



Commodity Levies (Winegrapes) Order 2010

Rt Hon Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 5th day of July 2010

Present:

The Hon Bill English presiding in Council

Pursuant to section 4 of the Commodity Levies Act 1990, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, and on the recommendation of the Minister of Agriculture given in accordance with sections 5 and 6 of that Act, makes the following order.

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Order

1 Title

This order is the Commodity Levies (Winegrapes) Order 2010.

2 Commencement

This order comes into force on 23 August 2010.

3 Interpretation

In this order, unless the context requires another meaning,—

buyer means a person who buys winegrapes, or grape juice or grape juice concentrate made from winegrapes, in New Zealand from the grower of the grapes

Council means the industry organisation known on the commencement of this order as New Zealand Grape Growers Council Incorporated

farm-gate price means the price paid to buy winegrapes from their grower (excluding GST)

free on-board value means the value of winegrapes specified in the declaration attached to, or forming part of, the Customs entry for the grapes (excluding GST)

grape juice means the juice of winegrapes

grape juice concentrate means grape juice that has been concentrated by removing water from it

grower means a person whose business is or includes—

- (a) growing winegrapes for sale or export; or
- (b) growing winegrapes to make grape juice, or grape juice concentrate, for sale or export

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

levy means the levy imposed by clause 4

levy money means money paid under this order as a levy

levy year means,—

- (a) for the first levy year, the period starting on the commencement of this order and ending on 30 June 2011;
- (b) for every other levy year, a period of 12 months starting on 1 July and ending on 30 June

mediator means a person appointed under clause 25 and, in relation to a dispute, means a mediator appointed to resolve the dispute

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 of Agriculture specifies by notice in the *Gazette*

notional price means the price set for winegrapes under clause 8 (excluding GST)

winegrapes means grapes of the genus *Vitis* that are grown in New Zealand to make wine, grape juice, or grape juice concentrate.

Levy imposed

4 Levy imposed

- (1) A levy is imposed on winegrapes that—
 - (a) are grown for sale or export; or
 - (b) are grown to make grape juice, or grape juice concentrate, for sale or export.
- (2) The levy is payable to the Council.

Responsibility for payment of levy

5 Grower primarily responsible for paying levy

The grower of winegrapes is primarily responsible for paying the levy on the grapes.

6 Person who must pay levy

- (1) If winegrapes, or grape juice or grape juice concentrate made from winegrapes, are sold in New Zealand by or on behalf of the grower, the buyer must pay the levy on the grapes.
- (2) If winegrapes, or grape juice or grape juice concentrate made from winegrapes, are exported by or on behalf of the grower, the grower must pay the levy on the grapes.

- (3) However, the buyer may recover from the grower any amount the buyer pays as levy (and any GST payable on the levy) by deducting it from any amount payable to the grower.
- (4) The buyer may not charge a fee for paying the levy or recovering the amount paid as levy from the grower.

Rate of levy

7 Basis of calculation of levy

The levy on winegrapes is to be calculated,—

- (a) for winegrapes sold in New Zealand by or on behalf of the grower, on the basis of the farm-gate price of the grapes:
- (b) for winegrapes exported by or on behalf of the grower, on the basis of the free on-board value of the grapes:
- (c) for winegrapes made into grape juice or grape juice concentrate that is sold in New Zealand, or exported, by or on behalf of the grower, on the basis of the notional price of the grapes.

8 Notional price of winegrapes made into grape juice or concentrate

- (1) The notional price of winegrapes for a levy year is the notional price set by the Council for those grapes—
 - (a) at its annual general meeting held on or before 31 December in that levy year; or
 - (b) for the first levy year, at its annual general meeting in 2010 (whether the meeting occurred before or occurs after the commencement of this order).
- (2) The Council must set the notional price of winegrapes at the price (excluding GST) that, in the Council's opinion, the grower would receive for grapes of that variety if, immediately before the grapes were made into grape juice or grape juice concentrate, the grower had sold them to a processor in the same region to make into grape juice or grape juice concentrate (whether or not such a processor existed).
- (3) A notional price takes effect on and from the date it is set under subclause (1).

- (4) As soon as practicable after setting a notional price, the Council must notify the price—
- (a) in the *Gazette*; and
 - (b) in *New Zealand WineGrower* or its replacement; and
 - (c) directly to all growers and buyers whose contact details are known to the Council.

9 Levy to be paid at single rate

The levy is to be paid at a single rate.

10 Maximum rate of levy

The maximum rate of levy on winegrapes is 1.5% of the farm-gate price, free on-board value, or notional price of the grapes.

11 Actual rate of levy set by Council

- (1) The actual rate of levy for a levy year is the rate set by the Council—
- (a) at its annual general meeting held on or before 31 December in that levy year; or
 - (b) for the first levy year, at its annual general meeting in 2010 (whether the meeting occurred before or occurs after the commencement of this order).
- (2) The rate of levy takes effect on and from the date it is set under subclause (1).

12 Previous rate applies if new rate not set

The following rate of levy continues to apply until a new rate is set under clause 11:

- (a) the rate last set under clause 11; or
- (b) if a rate has never been set under clause 11, the rate that applied immediately before the commencement of this order.

13 Notification of rate of levy

As soon as practicable after setting a rate of levy, the Council must notify the rate—

- (a) in the *Gazette*; and

- (b) in 1 or more daily newspapers circulating in the major metropolitan areas; and
- (c) in *New Zealand WineGrower* or its replacement; and
- (d) directly to all growers and buyers whose contact details are known to the Council.

Time for payment of levy

14 When levy payable

- (1) If winegrapes, or grape juice or grape juice concentrate made from winegrapes, are sold in New Zealand by or on behalf of the grower,—
 - (a) in the case of grapes, juice, or concentrate to be paid for by 2 or more instalments, the due date for paying the levy on grapes to which an instalment relates is the day on which the buyer is liable to pay the instalment; or
 - (b) in any other case, the due date for paying the levy on the grapes is the day on which the buyer is liable to pay for the grapes, juice, or concentrate.
- (2) If winegrapes, or grape juice or grape juice concentrate made from winegrapes, are exported by or on behalf of the grower,—
 - (a) in the case of grapes, juice, or concentrate to be paid for by 2 or more instalments, the due date for paying the levy on grapes to which an instalment relates is the day on which the grower is entitled to be paid the instalment; or
 - (b) in any other case, the due date for paying the levy on the grapes is the day on which the grower is entitled to be paid for the grapes, juice, or concentrate.
- (3) The latest date for paying any levy is the 20th day of the month after the month in which the levy is due to be paid.

Spending of levy money

15 Levy money must be spent

- (1) The Council may pay levy money to any of its regional associations.
- (2) The Council and its regional associations must—
 - (a) spend all levy money paid to them; and
 - (b) invest the levy money until it is spent.

16 How levy money to be spent

- (1) The Council and its regional associations may spend levy money, at a national or regional level, for the following purposes relating to winegrapes:
 - (a) research and development of viticulture and oenology:
 - (b) market research and development:
 - (c) promotion of winegrapes and wine:
 - (d) representation of growers' collective interests:
 - (e) education and training:
 - (f) technology transfer:
 - (g) development of sustainable viticulture:
 - (h) protection and improvement of vine health:
 - (i) implementation of enactments and regulatory programmes:
 - (j) day-to-day administration of the Council and its regional associations.
- (2) The Council and its regional associations must not spend levy money on commercial or trading activities.

17 Consultation on how levy money to be spent

- (1) The Council must, at least every 12 months,—
 - (a) consult growers on how levy money is proposed to be spent; and
 - (b) provide growers with details of how levy money was spent in the previous 12 months.
- (2) For the purposes of subclause (1), the Council must—
 - (a) communicate with growers by—
 - (i) sending regular newsletters to growers whose contact details are known to the Council; and
 - (ii) advertising in *New Zealand WineGrower* or its replacement; and
 - (iii) discussing matters at the technical symposium at any Romeo Bragato Conference; and
 - (iv) using any other method the Council thinks fit; and
 - (b) invite requests for priorities for annual research and other spending; and

- (c) in accordance with the Council's rules, provide for representation of growers on the Council's committee that allocates research funding; and
- (d) before each annual general meeting, advertise and hold meetings in winegrape-growing regions to consult with growers on how levy money is to be spent; and
- (e) before each annual general meeting, send to growers whose contact details are known to the Council—
 - (i) invitations to attend the meeting; and
 - (ii) a draft budget and plan for how levy money is proposed to be spent in the next levy year; and
- (f) at each annual general meeting, present for approval the final budget and plan for spending.

Record-keeping and information requirements

18 Returns provided by growers and buyers

- (1) The Council may write to a grower or buyer requesting any information the Council needs to calculate an amount of levy to be paid by the grower or buyer.
- (2) The grower or buyer must provide the information to the Council in writing as soon as is reasonably practicable after receiving the request.

19 Growers must keep records

- (1) A grower of winegrapes must keep records of the following details for each sale or export of the grapes, or of grape juice or grape juice concentrate made from the grapes:
 - (a) the quantity of grapes, juice, or concentrate sold or exported;
 - (b) the variety or varieties of grape;
 - (c) the full name of the buyer or importer of the grapes;
 - (d) the price received;
 - (e) the quantity of grapes made into juice or concentrate (if any);
 - (f) if the grower paid levy to the Council,—
 - (i) the amount or amounts of levy paid; and
 - (ii) when the amount or amounts of levy were paid:

- (g) if the grapes, juice, or concentrate were exported, a copy of any declaration attached to, or forming part of, the Customs entry for their export.
- (2) The grower must retain records for 2 years after the end of the levy year to which they relate.

20 Buyers must keep records

- (1) A buyer must keep records of the following details for each purchase of winegrapes, or of grape juice or grape juice concentrate made from winegrapes:
 - (a) the quantity of grapes, juice, or concentrate purchased:
 - (b) the variety or varieties of grape:
 - (c) the full name of the grower of the grapes:
 - (d) the price paid:
 - (e) the amount or amounts of levy that the buyer paid to the Council:
 - (f) when the amount or amounts of levy were paid.
- (2) The buyer must retain records for 2 years after the end of the levy year to which they relate.

21 Council must keep records

- (1) The Council must keep records of—
 - (a) each amount of levy money the Council received from a person, the full name of the person, and when the Council received the amount; and
 - (b) each amount of levy money the Council paid to a regional association, the name of the association, and when the Council paid the amount; and
 - (c) each amount of levy money the Council or a regional association invested (if any), and how and when the amount was invested; and
 - (d) each amount of levy money the Council or a regional association spent, and how and when the amount was spent.
- (2) The Council must retain records for 2 years after the end of the levy year in which the relevant amount of levy money was received, paid, invested, or spent (as the case may be).

22 Confidentiality of information

- (1) An officer, employee, or agent of the Council must not disclose any information obtained, or obtained as a result of actions taken,—
 - (a) under this order; or
 - (b) under 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 the Council; 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 growers.

*Miscellaneous provisions***23 Conscientious objectors**

- (1) A grower or buyer who objects on conscientious or religious grounds to paying an amount of levy to the Council may instead pay the amount to the Director-General of the Ministry of Agriculture and Forestry.
- (2) The Director-General must pay the amount to the Council.

24 Remuneration of auditors

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

*Mediation of disputes***25 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 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.

26 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) fix 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).

27 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, fixed by the mediator and notified in writing to the parties.

28 Conference to be held in private

Only the mediator and the parties to a dispute may attend a conference, unless clause 29 applies.

29 Representatives

A 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 the party's own costs in relation to the mediation.

34 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the 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 day on which the decision is made; or
 - (b) within any longer time that a District Court Judge allows.
- (3) The Registrar of the court must—
 - (a) fix 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.

Rebecca Kitteridge,
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 23 August 2010. It replaces the Commodity Levies (Winegrapes) Order 2004, which was deemed to have been revoked at the end of 22 August 2010 (under section 13 of the Commodity Levies Act 1990).

This order imposes a levy on all grapes of the genus *Vitis* that are grown in New Zealand to make wine, grape juice, or grape juice concentrate (**winegrapes**) for sale or export.

The levy is payable to New Zealand Grape Growers Council Incorporated. The grower of winegrapes is primarily responsible for paying the levy. However, in some situations, the buyer of winegrapes, or grape juice or grape juice concentrate made from winegrapes, must pay the levy, but may recover it from the grower.

The order expires 6 years after it is made (because of section 13(1) of the Commodity Levies Act 1990), unless it is revoked or extended before then.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 8 July 2010.

This order is administered by the Ministry of Agriculture and Forestry.
