and a particular person other than the debtor, in respect of all or part of a debt, including a service of attempting to collect, arranging for the collection of, negotiating the payment of, or realizing or attempting to realize on any security given for, the debt, but does not include a service that consists solely of accepting from a person (other than the particular person) a payment of all or part of an account unless

(i) under the terms of the agreement the person rendering the service may attempt to collect all or part of the account or may realize or attempt to realize on any security given for the account, or

(ii) the principal business of the person rendering the service is the collection of debt,

(r.3) a service (other than a prescribed service) of managing credit that is in respect of credit cards, charge cards, credit accounts, charge accounts, loan accounts or accounts in

respect of any advance and is provided to a person granting, or potentially granting, credit in respect of those cards or accounts, including a service provided to the person of

(i) checking, evaluating or authorizing credit,

(ii) making decisions on behalf of the person in relation to a grant, or an application for a grant, of credit,

(iii) creating or maintaining records for the person in relation to a grant, or an application for a grant, of credit or in relation to the cards or accounts, or

(iv) monitoring another person's payment record or dealing with payments made, or to be made, by the other person,

(r.4) a service (other than a prescribed service) that is preparatory to the provision or the potential provision of a service referred to in any of paragraphs (a) to (i) and (l), or that is provided in conjunction with a service referred to in any of those paragraphs, and that is

(i) a service of collecting, collating or providing information, or

(ii) a market research, product design, document preparation, document processing, customer assistance, promotional or advertising service or a similar service,

(r.5) property (other than a financial instrument or prescribed property) that is delivered or made available to a person in conjunction with the rendering by the person of a service referred to in any of paragraphs (a) to (i) and (l),

(s) any service the supply of which is deemed under this Part to be a taxable supply, or

(t) a prescribed service;

…

management or administrative service includes an asset management service;

…

money includes any currency, cheque, promissory note, letter of credit, draft, traveller's cheque, bill of exchange, postal note, money order, postal remittance and other similar instrument, whether Canadian or foreign, but does not include currency the fair market value of which exceeds its stated value as legal tender in the country of issuance or currency that is supplied or held for its numismatic value;

…

property means any property, whether real or personal, movable or immovable, tangible or intangible, corporeal or incorporeal, and includes a right or interest of any kind, a share and a chose in action, but does not include money;

…

service means anything other than

(a) property,

(b) money, and

(c) anything that is supplied to an employer by a person who is or agrees to become an employee of the employer in the course of or in relation to the office or employment of that person;

…

supply means, subject to sections 133 and 134, the provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition;

…

taxable supply means a supply that is made in the course of a commercial activity;

Section 217 – Division IV – Tax on Imported Taxable Supplies – Definitions

Definitions

217 The following definitions apply in this Division.

…

imported taxable supply means

(a) a taxable supply (other than a zero-rated or prescribed supply) of a service made outside Canada to a person who is resident in Canada, other than a supply of a service that is

(i) acquired for consumption, use or supply exclusively in the course of commercial activities of the person or activities that are engaged in exclusively outside Canada by the person and that are not part of a business or an adventure or concern in the nature of trade engaged in by the person in Canada,

(ii) consumed by an individual exclusively outside Canada (other than a training service the supply of which is made to a person who is not a consumer),

(iii) in respect of real property situated outside Canada,

(iv) a service (other than a custodial or nominee service in respect of securities or precious metals of the person) in respect of tangible personal property that is

(A) situated outside Canada at the time the service is performed, or

(B) exported as soon after the service is performed as is reasonable having regard to the circumstances surrounding the exportation and is not consumed, used or supplied in Canada after the service is performed and before the exportation of the property,

(v) a transportation service, or

(vi) a service rendered in connection with criminal, civil or administrative litigation outside Canada, other than a service rendered before the commencement of such litigation,

(b) a taxable supply (other than a zero-rated or prescribed supply) of tangible personal property made by a non-resident person who is not registered under Subdivision d of Division V to a recipient who is a registrant where

(i) physical possession of the property is transferred to the recipient in Canada by another registrant who

(A) made a supply in Canada of the property by way of sale, or a supply in Canada of a service of manufacturing or producing the property, to a non-resident person, or

(B) acquired physical possession of the property for the purpose of making a supply of a commercial service in respect of the property to a non-resident person,

(ii) the recipient gives the other registrant a certificate of the recipient described in paragraph 179(2)(c), and

(iii) the recipient is not acquiring the property for consumption, use or supply exclusively in the course of commercial activities of the recipient or the property is a passenger vehicle that the recipient is acquiring for use in Canada as capital property in commercial activities of the recipient and that has a capital cost to the recipient exceeding the amount deemed under paragraph 13(7)(g) or (h) of the Income Tax Act to be the capital cost of the vehicle to the recipient for the purposes of section 13 of that Act,

(b.1) a taxable supply (other than a zero-rated or prescribed supply) of tangible personal property made at a particular time by a non-resident person who is not registered under Subdivision d of Division V to a particular recipient who is resident in Canada, where

(i) the property is delivered or made available in Canada to the particular recipient and the particular recipient is not a registrant who is acquiring the property exclusively for consumption, use or supply in the course of commercial activities of the recipient, and

(ii) the non-resident person previously made a taxable supply of the property by way of lease, licence or similar arrangement to a registrant who was not dealing at arm's length with the non-resident person or who was related to the particular recipient, the property was delivered or made available in Canada to the registrant, the registrant was entitled to claim an input tax credit in respect of the property or was not required to pay tax under this Division in respect of the supply only because the registrant acquired the property exclusively for consumption, use or supply in the course of commercial activities of the registrant, and that supply was the last supply of the property made before the particular time by the non-resident person to a registrant,

(b.11) a particular taxable supply (other than a zero-rated supply) of property by way of lease, licence or similar arrangement that is deemed under subsection 143(1) to be made outside Canada to a recipient (in this paragraph referred to as the "lessee") who is resident in Canada, if

(i) a previous supply of the property to the lessee was made by way of lease, licence or similar arrangement (in this paragraph referred to as the "first lease") that was deemed under subsection 178.8(4) to be made in Canada,

(ii) the agreement for the particular taxable supply is an agreement (in this subparagraph referred to as a "subsequent lease") that results from the assignment of, or that succeeds, upon the renewal or variation of, the first lease or a subsequent lease, and

(iii) the lessee is not a registrant who is acquiring the property for consumption, use or supply exclusively in the course of commercial activities of the lessee;

(b.2) a taxable supply of a continuous transmission commodity, if the supply is deemed under section 143 to be made outside Canada to a registrant by a person who was the recipient of a supply of the commodity that was a zero-rated supply included in section 15.1 of Part V of Schedule VI or that would, but for subparagraph (a)(v) of that section, have been included in that section, and the registrant is not acquiring the commodity for consumption, use or supply exclusively in the course of commercial activities of the registrant,

(b.3) a supply, included in section 15.2 of Part V of Schedule VI, of a continuous transmission commodity that is neither exported, as described in paragraph (a) of that section, nor supplied, as described in paragraph (b) of that section, by the recipient and the recipient is not acquiring the commodity for consumption, use or supply exclusively in the course of commercial activities of the recipient,

(c) a taxable supply (other than a zero-rated or prescribed supply) of intangible personal property made outside Canada to a person who is resident in Canada, other than a supply of property that

(i) is acquired for consumption, use or supply exclusively in the course of commercial activities of the person or activities that are engaged in exclusively outside Canada by the person and that are not part of a business or an adventure or concern in the nature of trade engaged in by the person in Canada,

(ii) may not be used in Canada, or

(iii) relates to real property situated outside Canada, to a service to be performed wholly outside Canada or to tangible personal property situated outside Canada,

(c.1) a taxable supply made in Canada of intangible personal property that is a zero-rated supply only because it is included in section 10 or 10.1 of Part V of Schedule VI, other than

(i) a supply that is made to a consumer of the property, or

(ii) a supply of intangible personal property that is acquired for consumption, use or supply exclusively in the course of commercial activities of the recipient of the supply or activities that are engaged in exclusively outside Canada by the recipient of the supply and that are not part of a business or adventure or concern in the nature of trade engaged in by that recipient in Canada,

(d) a supply of property that is a zero-rated supply only because it is included in section 1.1 of Part V of Schedule VI, if the recipient is not acquiring the property for consumption, use or supply exclusively in the course of commercial activities of the recipient and

(i) an authorization of the recipient to use the certificate referred to in that section is not in effect at the time the supply is made, or

(ii) the recipient does not export the property in the circumstances described in paragraphs 1(b) to (d) of that Part; or

(e) a supply of property that is a zero-rated supply only because it is included in section 1.2 of Part V of Schedule VI, if the recipient is not acquiring the property for consumption, use or supply exclusively in the course of commercial activities of the recipient and

(i) an authorization of the recipient to use the certificate referred to in that section is not in effect at the time the supply is made, or

(ii) the recipient is not acquiring the property for use or supply as domestic inventory or as added property (as those expressions are defined in subsection 273.1(1)).

SCHEDULE "A"
INVESTO CANADA FUNDS CONSOLDIATED GROUP
AMOUNTS AT ISSUE

	FUND NAME	**AMOUNT**
1.	INVESCO CANADA FUND INC.	$294.867.43
2.	INVESCO CANADA MONEY MARKET FUND	$30,574.11
3.	INVESCO CANADIAN BALANCED FUND	$171,004.17
4.	INVESCO CANADIAN PREMIER FUND	$75,143.49
5.	INVESCO CORPORATE CLASS INC.	$221,123.06
6.	INVESCO GLOBAL BALANCED FUND	$2,560.59
7.	INVESCO GLOBAL EQUITY FUND	$90.63
8.	INVESCO GLOBAL REAL ESTATE FUND	$399.97
9.	INVESCO INDO-PACIFIC FUND	$5,531.04
10.	INVESCO INTACTIVE 2023 PORTFOLIO	$2,983.09
11.	INVESCO INTACTIVE 2028 PORTFOLIO	$3,893.01
12.	INVESCO INTACTIVE 2033 PORTFOLIO	$3,075.98
13.	INVESCO INTACTIVE 2038 PORTFOLIO	$5,118.13
14.	INVESCO INTACTIVE BALANCED GROWTH PORTFOLIO	$52,842.19
15.	INVESCO INTACTIVE BALANCED INCOME PORTFOLIO	$29,355.33
16.	INVESCO INTACTIVE DIVERSIFIED INCOME PORTFOLIO	$8,273.73
17.	INVESCO INTACTIVE GROWTH PORTFOLIO	$32,651.15
18.	INVESCO INTACTIVE MAXIMUM GROWTH PORTFOLIO	$10,157.28
19.	INVESCO INTERNATIONAL GROWTH FUND	$241.83
20.	INVESCO PURE CANADIAN FUND	$475.00
21.	INVESCO SELECT CANADIAN EQUITY FUND	$199,032.37
22.	POWERSHARES 1-5 YEAR LADDERED CORPORTE BOND INDEX FUND	$77.27
23.	POWERSHARES DIVERSIFIED YIELD FUND	$478.28
24.	POWERSHARES FTSE RAFI GLOBAL + FUNDAMENTAL FUND	$100.45
25.	POWERSHARES FTSE RAFI U.S. FUNDAMENTAL FUND	$19.04
26.	POWERSHARES GLOBAL DIVIDEND ACHIEVERS FUND	$35.45
27.	POWERSHARES HIGH YIELD CORPORATE BOND INDEX FUND	$51.94
28.	POWERSHARES REAL RETURN BOND INDEX FUND	$44.64
29.	POWERSHARES TACTICAL BOND FUND	$33.59
30.	POWERSHARES TACTICAL CANADIAN ASSET ALLOCATION FUND	$25.16
31.	TRIMARK ADVANTAGE BOND FUND	$89,193.51
32.	TRIMARK CANADIAN BOND FUND	$230,538.20
33.	TRIMARK CANADIAN ENDEAVOUR FUND	$77,381.02

34.	TRIMARK CANADIAN FUND	$57,336.07
35.	TRIMARK CANADIAN SMALL COMPANIES FUND	$17,811.75
36.	TRIMARK EUROPLUS FUND	$21,616.59
37.	TRIMARK FLOATING RATE INCOME FUND	$18,416.30
38.	TRIMARK FUND	$115,902.99
39.	TRIMARK GLOBAL BALANCED FUND	$124,937.70
40.	TRIMARK GLOBAL ENDEAVOUR FUND	$126,902.29
41.	TRIMARK GLOBAL HIGH YIELD BOND FUND	$24,673.40
42.	TRIMARK GOVERNMENT PLUS INCOME FUND	$35,032.66
43.	TRIMARK INCOME GROWTH FUND	$456,682.23
44.	TRIMARK INTEREST FUND	$30,850.59
45.	TRIMARK INTERNATIONAL COMPANIES FUND	$15,406.64
46.	TRIMARK RESOURCES FUND	$89,724.37
47.	TRIMARK SELECT BALANCED FUND	$119,027.06
48.	TRIMARK SELECT GROWTH FUND	$196,168.36
49.	TRIMARK U.S. COMPANIES FUND	$14,880.83
50.	TRIMARK U.S. MONEY MARKET FUND	$1,251.04
	TOTAL	$3,013,993.00

SCHEDULE "B"
OTHER FUNDS

Invesco Canada Money Market Fund (formerly AIM Canada Money Market Fund)
Trimark Fund
Trimark Canadian Fund
Trimark Interest Fund
Trimark Income Growth Fund
Trimark Canadian Endeavour Fund
Trimark Global Fundamental Equity Fund (formerly Trimark Select Growth Fund)
Trimark Select Balanced Fund
Invesco Select Canadian Equity Fund (formerly Trimark Select Canadian Growth Fund)
Trimark Global Endeavour Fund (formerly Trimark Americas Fund)
Trimark Government Plus Fund (formerly Trimark Government Income Fund)
Trimark Advantage Bond Fund
Trimark Canadian Bond Fund
Trimark Europlus Fund
Trimark Resources Fund (formerly Trimark Canadian Resources Fund)
Trimark Global Balanced Fund
Invesco Canadian Balanced Fund (formerly AIM Canadian Balanced Fund)
Invesco Canadian Premier Growth Fund (formerly AIM Canadian Premier Fund)
Invesco Canada Fund Inc. (formerly Invesco Trimark Canada Fund Inc., AIM Trimark Canada Fund Inc., AIM Canada Fund Inc.)
Invesco Corporate Class Inc. (formerly Invesco Trimark Corporate Class Inc., AIM Trimark Corporate Class Inc., AIM Trimark Global Fund Inc., AIM Global Fund Inc.)

CITATION:	2017TCC78
COURT FILE NO.:	2013-1914(GST)G; 2014-1941(GST)G; 2014-1943(GST)G
STYLE OF CAUSE:	SLFI GROUP - INVESCO CANADA LTD. - INVESCO CANADA FUNDS INCLUDING EACH FUND LISTED IN SCHEDULE "A" AN-D HER MAJESTY THE QUEEN INVESCO CANADA LTD. / INVESCO CANADA LTÉE AND HER MAJESTY THE QUEEN INVESCO CANADA MONEY MARKET FUND (FORMERLY AIM CANADA MONEY MARKET FUND) AND EACH OF THE OTHER FUNDS LISTED IN SCHEDULE “B” AND HER MEAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	September 14-16, 2015 AND December 14, 2015
REASONS FOR JUDGMENT BY:	The Honourable Justice Valerie Miller
DATE OF JUDGMENT:	May 25, 2017

APPEARANCES:

Counsel for the Appellant:	John Tobin Lisa Talbot
Counsel for the Respondent:	Marilyn Vardy Andrea Jackett

COUNSEL OF RECORD:

For the Appellant:

Name:	John Tobin Lisa Talbot
Firm:	Torys LLP

For the Respondent: William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada