



Wine (Grape Wine Levy) Order 2016

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 30th day of May 2016

Present:

His Excellency the Governor-General in Council

This order is made under sections 111 and 119 of the Wine Act 2003—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Primary Industries made after meeting the requirements in sections 5 and 6 of the Commodity Levies Act 1990 (as applied and modified by section 111 of the Wine Act 2003).

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Order

1 Title

This order is the Wine (Grape Wine Levy) Order 2016.

2 Commencement

This order comes into force on 1 July 2016.

3 Interpretation

In this order, unless the context otherwise requires,—

Director-General means the chief executive of the department that has, with the authority of the Prime Minister, responsibility for the administration of the Commodity Levies Act 1990

grape wine means grape wine (as defined by section 4(1) of the Wine Act 2003) that is made from winegrapes grown in New Zealand

grape wine component means the volume of grape wine contained in a grape wine product

grape wine product means a wine product (as defined by section 4(1) of the Wine Act 2003) in which the wine content includes grape wine

GST means goods and services tax payable under the Goods and Services Tax Act 1985

levy—

- (a) means the levy imposed by clause 4; and
- (b) includes any additional levy imposed under clause 15

levy money means money paid under this order as a levy

levy year means a period of 12 months starting on 1 July and ending on 30 June of the following year

mediator means a person appointed under clause 26 and, in relation to a dispute, means a mediator appointed to resolve the dispute

Minister means the Minister who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of the Commodity Levies Act 1990

New Zealand Winegrower or its replacement means—

- (a) the publication known on the commencement of this order as *New Zealand Winegrower*; or
- (b) any publication that replaces *New Zealand Winegrower*; or
- (c) if *New Zealand Winegrower* stops being published and is not replaced, a publication that the Minister specifies by notice in the *Gazette*

NZW means the incorporated society known as New Zealand Winegrowers Incorporated

quarter means a 3-month period ending on 31 March, 30 June, 30 September, or 31 December

winegrapes has the same meaning as in clause 3 of the Commodity Levies (Winegrapes) Order 2016

winery means a person whose business is, or includes,—

- (a) producing and selling grape wine or grape wine products; or

- (b) selling grape wine or grape wine products that have been produced on that person's behalf.

Levy imposed

4 Levy imposed

- (1) A levy is imposed on—
 - (a) grape wine that is sold by (or on behalf of) a winery; and
 - (b) the grape wine component of a grape wine product that is sold by (or on behalf of) a winery.
- (2) However, the levy is not imposed in relation to the sale of the grape wine or grape wine product to another winery in New Zealand.

Responsibility for paying levy

5 Winery primarily responsible for paying levy

The winery that sells grape wine or a grape wine product (or on whose behalf the wine or product is sold) is primarily responsible for paying any levy on the wine or the grape wine component of the product.

Rate of levy

6 Basis for calculation of levy

The levy must be calculated on the basis of the volume (in litres) of grape wine (including the grape wine component of a grape wine product) that is sold.

7 Levy to be paid at single rate

The levy must be paid at a single rate.

8 Maximum rate of levy

The maximum rate of the levy is 3.5 cents per litre of grape wine (including the grape wine component of a grape wine product) that is sold.

9 Actual rate of levy set by NZW

- (1) The actual rate of the levy for a levy year is the rate set by NZW, in accordance with its rules, before the start of that levy year.
- (2) For the first levy year, that rate may be set by NZW, in accordance with its rules, before the commencement of this order.

10 Previous rate applies if new rate not set

The following rate of the levy continues to apply until a new rate is set under clause 9:

- (a) the rate last set under clause 9; or

- (b) if a rate has never been set under clause 9, the rate that applied immediately before the commencement of this order.

11 Notification of rate of levy

As soon as practicable after setting a rate of the levy for a levy year, NZW must notify the rate—

- (a) in the *Gazette*; and
- (b) in NZW's newsletter; and
- (c) in *New Zealand Winegrower* or its replacement; and
- (d) directly to all wineries whose contact details are known to NZW.

Payment of levy

12 Levy to be paid to NZW

The levy is to be paid to NZW.

13 When levy must be paid

- (1) The levy is due for payment on the day on which the grape wine or grape wine product is sold.
- (2) However, the levy must be paid quarterly, and the last day for paying the levy is—
 - (a) 31 October, for sales in the previous quarter ending on 30 September;
 - (b) 31 January, for sales in the previous quarter ending on 31 December;
 - (c) 30 April, for sales in the previous quarter ending on 31 March;
 - (d) 31 July, for sales in the previous quarter ending on 30 June.

14 Maximum levy payable for levy year

- (1) The maximum amount of the levy payable by a winery for a levy year is the amount payable on 20 million litres of grape wine (including the grape wine component of a grape wine product).
- (2) However, for the first levy year the maximum amount of the levy payable by a winery for a levy year is the amount payable on 40 million litres of grape wine (including the grape wine component of a grape wine product).
- (3) The amounts specified in this clause do not include any additional levy payable under clause 15.

15 Additional levy payable if levy not paid in time

- (1) This clause applies if a winery does not pay any amount of the levy (including any GST payable on the levy) on or before the last day for payment.
- (2) NZW may (at its discretion), at the end of each month during which the amount remains unpaid, impose an additional levy of 10% of the unpaid

amount (including any unpaid additional levy already imposed under this clause).

Spending of levy money

16 Levy money must be spent

- (1) NZW may pay the levy money to any of its branches or subsidiaries.
- (2) NZW and its branches or subsidiaries must—
 - (a) spend all the levy money paid to them; and
 - (b) invest the levy money until it is spent.

17 How levy money to be spent

- (1) NZW and its branches and subsidiaries may spend the levy money, at a national or regional level, for the following purposes relating to winegrapes or grape wine:
 - (a) research and development relating to, and other programmes or services for, the New Zealand winegrape and grape wine industry:
 - (b) representation of, and advocacy for, the interests of the New Zealand winegrape and grape wine industry:
 - (c) the enhancement and protection of the integrity and reputation of New Zealand grape wine in New Zealand and overseas:
 - (d) the collection, analysis, and dissemination of information:
 - (e) research and development relating to viticulture, oenology, and other relevant disciplines:
 - (f) market research and development:
 - (g) the promotion of winegrapes and grape wine:
 - (h) education and training:
 - (i) technology transfer:
 - (j) the development and maintenance of standards, codes of practice, sustainability programmes, and quality assurance programmes:
 - (k) the protection and improvement of vine health:
 - (l) the implementation of legislation and regulatory programmes:
 - (m) funding activities undertaken for the New Zealand winegrape and grape wine industry by government and other agencies:
 - (n) the day-to-day administration of NZW and its branches and subsidiaries.
- (2) NZW and its branches and subsidiaries must not spend the levy money on commercial or trading activities.

18 Consultation on how levy money to be spent

- (1) NZW must, at least every 12 months,—
 - (a) consult wineries on how the levy money is proposed to be spent; and
 - (b) provide wineries with details of how the levy money was spent in the previous 12 months.
- (2) For the purposes of subclause (1), NZW must—
 - (a) communicate with wineries by using 1 or more of the following methods of communication:
 - (i) sending regular newsletters to wineries whose contact details are known to NZW;
 - (ii) communicating in *New Zealand Winegrower* or its replacement;
 - (iii) communicating, in accordance with NZW's rules, with the Regional Membership Council of NZW (which must include representatives from winegrower regional organisations);
 - (iv) using any other method to communicate with wineries that NZW thinks fit; and
 - (b) before NZW approves a budget to spend the levy money for a levy year,—
 - (i) provide to wineries its draft budget and plan for spending that levy money by using 1 or more of the methods referred to in paragraph (a); and
 - (ii) give wineries an opportunity to comment on the draft budget and plan; and
 - (c) at each annual general meeting, present the annual accounts and annual report of NZW.

*Record-keeping and information requirements***19 Returns provided by wineries**

- (1) A winery must accompany each of its levy payments with a return that specifies the volume (in litres) of grape wine (including the grape wine component of a grape wine product) sold in the period to which the payment relates.
- (2) NZW may write to a winery requesting any information that NZW needs to calculate an amount of the levy to be paid by the winery.
- (3) The winery must provide the information to NZW in writing as soon as is reasonably practicable after receiving the request.

20 Wineries must keep records

- (1) A winery must keep records of the following matters for each levy year:

- (a) each individual sale of grape wine (including the grape wine component of a grape wine product) sold in the levy year:
 - (b) each sale described in paragraph (a) that was a sale to another winery in New Zealand:
 - (c) the total volume of grape wine (including the grape wine component of grape wine products) sold in each quarter of the levy year:
 - (d) the portion of the total volume described in paragraph (c) that was sold to other wineries in New Zealand:
 - (e) each amount of the levy money paid to NZW and the date of payment.
- (2) The winery must retain the records for 2 years after the end of the levy year to which they relate.

21 NZW must keep records

- (1) NZW must keep records of the following matters:
- (a) each payment of the levy money received by NZW, including—
 - (i) the amount received; and
 - (ii) the date on which NZW received it; and
 - (iii) the name and contact details of the person who paid it:
 - (b) how and when the levy money was invested (if at all):
 - (c) how and when the levy money was spent.
- (2) NZW must retain the records for 2 years after the end of the levy year in which the payment, investment, or spending happened.

22 Confidentiality of information

- (1) An officer, employee, or agent of NZW must not disclose any information obtained, or obtained as a result of actions taken,—
- (a) under this order; or
 - (b) under the Wine Act 2003 or the Commodity Levies Act 1990 in relation to this order.
- (2) Subclause (1) does not affect or prevent the disclosure of information—
- (a) to an officer, employee, or agent of NZW; or
 - (b) with the consent of every identifiable person to whom it relates; or
 - (c) for statistical or research purposes if the information is disclosed in a form that does not identify any person; or
 - (d) that is required by law.
- (3) Subclause (1) does not affect or prevent the disclosure of information for the purposes of—

- (a) complying with section 17(1) or 25 of the Commodity Levies Act 1990; or
- (b) giving evidence in any legal proceedings taken under or in relation to this order; or
- (c) determining the voting entitlements or counting the votes of wineries.

Miscellaneous provisions

23 GST excluded

The maximum rate of the levy and any amounts referred to in this order are exclusive of GST.

24 Conscientious objectors

- (1) A winery that objects on conscientious or religious grounds to paying an amount of the levy to NZW may instead pay the amount to the Director-General.
- (2) The Director-General must pay the amount to NZW.

25 Remuneration of auditors

A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 must be remunerated by NZW at a rate determined by the Minister after consulting NZW.

Mediation of disputes

26 Appointment of mediators

- (1) This clause applies to any dispute about—
 - (a) whether a person is required to pay the levy; or
 - (b) the amount of the levy payable.
- (2) Any party to a dispute may ask the President of the Arbitrators' and Mediators' Institute of New Zealand Incorporated to appoint a person to resolve the dispute by mediation.
- (3) If asked under subclause (2), the President (or a person authorised by the President) may appoint a person to resolve the dispute by mediation.
- (4) The mediator's appointment ends if—
 - (a) the parties to the dispute resolve it by agreement; or
 - (b) the mediator resolves the dispute under clause 32.

27 Remuneration of mediators

- (1) A mediator must be paid remuneration (by way of fees and allowances) agreed to by the parties to the dispute.

- (2) If the parties to a dispute cannot agree on a mediator's remuneration, the President of the Arbitrators' and Mediators' Institute of New Zealand Incorporated (or a person authorised by the President) must—
 - (a) set the remuneration to be paid to the mediator; and
 - (b) specify how much of that remuneration (if any) each party must pay.
- (3) A party must pay to the mediator any amount specified as payable by that party under subclause (2)(b).

28 Conference to resolve dispute

- (1) A mediator may organise, and preside at, 1 or more conferences between the parties to a dispute to try to resolve the dispute.
- (2) Every conference must be held on a day, and at a time and place, set by the mediator and notified in writing to the parties.

29 Conference to be held in private

- (1) Only the mediator and the parties to a dispute may attend a conference.
- (2) However, the mediator may allow a representative of any party to a dispute to attend a conference if the mediator is satisfied that it is appropriate in the circumstances.

30 Right to be heard

The following persons may be heard at a conference:

- (a) every party to the dispute; and
- (b) every representative of a party allowed by the mediator to attend the conference.

31 Evidence

- (1) A mediator may hear and take into account any relevant evidence or information, whether or not it would be admissible in a court.
- (2) A mediator may, on the mediator's own initiative, seek and receive any evidence, and make any investigations and inquiries, that the mediator thinks desirable to resolve a dispute.
- (3) A mediator may require any person giving evidence at a conference to verify the evidence by statutory declaration.

32 Mediator may resolve dispute in certain cases

- (1) A mediator may resolve the dispute for the parties if—
 - (a) the dispute is not resolved at a conference; or
 - (b) the mediator believes that the parties are unlikely to resolve the dispute, whether or not they confer directly.

- (2) A mediator who resolves a dispute under subclause (1) must give each of the parties written notice of the mediator's decision and the reasons for the decision.
- (3) The parties must comply with the mediator's decision.

33 Costs of mediation

Each party must pay its own costs in relation to the mediation.

34 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with a decision made by a mediator under clause 32 may appeal to a District Court against the decision.
- (2) The appeal must be brought by filing a notice of appeal—
 - (a) within 28 days after the date of the decision; or
 - (b) within any longer time that a District Court Judge allows.
- (3) The Registrar of the court must—
 - (a) set the time and place for the hearing of the appeal; and
 - (b) notify the time and place to the appellant and the other parties to the dispute; and
 - (c) serve a copy of the notice of appeal on every other party to the dispute.
- (4) Every party to the dispute may appear and be heard at the hearing of the appeal.
- (5) The District Court may confirm, vary, or reverse the mediator's decision.
- (6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the mediator's decision.

35 Revocation of Wine (Grape Wine Levy) Order 2010

The Wine (Grape Wine Levy) Order 2010 (SR 2010/460) is revoked.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order comes into force on 1 July 2016. It revokes the Wine (Grape Wine Levy) Order 2010.

This order imposes a levy on grape wine (including the grape wine component of a grape wine product) that is sold by (or on behalf of) a winery in New Zealand.

The levy is payable to New Zealand Winegrowers Incorporated (**NZW**), which is the industry body for both winegrapes and grape wine that replaces the New Zealand Grape Growers Council Incorporated and the Wine Institute of New Zealand Incorporated. The winery that sells the grape wine (or on whose behalf the wine is sold) is responsible for paying the levy.

The levy may be used for the purposes of the winegrape and grape wine industry (and NZW also administers the levy under the Commodity Levies (Winegrapes) Order 2016 for those purposes).

The Wine (Grape Wine Levy) Order 2010 is revoked. However, the revocation does not affect obligations that arose before 1 July 2016 to pay the previous levy to the previous industry body (*see* section 17 of the Interpretation Act 1999).

This order is a confirmable instrument under section 47B of the Legislation Act 2012. It is revoked at the close of 30 June 2017 unless earlier confirmed by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(a) of that Act. If this order is confirmed, it will, under section 13 of the Commodity Levies Act 1990, be deemed to be revoked 6 years after it is made, unless it is revoked or extended before then.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 2 June 2016.

This order is administered by the Ministry for Primary Industries.