



Wine (Grape Wine Levy) Order 2010

Anand Satyanand, Governor-General

Order in Council

At Wellington this 13th day of December 2010

Present:

His Excellency the Governor-General in Council

Pursuant to sections 111 and 119 of the Wine Act 2003, His Excellency the Governor-General, 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 the Commodity Levies Act 1990 (as applied and modified by section 111 of the Wine Act 2003), makes the following order.

Contents

	Page
1 Title	3
2 Commencement	3
3 Interpretation	3
<i>Levy imposed</i>	
4 Levy imposed	4
<i>Responsibility for paying levy</i>	
5 Winery primarily responsible for paying levy	4

	<i>Rate of levy</i>	
6	Basis for calculation of levy	5
7	Levy to be paid at single rate	5
8	Maximum rate of levy	5
9	Actual rate of levy set by Institute	5
10	Previous rate applies if new rate not set	5
11	Notification of rate of levy	5
	<i>Payment of levy</i>	
12	Levy paid to Institute	6
13	When levy must be paid	6
14	Maximum and minimum levy payable for levy year	6
15	Payment of minimum levy	6
16	Payment of unpaid levy	7
17	Additional levy payable if levy not paid in time	7
	<i>Spending of levy money</i>	
18	Levy money must be spent	7
19	How levy money to be spent	7
20	Consultation on how levy money to be spent	8
	<i>Record-keeping and information requirements</i>	
21	Returns and information provided by wineries	9
22	Wineries must keep records	9
23	Institute must keep records	9
24	Confidentiality of information	10
	<i>Miscellaneous provisions</i>	
25	GST excluded	11
26	Conscientious objectors	11
27	Remuneration of auditors	11
	<i>Mediation of disputes</i>	
28	Appointment of mediators	11
29	Remuneration of mediators	12
30	Conference to resolve dispute	12
31	Conference to be held in private	12
32	Right to be heard	12
33	Evidence	12
34	Mediator may resolve dispute in certain cases	13
35	Costs of mediation	13
36	Appeal to District Court	13

Order

1 Title

This order is the Wine (Grape Wine Levy) Order 2010.

2 Commencement

This order comes into force on 21 February 2011.

3 Interpretation

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

grape wine means grape wine (as defined by section 4 of the Wine Act 2003) that is made from wine grapes 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 of the Wine Act 2003) in which the wine content is solely grape wine

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

Institute means the industry organisation known on the commencement of this order as Wine Institute of New Zealand Incorporated

levy—

- (a) means the levy imposed by clause 4; and
- (b) includes any additional levy imposed under clause 17

levy money means money paid under this order as levy

levy year means,—

- (a) for the first levy year, the period starting on the commencement of this order and ending on 30 June 2012;
- (b) for each later levy year, a period of 12 months starting on 1 July and ending on 30 June

mediator—

- (a) means a person appointed under clause 28; and
- (b) 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*

sell has the meaning given by section 4 of the Wine Act 2003

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

- (1) 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.
- (2) No winery is exempt from paying the levy.

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 is to be paid at a single rate.
- 8 Maximum rate of levy**
The maximum rate of 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 Institute**
- (1) The actual rate of levy for a levy year is the rate set by the Institute—
 - (a) on or before 31 March 2011, for the first levy year; or
 - (b) on or before the start of the levy year, for each later levy year.
 - (2) The Institute may set the actual rate of levy using any means by which it can lawfully make decisions.
- 10 Previous rate applies if new rate not set**
- (1) The following rate of 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.
 - (2) However, if the rate of levy for the first levy year is set on or before 31 March 2011, that rate applies for the first levy year despite subclause (1)(b).
- 11 Notification of rate of levy**
As soon as practicable after setting a rate of levy for a levy year, the Institute 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 wineries whose postal or email addresses are known to the Institute.

Payment of levy

12 Levy paid to Institute

The levy must be paid to the Institute.

13 When levy must be paid

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

14 Maximum and minimum levy payable for levy year

- (1) The maximum amount of 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).
- (2) The minimum amount of levy payable by a winery for a levy year is \$400.
- (3) The amounts specified in this clause do not include any additional levy payable under clause 17.

15 Payment of minimum levy

- (1) If a winery reasonably believes that the levy it must pay for a levy year will not exceed the minimum amount of \$400, it may either—

- (a) pay the \$400 on or before 31 October of the levy year;
or
 - (b) pay \$100 on or before each of the 4 last days for payment specified in clause 13(3) for the levy year.
- (2) This clause overrides clause 13.

16 Payment of unpaid levy

- (1) This clause applies if—
- (a) the levy payable by a winery for a levy year is the minimum amount of \$400, but the winery did not pay the \$400 under clause 15(1); or
 - (b) the levy payable by a winery for a levy year exceeds the minimum amount of \$400, but the winery paid only the \$400 under clause 15(1).
- (2) The last day for paying the levy that remains unpaid is 31 July after the end of the levy year.

17 Additional levy payable if levy not paid in time

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

Spending of levy money

18 Levy money must be spent

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

19 How levy money to be spent

- (1) The Institute and its regional associations may spend levy money only for a purpose, including any of the following, that is closely related to the interests of wineries:

- (a) collection, analysis, and dissemination of information:
 - (b) market research and development:
 - (c) promotion of grape wine and grape wine products:
 - (d) research and development of viticulture, oenology, and other relevant disciplines:
 - (e) education and training:
 - (f) funding activities undertaken on behalf of the grape wine industry by government and other agencies:
 - (g) developing standards, codes of practice, sustainability programmes, and quality assurance programmes:
 - (h) assisting with the implementation of legislation:
 - (i) day-to-day administration of the Institute or its regional associations:
 - (j) promoting the interests of producers of grape wine and grape wine products.
- (2) Spending for any purpose may be directed at the national level or the regional level.
- (3) The Institute and its regional associations must not spend levy money on commercial or trading activities.

20 Consultation on how levy money to be spent

- (1) The Institute must, at least every 12 months,—
- (a) consult wineries on how it proposes to spend levy money; and
 - (b) provide wineries with details of how it spent levy money in the previous 12 months.
- (2) In consulting wineries under subclause (1)(a), the Institute—
- (a) must send regular newsletters to all wineries whose postal or email addresses are known to the Institute; and
 - (b) must advertise in *New Zealand WineGrower* or its replacement; and
 - (c) may consult using any other method the Institute thinks fit.
- (3) After consulting under subclause (1)(a), the Institute must provide wineries with a copy of its approved plan for spending.

Record-keeping and information requirements

21 Returns and information provided by wineries

- (1) A winery must accompany each of its levy payments with a return—
 - (a) specifying 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; and
 - (b) if the payment is being made towards the \$400 minimum amount of levy payable for a levy year, stating that the payment is being made for that reason.
- (2) The Institute may write to a winery requesting any information the Institute needs to calculate an amount of levy to be paid by the winery.
- (3) The winery must provide the information to the Institute in writing as soon as is reasonably practicable after receiving the request.

22 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 levy money paid to the Institute 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.

23 Institute must keep records

- (1) The Institute must keep records of the following matters:

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

24 Confidentiality of information

- (1) An officer, employee, or agent of the Institute 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 the Institute; 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 voting entitlements or counting votes for elections of the Institute's officers.

*Miscellaneous provisions***25 GST excluded**

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

26 Conscientious objectors

- (1) A winery that objects on conscientious or religious grounds to paying an amount of levy to the Institute may instead pay the amount to the Director-General of the Ministry of Agriculture and Forestry (or the chief executive of any other department of State that is responsible for the administration of this order).
- (2) The Director-General (or other chief executive) must pay the amount to the Institute.

27 Remuneration of auditors

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

*Mediation of disputes***28 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 34.

29 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).

30 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.

31 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.

32 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.

33 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.

34 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.

35 Costs of mediation

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

36 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with a decision made by a mediator under clause 34 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.

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 21 February 2011. It replaces the Wine (Grape Wine Levy) Order 2005, which was deemed to have been revoked at the end of 20 February 2011 (under section 13 of the Commodity Levies Act 1990).

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. However, the levy is not imposed in relation to the sale of the grape wine to another winery in New Zealand.

The levy is payable quarterly to Wine Institute of New Zealand Incorporated (the **Institute**). The winery that sells the grape wine (or on whose behalf the wine is sold) is responsible for paying the levy.

The levy is calculated on the basis of the volume (in litres) of grape wine sold. There is a maximum and a minimum amount of levy payable by a winery for each levy year.

The Institute (and its regional associations) must ultimately spend all the levy money, and the Institute must consult wineries before deciding how to spend the levy money.

Records relating to the levy must be kept by wineries and the Institute. The Institute is restricted in how it may use the information it obtains in relation to the order.

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.

2010/460

Wine (Grape Wine Levy) Order 2010

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

Date of notification in *Gazette*: 16 December 2010.

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