Reprint
as at 10 June 2019

Commodity Levies (Avocados) Order 2013

(SR 2013/258)

Commodity Levies (Avocados) Order 2013: revoked, on 10 June 2019, by clause 35 of the Commodity Levies (Avocados) Order 2019 (LI 2019/86).

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 10th day of June 2013

Present:
His Excellency the Governor-General in Council

Pursuant to section 4 of the Commodity Levies Act 1990, His Excellency the Governor-General makes the following order, acting—

(a) on the advice and with the consent of the Executive Council; and

(b) on the recommendation of the Minister for Primary Industries given in accordance with sections 5 and 6 of that Act.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This order is administered by the Ministry for Primary Industries.

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Order

1 Title

This order is the Commodity Levies (Avocados) Order 2013.

2 Commencement

This order comes into force on 11 July 2013.

Order: confirmed, on 18 December 2013, by section 9(i) of the Subordinate Legislation (Confirmation and Validation) Act 2013 (2013 No 142).

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

avocados means fruit of any tree of the species *Persea americana*

collection agent means a person whose business is, or includes,—

(a) buying avocados from a grower for resale in New Zealand, or for export; or

(b) selling avocados in New Zealand on behalf of a grower, or exporting avocados on behalf of a grower

export means the sale of avocados—

(a) by a grower to a market other than in New Zealand; or

(b) by a grower to a collection agent for sale to a market other than in New Zealand; or

(c) by a collection agent to a market other than in New Zealand

export avocados means avocados that are—

(a) grown in New Zealand by a grower; and

(b) exported; and

(c) not processed before export

grower means a person whose business is, or includes, the growing, and selling or export, of avocados

GST means goods and services tax

levy means the levies imposed by clause 5

levy money means the money paid under this order as a levy

levy year means,—

(a) for the first levy year, the period starting on 11 July 2013 and ending on 30 April 2014:

(b) for the last levy year, the period starting on 1 May 2019 and ending on 9 June 2019:

(c) for every other year, a period of 12 months starting on 1 May and ending on 30 April in the following year

mediator means a person appointed under clause 25

New Zealand market avocados means avocados that are—

(a) grown in New Zealand by a grower; and

(b) sold in New Zealand for consumption as fresh fruit

NZAGA means N.Z. Avocado Growers Association Incorporated

processed—

(a) means any process that is applied to avocados; and

(b) includes avocados that are puréed, pulped, dried, freeze dried, dehydrated, evaporated, preserved, frozen, juiced, canned, bottled, or from which oil has been extracted, whether or not other ingredients are added to the avocados

selling price means the price at which avocados are sold at the first point of sale—

(a) exclusive of GST; and

(b) before the deduction of any costs or charges

tray equivalent means 5.5 kg in weight of avocados.

4 GST

A reference in this order to the payment or recovery of a levy must be read as including the payment of any GST payable on the levy.

Levies imposed

5 Levies imposed on New Zealand market avocados and export avocados

(1) A levy is imposed on—

(a) all New Zealand market avocados; and

(b) all export avocados.

(2) The levy is payable to NZAGA.

Responsibility for payment of levy

6 Growers primarily responsible for payment of levy

(1) The persons primarily responsible for paying the levy are growers who grow—

(a) New Zealand market avocados; or

(b) export avocados.

(2) No grower of New Zealand market avocados or export avocados is exempt from paying the levy.

7 Responsibility of collection agents for payment of levy

(1) A collection agent must pay the levy to NZAGA if the collection agent—

(a) buys avocados from growers (except through another collection agent) for resale in New Zealand, or for export, as the case may be; or

(b) sells avocados in New Zealand on behalf of growers, or exports them on behalf of growers, as the case may be.

(2) The collection agent may recover the levy from the grower—

(a) by deducting the amount of the levy from the payment made to the grower; or

(b) by recovering the amount of the levy as a debt due from the grower.

8 Collection fee

(1) A collection agent who pays the levy to NZAGA on New Zealand market avocados may deduct from the levy a collection fee of not more than 5% of the amount of the levy payable to NZAGA (exclusive of GST) plus the GST payable on the fee.

(2) In the case of export avocados, the collection agent who pays the levy to NZAGA must not deduct a collection fee from the levy.

Determination of levy

9 Levies to be paid at single rate

The levies must be paid at a single rate.

10 Basis of calculation of levy

(1) The levy payable in a levy year must be calculated on the basis of,—

(a) in the case of New Zealand market avocados, the selling price; and

(b) in the case of export avocados, the number of kilograms of avocados grown and exported, calculated by reference to the number of tray equivalents.

(2) For the purposes of subclause (1)(a), if NZAGA considers that the declared selling price is not consistent with the prevailing market conditions in the grower's locality or if there is no declared selling price, NZAGA may determine that the selling price is the market value on the date of sale or transaction that, in the opinion of NZAGA, a purchaser would have been reasonably expected to pay for the avocados.

11 Maximum rate of levy

The maximum rate of levy is,—

(a) in the case of New Zealand market avocados, 3% of the selling price (plus GST, if any); and

(b) in the case of export avocados, 50 cents (plus GST, if any) per tray equivalent.

12 NZAGA must fix levy rates

(1) NZAGA must fix the levy rate for the first levy year by any means by which it can lawfully make decisions.

(2) NZAGA must fix the levy rate for each subsequent levy year—

(a) at an annual general meeting; or

(b) at a special general meeting called for that purpose.

13 Previous rate to apply

If NZAGA does not fix the levy rates before the start of a levy year, the levy rate for that year is payable at the rate last fixed under clause 12.

14 Notification of rate of levy

(1) As soon as practicable after setting the levy rates for a levy year, NZAGA must notify the levy rates—

(a) directly to all growers and collection agents known to NZAGA; and

(b) in *Avoscene*; and

(c) in *The Orchardist*.

(2) If *Avoscene* or *The Orchardist* ceases to be published, the levy rates must be notified in—

(a) any publication that replaces it; or

(b) if no publication replaces it, a publication for the time being specified for the purposes of this order by the Minister for Primary Industries by notice in the *Gazette*.

Payment of levy

15 When levy payable

(1) The due date for payment of the levy for New Zealand market avocados is the earlier of—

(a) the date when the grower sells the avocados to a collection agent; or

(b) the date when a collection agent sells the avocados on behalf of the grower.

(2) The due date for payment of the levy for New Zealand market avocados that are sold by a grower without using a collection agent is on 30 April next following the date of sale.

(3) The due date for payment of the levy for export avocados is the date on which the avocados are first sold.

(4) For the purposes of subclauses (1) to (3), the latest date for payment of the levy is the 20th day of the month after the month in which the due date for payment occurs.

(5) In the case of export avocados, NZAGA may, in its absolute discretion, grant an extension of time for paying the levy if offshore terms of trade for the sale of the avocados have not been finalised before the last day for payment of the levy.

16 Penalty for late payment

If any amount of the levy has not been paid by the close of the latest day for payment, the following amounts must be paid to NZAGA in addition to the amount otherwise payable:

(a) 10% of the amount of the unpaid levy; and

(b) for each month that the amount is outstanding, a further 2% of the amount of the unpaid levy (including additional levies owing under this clause).

Expenditure of levy money

17 Association must spend levy money

(1) NZAGA—

(a) must spend all levy money; or

(b) pending its expenditure, may—

(i) pay levy money to its branches or subsidiaries, which must spend the levy money; or

(ii) invest levy money.

(2) NZAGA must not spend levy money on commercial or trading activities.

18 Purposes for which levy money may be spent

NZAGA or its branches or subsidiaries may spend levy money for any or all of the following purposes:

(a) research and development:

(b) market development and access:

(c) promotion of avocados and the avocado industry:

(d) services relating to crop estimation:

(e) development of quality management programmes, including food safety:

(f) quality assurance:

(g) grower education and information:

(h) industry communications, including the publication of *Avoscene*:

(i) day-to-day administration of NZAGA.

19 Consultation on how levy money to be spent

NZAGA must consult growers on how it proposes to spend levy money at its annual general meeting or at a special general meeting called for that purpose.

Record-keeping requirements and confidentiality of information

20 Returns

Every collection agent must supply, in writing, to NZAGA, as soon as is reasonably practicable, returns that contain any information that NZAGA requests in writing for the purposes of calculating the levy.

21 Records

(1) In the case of New Zealand market avocados, every grower and collection agent must, in each levy year, keep records of—

(a) the number of tray equivalents of avocados sold; and

(b) the name of the grower or collection agent; and

(c) the price received or paid, or the value placed on the avocados; and

(d) the amount of the levy collected by, or paid to, NZAGA, as the case may be; and

(e) the amount of the collection fee (if any) deducted by the collection agent.

(2) In the case of export avocados, every grower and collection agent must, in each levy year, keep records of—

(a) the name and any official mark that identifies the grower for export purposes (for example, the Property Identification Number); and

(b) the number of tray equivalents of avocados exported; and

(c) the price received or paid for, or the value placed on, the avocados; and

(d) the amount of the levy collected by, or paid to, the NZAGA, or the Director-General of the Ministry for Primary Industries for growers or collection agents who are conscientious objectors.

(3) NZAGA must, in each levy year, keep records of—

(a) each amount of levy paid to it in the levy year, the date on which each levy is received, and the person who pays the levy in each case; and

(b) the manner in which the levy money is spent or invested.

(4) The records referred to in subclauses (1) and (2) must be kept for at least 7 years after the date of payment of the levy to which the records relate.

(5) The records referred to in subclause (3) must be kept for at least 7 years after the end of the levy year to which the records relate.

22 Confidentiality of information

(1) No officer or employee of NZAGA may disclose (other than to some other person who is an officer or employee of NZAGA) any information obtained—

(a) under or because of this order; or

(b) under the Act in relation to this order.

(2) Subclause (1) does not affect or prevent—

(a) the production of records or accounts under section 17(1) of the Act; or

(b) the production of any statement under section 25 of the Act; or

(c) the giving of evidence in any legal proceedings taken—

(i) under or in relation to this order; or

(ii) under the Act in relation to this order.

(3) Subclause (1) does not prevent NZAGA from disclosing or using any information—

(a) (not being information relating to an identifiable person) for statistical and research purposes; or

(b) for the purpose of collecting levies; or

(c) for the purpose of determining the voting entitlements, and the counting of votes, of members of NZAGA; or

(d) with the consent of every identifiable person to whom the information relates.

Miscellaneous

23 Conscientious objectors

(1) Any grower or collection agent who objects on conscientious or religious grounds to the manner of recovery by NZAGA of an amount of levy money may pay the amount concerned to the Director-General of the Ministry for Primary Industries.

(2) The Director-General must pay the amount to NZAGA.

24 Remuneration of persons conducting compliance audits

A person appointed as auditor under section 15 of the Act must be remunerated by NZAGA at a rate agreed by the auditor and NZAGA.

Mediation of disputes

25 Appointment of mediators

(1) This clause applies if a dispute arises about—

(a) whether a person is required to pay a levy; or

(b) the amount of levy money payable.

(2) A party to the dispute may ask the President of the Arbitrators and Mediators Institute of New Zealand Incorporated (the **President**) to appoint a person to—

(a) organise and preside at a conference of the parties; and

(b) attempt to resolve the dispute by mediation.

(3) On receiving a request under subclause (2), the President (or a person authorised by the President to do so) may appoint a person to resolve the dispute by mediation.

(4) The mediator's appointment ends when—

(a) the parties resolve the dispute themselves; 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.

(2) However, if the parties cannot agree on a mediator's remuneration, the President (or a person authorised by the President to do so) must—

(a) fix an amount or several amounts to be paid to the mediator as remuneration; and

(b) specify the amount (if any) that each party must pay.

(3) Each party must pay to the mediator the amount fixed by the President (or authorised person) and specified as an amount to be paid by that party.

27 Time and place of conference

Every conference of the parties organised by a mediator is to be held on a day and at a time and place fixed, and notified in writing to the parties, by the mediator.

28 Conference to be held in private

Except as provided in clause 29, only the parties and the mediator may attend a conference organised by the mediator.

29 Representatives

If satisfied that in all the circumstances it is appropriate to do so, a mediator may allow a representative of a party to attend a conference of the parties organised by the mediator.

30 Right to be heard

Every party, and every representative of a party allowed by the mediator to attend a conference of the parties organised by a mediator, may be heard at 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 of law.

(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 of the parties to verify the evidence by statutory declaration.

32 Mediator may resolve dispute in certain cases

(1) A mediator may resolve a dispute for the parties if the mediator—

(a) has organised and presided at a conference of the parties but the dispute has not been resolved; or

(b) believes that the parties are unlikely to resolve the dispute, whether or not the parties confer directly.

(2) If the mediator resolves a dispute, the mediator 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 a decision of the mediator.

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 who is dissatisfied with a decision made by a mediator under clause 32 may appeal against the decision to a District Court.

(2) An appeal is to be brought by the filing of a notice of appeal within 28 days of the making of the decision concerned, or within any longer time a District Court Judge allows.

(3) The Registrar of the District Court must—

(a) serve a copy of the notice of appeal on every other party to the dispute; and

(b) fix the time and place for the hearing of the appeal; and

(c) notify the appellant and the other parties of the time and place for the hearing of the appeal.

(4) Every party may appear and be heard at the hearing of the appeal.

(5) On hearing the appeal, the District Court may confirm, vary, or reverse the decision appealed against.

(6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the decision appealed against.

Transitional matter

35 Ongoing duty to pay levy

Amounts of levy that are payable to NZAGA under the Commodity Levies (Avocados) Order 2007 before the commencement of this order continue to be due and payable as if the Commodity Levies (Avocados) Order 2007 had not been revoked.

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, which comes into force on 11 July 2013, replaces the Commodity Levies (Avocados) Order 2007, which is revoked at the close of 8 July 2013.

This order imposes a levy on avocados grown in New Zealand that are—

- sold for consumption in New Zealand as fresh fruit; or
- exported from New Zealand.

The levy is payable by growers or collection agents to the N.Z. Avocado Growers Association Incorporated.

Under section 12 of the Commodity Levies Act 1990, this order will be deemed to be revoked at the close of 30 June 2014 unless it is confirmed by an Act of Parliament passed on or before that date. The order will then be deemed to be revoked 6 years after it is made, by virtue of section 13(1) of the Commodity Levies Act 1990, unless the order is earlier revoked or extended.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 13 June 2013.

Reprints notes

1 General

This is a reprint of the Commodity Levies (Avocados) Order 2013 that incorporates all the amendments to that order as at the date of the last amendment to it.

2 Legal status

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 Editorial and format changes

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also http://www.pco.parliament.govt.nz/editorial-conventions/.

4 Amendments incorporated in this reprint

Commodity Levies (Avocados) Order 2019 (LI 2019/86): clause 35

Subordinate Legislation (Confirmation and Validation) Act 2013 (2013 No 142): section 9(i)

Wellington, New Zealand:
Published under the authority of the New Zealand Government—2019