

**Reprint
as at 9 July 2013**



**Commodity Levies (Avocados)
Order 2007**

(SR 2007/189)

Commodity Levies (Avocados) Order 2007: revoked, on 9 July 2013, by section 13(1) of the Commodity Levies Act 1990 (1990 No 127).

Anand Satyanand, Governor-General

Order in Council

At Wellington this 9th day of July 2007

Present:

His Excellency the Governor-General in Council

Pursuant to section 4 of the Commodity Levies Act 1990, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

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 2007.

2 Commencement

This order comes into force on 6 August 2007.

Order: confirmed, on 27 November 2007, by section 8(e) of the Subordinate Legislation (Confirmation and Validation) Act 2007 (2007 No 103).

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 or for processing in New Zealand, or for export; or
- (b) selling or processing avocados in New Zealand on behalf of a grower, or exporting avocados on behalf of a grower

export means the sale of avocados by the grower or by a collection agent to a market other than in New Zealand

fresh, in relation to avocados, means avocados that are not processed

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

GST means goods and services tax

levy means the levies imposed by clauses 4 and 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 the commencement of this order and ending on 30 April 2008; and
- (b) for every other year, a period of 12 months beginning on 1 May and ending on 30 April

mediator means a person appointed under clause 25

NZAGA means N.Z. Avocado Growers Association Incorporated

processed, in relation to avocados,—

- (a) means any process that is applied to fresh avocados; and
- (b) includes avocados that are purèed, pulped, dried, freeze dried, dehydrated, evaporated, preserved, frozen, juiced, canned, bottled, or from which oil has been extracted, whether or not other ingredients have been 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.

Levy imposed

4 Levy imposed on avocados for domestic consumption

- (1) A levy is imposed on all avocados grown by growers and—
 - (a) sold in New Zealand for consumption as fresh fruit; or
 - (b) sold for processing in New Zealand; or
 - (c) processed in New Zealand before being sold.
- (2) The levy is payable to NZAGA.

5 Levy imposed on export avocados

- (1) A levy is imposed on all avocados produced by growers and—
 - (a) exported by the grower; or
 - (b) sold to a collection agent for export; or
 - (c) exported by a collection agent on behalf of a grower.
- (2) The levy is payable to NZAGA.

Responsibility for payment of levy

6 Growers primarily responsible for payment of levy

- (1) Growers of avocados are primarily responsible for paying the levy.
- (2) No grower 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 (plus any GST payable on it) if the collection agent—
 - (a) buys avocados from growers (except through another collection agent) for resale or processing in New Zealand, or for export, as the case may be; or
 - (b) sells or processes 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 (plus any GST paid in respect of it) from the grower—
 - (a) by deducting the amount of the levy (plus any GST payable on it) from the payment made to the grower; or
 - (b) by recovering the levy (plus any GST paid on it) as a debt due from the grower.

8 Collection fee

- (1) A collection agent who pays the levy to NZAGA on avocados sold in New Zealand for consumption as fresh fruit or avocados that are processed in New Zealand may deduct from the levy a collection fee of not more than 10% of the amount of the levy payable to NZAGA (exclusive of GST) plus the GST payable on the fee.
- (2) In the case of avocados being exported, the collection agent who pays the levy to NZAGA must not deduct a collection fee from the levy.

Determination of levy

9 Levy to be paid at single rate

The levies imposed by clauses 4 and 5 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 avocados sold in New Zealand for consumption as fresh fruit, the selling price; and
 - (b) in the case of avocados sold for processing in New Zealand, the selling price; and
 - (c) in the case of avocados processed in New Zealand by, or on behalf of, the grower before being sold, the selling price; and
 - (d) in the case of avocados exported or sold for export, the number of kilograms of avocados produced and exported, calculated by reference to the number of tray equivalents.
- (2) For the purposes of subclause (1)(a) to (c), 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 avocados sold in New Zealand for consumption as fresh fruit, 3% of the selling price (plus GST, if any); and
- (b) in the case of avocados sold for processing in New Zealand, 3% of the selling price (plus GST, if any); and
- (c) in the case of avocados processed in New Zealand by, or on behalf of, the grower before being sold, 3% of the selling price (plus GST, if any); and
- (d) in the case of avocados exported or sold for export, 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) in *Avoscene*; and
 - (b) 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 them; or
 - (b) if no publication replaces them, a publication for the time being specified for the purposes of this order by the Minister responsible for the administration of the Act by notice in the *Gazette*.

Payment of levy

15 When levy payable

- (1) The due date for payment of the levy is—
 - (a) the date the grower sells the avocados to the collection agent or directly; or
 - (b) the date the collection agent sells the avocados on behalf of the grower; or
 - (c) if the avocados are not sold, the date on which the avocados are processed.
- (2) 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.
- (3) In the case of avocados sold for export, NZAGA may, in its absolute discretion, grant an extension of time for paying the levy if off-shore 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 must—
 - (a) spend all levy money; or
 - (b) pending its expenditure, may—
 - (i) pay the levy money to its branches or subsidiaries, which must spend the levy money; or
 - (ii) invest the 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 the levy money for any or all of the following purposes:

- (a) research and development:
- (b) market development, promotion, 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) the publication *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 avocados grown in New Zealand and sold for consumption in New Zealand as fresh fruit, 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; 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 avocados grown in New Zealand and exported, 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, 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.
- (3) In the case of avocados grown in New Zealand and processed or sold for processing in New Zealand, every grower and collection agent must, in each levy year, keep records of—
 - (a) the quantity in kilograms of avocados sold; and
 - (b) the name of the grower or supplier; 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.
- (4) 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.
- (5) The records referred to in subclauses (1) to (3) must be kept for at least 2 years after the date of payment of the levy to which the records relate.
- (6) The records referred to in subclause (4) must be kept for at least 7 years after the levy year to which the records relate.

22 Confidentiality of information

- (1) No officer or employee of NZAGA, or any other person or organisation that gathers information, may disclose (except to 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 prevent NZAGA from disclosing or using information—
- (a) with the consent of the levy payer and every other identifiable person to whom the information relates; or
 - (b) for the purposes of collecting levy money from each levy payer; or
 - (c) for statistical or research purposes, if the information is in a form that does not identify any individual.
- (3) Subclause (1) does not affect or prevent—
- (a) the disclosure of information for the purposes of—
 - (i) a compliance audit conducted under sections 15, 16, and 17 of the Act; or
 - (ii) producing any statement under section 25 of the Act; or
 - (b) the giving of evidence in any legal proceedings taken under, or in relation to, this order or, in relation to this order, under the Act; or

- (c) the disclosure of information required by law.

Miscellaneous

23 Conscientious objectors

- (1) Any grower 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 chief executive of the Ministry of Agriculture and Forestry.
- (2) The chief executive 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 to any dispute about—
- (a) whether any person is required to pay the levy; or
 - (b) the amount of levy payable.
- (2) Any 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 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.

- (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 that must 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 Conferences under control of mediator

A mediator must—

- (a) organise the date, time, and place for each conference to be held by the mediator; and
- (b) notify the parties by mail or email; and
- (c) preside at the conference.

28 Conference must be held in private

Except as provided in clause 29, only the parties to a dispute 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 any party to a dispute to attend a conference of the parties organised by the mediator.

30 Right to be heard

The following parties may be heard at a conference with a mediator:

- (a) each party to the dispute; and
- (b) each 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 of law.
- (2) A mediator may, on the mediator's own initiative,—
 - (a) seek and receive any evidence that the mediator thinks desirable to resolve a dispute; and
 - (b) 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 a dispute 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—
 - (a) the dispute has not been resolved at a conference of the parties with the mediator; or
 - (b) the dispute appears to the mediator to be unlikely to be resolved by the parties, whether or not they 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, in person, by mail, or by email.
- (3) The parties must comply with the 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 the mediator's decision 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 on which the mediator makes the decision; or
 - (b) within any longer time that a District Court Judge allows.
- (3) The Registrar of the 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 to the dispute.
- (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.

35 Revocation

- (1) The Commodity Levies (Avocados) Order 2001 (SR 2001/204) is revoked.
- (2) Amounts of levy that become payable to NZAGA under the Commodity Levies (Avocados) Order 2001 before the commencement of this order continue to be due and payable as if that order had not been revoked.

Diane Morcom,
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 6 August 2007, replaces the Commodity Levies (Avocados) Order 2001, which expires at the close of 5 August 2007.

This order imposes the following 2 levies on avocados grown or produced in New Zealand:

- a levy on avocados sold for consumption as fresh fruit, or sold for processing, or processed by or on behalf of a grower; and
- a levy on avocados exported from New Zealand.

Reprinted as at
9 July 2013

Commodity Levies (Avocados) Order 2007

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

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

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 12 July 2007.

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 - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
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Notes**1 General**

This is a reprint of the Commodity Levies (Avocados) Order 2007. The reprint incorporates all the amendments to the Commodity Levies (Avocados) Order 2007 as at 9 July 2013, as specified in the list of amendments at the end of these notes. Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, *see*

<http://www.pco.parliament.govt.nz/legislation/reprints.shtml>
or Part 8 of the *Tables of Acts and Ordinances and Statutory Regulations, and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)
- position of the date of assent (it now appears on the front page of each Act)

- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Subordinate Legislation (Confirmation and Validation) Act 2007 (2007 No 103): section 8(e)

Commodity Levies Act 1990 (1990 No 127): section 13(1)
