

**Please note that the following Policy Statement, although correct at the time of issue, may not have been updated to reflect any subsequent legislative changes.**

### **GST/HST Policy Statement**

P-243            Section 232.1 - Promotional Allowances

#### **Subject**

Promotional allowances qualifying for tax relief under section 232.1 of the *Excise Tax Act* (the “Act”).

#### **Legislative References**

Section 232.1 of the Act

#### **National Coding System File Number(s)**

11755-3, 11755-6, 11601-2

#### **Effective Date**

April 1, 1997

#### **Issue and Decision**

This policy statement will assist persons in determining whether a particular activity is “promotion” and whether an amount that is paid, credited or allowed as a discount is “an amount in return for the promotion of the particular property by the particular registrant” for purposes of section 232.1.

Generally, a promotional allowance is an amount paid by a supplier such as a manufacturer to a reseller (e.g. wholesaler, distributor or retailer) who agrees to promote particular tangible personal property of the supplier. However, a promotional allowance may also be an amount paid by a wholesaler or distributor to a retailer.

Where the requirements of section 232.1 are met, a promotional allowance is not regarded as consideration for a supply and as a result, no tax is exigible.

#### **Meaning of Promotion**

For purposes of section 232.1, the term “promotion” means efforts, activities or actions that directly or indirectly inform, persuade and influence the acceptance, distribution and sale/purchase of a product.

Promotional allowances are given as inducements to elicit such efforts, activities or actions, or as reimbursements of expenses incurred by resellers for the promotion of

goods. Promotion is generally designed to create product awareness or brand recognition; influence attitudes, beliefs and behaviours; stimulate demand; influence market share; facilitate reseller support; and generally encourage the distribution and sale/purchase of the particular products.

The tools of promotion include advertising; personal selling; reseller support; publicity; sales promotion; sponsorship and exhibitions. Though not exhaustive, the following promotional allowances would generally be covered by section 232.1 and the activities for which the allowances are paid would generally fall within the meaning of promotion for purposes of section 232.1:

- Cooperative Advertising Allowance - An amount paid by a supplier to a reseller for local advertising or other promotional or merchandising activities undertaken by the reseller. The supplier may pay the amount as a reimbursement of a portion of the reseller's advertising expenses related to the supplier's product.
- Retail Display or Space Allowance - An amount paid by a supplier to a reseller to prominently display the supplier's products in the reseller's stores (e.g. to place products in strategic locations such as by the cash registers).
- Temporary Price Reduction Program - An amount paid by a supplier to a reseller to temporarily reduce the selling price of a product that has been acquired by the reseller for resale. The reduction in price is not linked or conditional on any other activities performed by the reseller.
- Conference/Trade Show Sponsorship - An amount paid by a supplier to a reseller in order to sponsor the reseller's participation in a trade show and to feature the supplier's product at the trade show.
- New Product Listing Fee/New Product Allowance - An amount paid by a supplier to a reseller for agreeing to list a new product in inventory; to stock a new product; or to ensure the product is displayed on store shelves.
- Store Opening Allowance - An amount paid by a supplier to a reseller for merchandising when that reseller opens a new store.
- Signing Bonus - An amount paid by a supplier to a reseller upon the signing of a merchandising agreement.
- Brand Specific Advertising Allowance - An amount paid by a supplier to a reseller for performing merchandising activities that include corporate recognition initiatives of promoting a brand, logo or trademark.
- Exclusivity Fee - An amount paid by a supplier to a reseller for the right to be the exclusive supplier of a particular property to that reseller. This entails the supplier

requiring the reseller to refuse to carry or to restrict the number of competitors' products stocked in its store for a specified period of time.

- Fee for the Non-Promotion of a Competitor's Product - An amount paid by a supplier to a reseller to ensure that the reseller will not promote the products of the supplier's competitors for a fixed period of time. This type of agreement is normally, though not always, undertaken concurrently with activities promoting the allowance payer's own products.

### **Eligibility for Relief**

Section 232.1 applies where:

- a particular registrant (i.e. a reseller)
- acquires particular tangible personal property (i.e. specific goods) [from a supplier such as the manufacturer of the property or an intermediary such as a wholesaler]
- exclusively for supply by way of sale for a price in money (i.e. resale) in the course of the reseller's commercial activities; and
- another registrant (e.g. the manufacturer of the property) who has made taxable supplies of the property by way of sale to the reseller or to another person (e.g. an intermediary such as a wholesaler)
  - pays to, or credits in favour of, the reseller, or
  - allows as a discount on, or as a credit against, the price of any property or service supplied by that registrant to the reselleran amount in return for the promotion of the particular tangible personal property by the reseller.

Where the allowance meets the requirements of section 232.1, it is deemed not to be consideration for a supply by the reseller to the other registrant. The tax treatment of the promotional allowance will depend on how that amount is paid, credited or allowed as a discount:

- Where the promotional allowance is taken as a discount on, or credit against, the price of any property or service for which tax has been charged or collected, the amount is deemed to be a reduction in consideration for that supply. The supplier may choose to adjust the tax on the deemed reduction in consideration in accordance with subsection 232(2). If the supplier chooses not to adjust the tax, the promotional allowance has no GST/HST consequences.
- Where the promotional allowance is paid as a discount on the price of property or service for which tax has not yet been charged or collected, the consideration for the supply is deemed to be the amount (if any) net of the discount.
- If the promotional allowance is paid otherwise than as a discount or credit against the price of property or service, it is deemed to be a rebate for purposes of section 181.1 of the Act.

If an adjustment to tax is made pursuant to either of subsection 232(2) or section 181.1 (as outlined above), the supplier must satisfy the relevant documentary requirements.

Businesses use various promotional tools and offer numerous types of allowances; however, only qualifying promotional allowances will receive the relief provided under section 232.1. For example, even though promotion occurs in the following instances, section 232.1 will not apply where:

- A reseller buys various types of goods from a manufacturer and receives an amount from the manufacturer in return for the promotion of a particular product, but the reseller does not acquire the particular product exclusively for resale in the course of its commercial activities;
- A reseller receives an amount from a manufacturer in return for the promotion of a particular product, but the reseller has acquired the particular product for consumption or use (e.g. for further manufacture), rather than exclusively for resale in the course of its commercial activities;
- A reseller receives an amount from a manufacturer in return for the promotion of a particular product, but the reseller has acquired the particular product for supply by way of lease, licence or similar arrangement, rather than exclusively for resale in the course of its commercial activities;
- A third party (i.e. franchisor) receives an amount from a manufacturer in return for the promotion of a particular product and another person (i.e. franchisee) has acquired that product from the manufacturer exclusively for resale. That is, the person receiving the allowance is not the same person that acquired the particular product exclusively for resale in the course of its commercial activities.

Registrants must determine, on a case-by-case basis, the tax consequences of various allowances paid or received. Some allowances will continue to be regarded as consideration for a taxable supply or a reduction in consideration. For example, volume discounts, growth allowances, truckload allowances, freight allowances, warehousing allowances, defective merchandising allowances, percentage allowances in lieu of returning goods, etc. are generally regarded as deferred price adjustments for purposes of section 232, rather than as promotional allowances to which section 232.1 applies.

## **ILLUSTRATIVE EXAMPLES**

All parties to the transactions described below are GST/HST registrants.

### **Example No. 1**

#### **Statement of Facts**

1. Manufacturer A makes taxable supplies by way of sale of cleaning compounds to wholesalers, distributors and retailers.
2. Manufacturer B makes taxable supplies by way of sale of accessories such as mops and buckets to wholesalers, distributors and retailers.
3. Retailer C has acquired the cleaning compounds directly from Manufacturer A and the accessories from various wholesalers exclusively for resale (i.e. supply by way of sale for a price in money) in the course of its commercial activities.
4. Manufacturer A provides an allowance to Retailer C and Manufacturer B also provides an allowance to Retailer C for the co-promotion of their products by Retailer C. Retailer C agrees to feature the products of each manufacturer in a special advertising circular or a store display that groups these (and other) specific products in order to communicate their availability and need-satisfying attributes. Manufacturer A and Manufacturer B each provide an allowance in respect of their own products.
5. Manufacturer A gives the allowance to Retailer C as a discount against the price of the cleaning compounds at the time of invoicing, while Manufacturer B pays Retailer C the allowance in full by cheque after the circular and/or store display have been carried out.

#### **Ruling Requested**

Does the allowance given as a discount by Manufacturer A to Retailer C, as well as the allowance paid by Manufacturer B to Retailer C, for inclusion of their respective products in Retailer C's advertising circular or store display qualify as "an amount in return for the promotion of the particular property by the particular registrant" for purposes of section 232.1?

#### **Ruling Given**

Based on the facts set out above, to the extent that Manufacturer A and Manufacturer B have each given or paid an allowance in respect of their own products to Retailer C for inclusion of those products in the advertising circular or store display, each such

allowance is considered to be “an amount in return for the promotion of the particular property by the particular registrant”.

The allowances meet the requirements of section 232.1. The allowances are deemed not to be consideration for a supply.

### **Example No. 2**

#### **Statement of Facts**

1. Manufacturer A makes taxable supplies by way of sale of tomato juice to wholesalers, distributors and retailers.
2. Retailer B has acquired Manufacturer A’s tomato juice exclusively for resale (i.e. supply by way of sale for a price in money) in the course of its commercial activities.
3. The merchandising agreement between Manufacturer A and Retailer B is about to expire, and Manufacturer A agrees to provide an allowance or bonus to Retailer B to induce the signing of a new merchandising agreement. This agreement is in respect of acceptance of the specific terms and conditions of trade (i.e. credit and payment terms, delivery terms, duration of contract, discounts and allowances, etc).
4. Manufacturer A pays the amount by cheque, in full, upon the signing of a new merchandising agreement.

#### **Ruling Requested**

Does the amount paid by Manufacturer A to Retailer B upon the signing of a merchandising agreement qualify as “an amount in return for the promotion of the particular property by the particular registrant” for purposes of section 232.1?

#### **Ruling Given**

Based on the facts set out above, the amount paid upon the signing of a merchandising agreement is considered to be “an amount in return for the promotion of the particular property by the particular registrant”.

The amount paid by Manufacturer A is deemed not to be consideration for a supply as the requirements of section 232.1 have been met.

### **Example No. 3**

#### **Statement of Facts**

1. Manufacturer A makes taxable supplies by way of sale of flour to manufacturers, wholesalers, distributors and retailers.

2. Manufacturer B has acquired Manufacturer A's flour.
3. Manufacturer B consumes the flour to make frozen pie shells, which are supplied to retailers by way of sale in the course of its commercial activities. Manufacturer B never resells ("as is") any of the flour acquired from Manufacturer A.
4. Manufacturer A provides an allowance to Manufacturer B for participating in corporate recognition initiatives of promoting its brand name. This requires Manufacturer B to display Manufacturer A's trademark on the packaging of frozen pie shells, which Manufacturer B agrees to do.
5. Manufacturer A gives the allowance as a discount against the price of flour at the time of invoicing.

### **Ruling Requested**

Does the allowance given by Manufacturer A to Manufacturer B to display the trademark on the packaging of its frozen pie shells qualify as "an amount in return for the promotion of the particular property by the particular registrant" for purposes of section 232.1?

### **Ruling Given**

Based on the facts set out above, the allowance given to display Manufacturer A's trademark on the packaging of the frozen pie shells is not considered to be a qualifying allowance for purposes of section 232.1. Manufacturer B has not acquired the flour from Manufacturer A exclusively for supply by way of sale for a price in money. Rather, the flour is acquired for consumption in Manufacturer B's commercial activity of producing frozen pie shells.

The requirements of paragraph 232.1(a) have not been met. As such, the deeming provisions of section 232.1 will not apply and the allowance remains consideration for a taxable supply.

## **Example No. 4**

### **Statement of Facts**

1. Manufacturer A makes taxable supplies by way of sale of its brand of tires to wholesalers, distributors and retailers.
2. Manufacturer B makes taxable supplies by way of sale of its brand of tires to wholesalers, distributors and retailers.
3. Retailer C has acquired Manufacturer A's tires exclusively for resale (i.e. supply by way of sale for a price in money) in the course of its commercial activities.

4. Manufacturer A gives an allowance to Retailer C to not stock Manufacturer B's tires for a specified period of time.
5. Manufacturer A agrees to give the allowance to Retailer C in the form of a credit or discount against future purchases of tires supplied by Manufacturer A to Retailer C.

**Ruling Requested**

Does the allowance (in the form of a credit or discount against future purchases of tires) given by Manufacturer A to Retailer C to not stock Manufacturer B's tires qualify as "an amount in return for the promotion of particular property by the particular registrant" for purposes of section 232.1?

**Ruling Given**

Based on the facts set out above, the allowance given to not stock a competing manufacturer's product is considered to be "an amount in return for the promotion of the particular property by the particular registrant".

The allowance meets the requirements of section 232.1. The allowance is deemed not to be consideration for a supply.