



Commodity Levies (Tamarillos) Order 2003

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 10th day of November 2003

Present:

Her Excellency the Governor-General in Council

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

Contents

1	Title		
2	Commencement		
3	Interpretation		
4	Levy imposed		
	<i>Responsibility for payment of levy</i>		
5	Grower primarily responsible for paying levy		
6	Responsibility of collection agents for payment of levy		
	<i>Determination of levy by NZTGA</i>		
7	Basis for calculation of levy		
8	Returns must be supplied to NZTGA to determine amount of levy		
9	Maximum rate of levy		
10	Payment of levy		
11	NZTGA must fix actual rate of levy		
12	Rate if no rate fixed before beginning of levy year		
13	Notification of levy rate		
			<i>Payment of levy</i>
		14	When levy payable
		15	Additional levy payable if levy not paid in time
			<i>Expenditure of levy money</i>
		16	NZTGA must spend levy money
		17	Purposes for which levy money may be spent
		18	Consultation on spending levy money
			<i>Recordkeeping requirements and confidentiality of information</i>
		19	Records
		20	Confidentiality of information
			<i>Miscellaneous</i>
		21	Conscientious objectors
		22	Remuneration of persons conducting compliance audits

	<i>Mediation in case of dispute</i>	29	Evidence
23	Appointment of mediators	30	Mediator may resolve dispute in certain cases
24	Remuneration of mediators		
25	Time and place of conference	31	Appeal to District Court
26	Conference to be held in private		<i>Revocation</i>
27	Representatives		
28	Right to be heard	32	Revocation

Order

1 Title

This order is the Commodity Levies (Tamarillos) Order 2003.

2 Commencement

This order comes into force on the 28th day after the date of its notification in the *Gazette*.

3 Interpretation

In this order, unless the context otherwise requires,—

collection agent means a person whose business is or includes—

- (a) buying tamarillos from a grower for resale, processing, or export; or
- (b) selling, processing, or exporting tamarillos on behalf of a grower

fob value, in relation to any quantity of tamarillos exported from New Zealand in respect of which a customs entry is made, means the value of the tamarillos as specified in the declaration in, attached to, or forming part of, the entry (before the deduction of any costs or charges)

fresh means not processed

GST means goods and services tax

grower means a person whose business is or includes the growing of tamarillos for commercial purposes

levy means the levy imposed by clause 4

levy money means money paid or payable under this order as levy

levy year means,—

- (a) for the first year, the period beginning on the 28th day after the date of the notification of this order in the *Gazette* and ending on 31 December 2004; and

- (b) for each subsequent year, the period of 12 months beginning on 1 January and ending on 31 December

mediator means a person appointed under clause 23(2) and, in relation to a dispute, means a mediator appointed to resolve it

month means calendar month

notional process value means the amount of money that, in the opinion of NZTGA, the grower would have received if, immediately before the tamarillos were processed, the grower had sold them to a similar processor in the grower's locality (excluding GST and before the deduction of any costs and charges)

NZTGA means the New Zealand Tamarillo Growers Association Incorporated

processed includes bottled, canned, dehydrated, evaporated, dried, freeze-dried, frozen, and preserved,—

- (a) whether as tamarillos or as concentrate, pulp, puree, sauce, or some other product; and
(b) whether alone or with other ingredients

selling price—

- (a) means the price at which the tamarillos are sold at the first point of sale (excluding GST and before the deduction of any costs or charges); but
(b) if, in the opinion of NZTGA, that price is not consistent with prevailing market conditions in the grower's locality, NZTGA may determine that the selling price is the market value that, in the opinion of NZTGA, the purchaser would reasonably have been expected to pay for the tamarillos (excluding GST and before the deduction of any costs and charges)

tamarillos means the fruit of the tamarillo plant (*Cyphomandra betacea*).

4 Levy imposed

- (1) A levy is imposed on tamarillos grown in New Zealand by growers for—
- (a) sale for consumption as fresh fruit; or
(b) resale as fresh fruit; or
(c) export as fresh fruit; or

- (d) sale for processing in New Zealand; or
 - (e) processing before sale.
- (2) The levy is payable to NZTGA.

Responsibility for payment of levy

5 Grower primarily responsible for paying levy

A grower is primarily responsible for paying the levy.

6 Responsibility of collection agents for payment of levy

- (1) A collection agent—
- (a) must pay the levy (and any GST payable on the levy) on tamarillos—
 - (i) bought from the grower (except through another collection agent); or
 - (ii) sold, processed, or exported on the grower's behalf; and
 - (b) may recover the levy (and any GST paid in respect of it) from the grower—
 - (i) by deducting the amount of the levy (and any GST paid in respect of it) from the payment made to the grower; or
 - (ii) by recovering the amount of the levy (and any GST paid in respect of it) as a debt due from the grower.
- (2) A collection agent who pays the levy may, before paying it to NZTGA, deduct from the levy a collection fee of not more than 10% of the amount of the levy (exclusive of GST) plus the GST payable on the fee.

Determination of levy by NZTGA

7 Basis for calculation of levy

- (1) The levy payable by a grower must be calculated on the basis of—
- (a) the fob value, in the case of tamarillos that are exported unprocessed before the first point of sale;
 - (b) the notional process value, in the case of tamarillos that are processed before the first point of sale;
 - (c) the selling price, in all other cases.

- (2) If the levy is calculated on the basis of the selling price, NZTGA may treat the following amounts as if they were part of the selling price:
- (a) any other payments made to the grower by the purchaser in relation to the sale of the tamarillos:
 - (b) the value (as determined by NZTGA) of any goods or services provided—
 - (i) to the grower by the purchaser in relation to the sale of the tamarillos; and
 - (ii) free of charge or below market value.

8 Returns must be supplied to NZTGA to determine amount of levy

- (1) For the purpose of determining the amount of levy payable by a grower,—
- (a) every grower who sells, processes, or exports the grower's own tamarillos in any month must provide to NZTGA, with the amount of levy for the month, written notice of—
 - (i) the selling price and quantity of tamarillos sold by the grower in the month; and
 - (ii) the notional process value and quantity of tamarillos processed for sale by the grower in the month; and
 - (iii) the fob value and quantity of tamarillos exported by the grower in the month; and
 - (b) every collection agent must provide to NZTGA, with the amount of levy for each month, written notice of—
 - (i) the price paid for, and quantity of, tamarillos bought from a grower by the collection agent in the month; and
 - (ii) the notional process value and quantity of tamarillos processed on behalf of a grower by the collection agent in the month; and
 - (iii) the fob value and quantity of tamarillos exported on behalf of a grower by the collection agent.
- (2) NZTGA may request, in writing, from each grower and collection agent any other information required by NZTGA for the purpose of determining the amount of the levy payable by a grower or collection agent.

- (3) Every grower and collection agent must, as soon as reasonably practicable after receiving a written request from NZTGA, supply NZTGA with written returns of the information requested.

9 Maximum rate of levy

The maximum rate of the levy is 3% of the fob value, notional process value, or selling price (as the case may be).

10 Payment of levy

The levy must be paid at a single rate.

11 NZTGA must fix actual rate of levy

NZTGA must fix the actual rate of the levy,—

- (a) for the levy year ending on 31 December 2004, in accordance with its rules;
- (b) for any subsequent levy year, at a general meeting NZTGA held before the beginning of the levy year.

12 Rate if no rate fixed before beginning of levy year

If NZTGA does not fix the actual rate of levy before the beginning of a levy year, the levy for that year is payable at the rate last fixed under clause 11.

13 Notification of levy rate

- (1) As soon as is practicable after the rate of levy for a levy year has been fixed, NZTGA must notify the rate in—
- (a) the *Gazette*; and
- (b) *The Orchardist*.
- (2) If *The Orchardist* ceases to be published, the rate of levy for a levy year must be notified in—
- (a) any publication that replaces it; or
- (b) if no publication replaces it, a publication specified by the Minister in the *Gazette*.

Payment of levy

14 When levy payable

- (1) The due day for payment of the levy to NZTGA is—
- (a) the date of sale in the case of tamarillos sold—

- (i) by the grower direct to the public or to a collection agent; or
 - (ii) by a collection agent on behalf of the grower; or
 - (b) the date of processing in the case of tamarillos processed—
 - (i) without having been sold by the grower; or
 - (ii) by a collection agent on behalf of the grower; or
 - (c) the date of export in the case of tamarillos exported—
 - (i) by the grower; or
 - (ii) by a collection agent on behalf of the grower.
- (2) The latest date for payment of the levy is the 20th day of the month following the due date for payment.

15 Additional levy payable if levy not paid in time

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 NZTGA in addition to the amount otherwise payable:

- (a) 5% of the amount of the unpaid levy;
- (b) 2% of the amount of the unpaid levy (excluding additional levies owing under this clause) for each month that the amount is outstanding.

Expenditure of levy money

16 NZTGA must spend levy money

NZTGA must spend or (pending expenditure) invest all levy money paid to it.

17 Purposes for which levy money may be spent

- (1) NZTGA may spend levy money for the following purposes relating to tamarillos or growers:
- (a) research, including market research;
 - (b) product development;
 - (c) market development;
 - (d) protection or improvement of plant health;
 - (e) development and implementation of quality assurance programmes;
 - (f) education, information, or training;
 - (g) day-to-day administration of NZTGA;
 - (h) industry promotion and development (including representing the views of growers).

- (2) NZTGA must not spend any levy money on commercial or trading activities.

18 Consultation on spending levy money

- (1) NZTGA must, at least once every 12 months at a general meeting, consult growers on how it proposes to spend the levy money.
- (2) NZTGA must, before a meeting, circulate to all growers a draft budget and a draft plan on how the levy money is proposed to be spent.

Recordkeeping requirements and confidentiality of information

19 Records

- (1) Every grower must, in each levy year, keep records of—
 - (a) the name and address of every collection agent to which the grower supplied tamarillos; and
 - (b) the price received or value placed on the grower's tamarillos; and
 - (c) the amount of levies paid to NZTGA.
- (2) Every collection agent must, in each levy year, keep records of—
 - (a) the name and contact details of every grower from whom tamarillos were purchased, or on whose behalf tamarillos were sold, processed, or exported; and
 - (b) the quantity of tamarillos supplied by each grower to it and the period during which the tamarillos were supplied; and
 - (c) the amount of levy paid to NZTGA and the date of payment; and
 - (d) the amount of collection fee (if any) deducted by the collection agent.
- (3) NZTGA must, in each levy year, keep records of—
 - (a) each amount of levy paid to it; and
 - (b) the name and address of each grower and collection agent who paid each amount of levy and the date on which it was received; and
 - (c) the amount of collection fee (if any) deducted by a collection agent; and
 - (d) how levy money was spent or invested.

- (4) The records required by this clause must be retained for at least 2 years after the end of the levy year to which they relate.

20 Confidentiality of information

- (1) No officer or employee of NZTGA or any other person who gathers information may disclose (except to some other officer or employee of NZTGA) any information obtained—
- (a) under or because of this order; or
 - (b) under the Commodity Levies Act 1990 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 Commodity Levies Act 1990; or
 - (b) the production of any statement under section 25 of the Commodity Levies Act 1990; or
 - (c) the giving of evidence in any legal proceedings taken—
 - (i) under or in relation to this order; or
 - (ii) in relation to this order, under or in relation to the Commodity Levies Act 1990.
- (3) Subclause (1) does not prevent NZTGA, or a collection agent, from—
- (a) disclosing or using any information (not being information relating to an identifiable person) for statistical or research purposes; or
 - (b) disclosing or using any information for the purposes of invoicing and collecting the levy; or
 - (c) disclosing or using any information with the consent of every identifiable person to whom it relates; or
 - (d) disclosing or using any information as required by law.

Miscellaneous

21 Conscientious objectors

- (1) A grower or collection agent who objects on conscientious or religious grounds to the manner of recovery by NZTGA 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 NZTGA.

22 Remuneration of persons conducting compliance audits

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

*Mediation in case of dispute***23 Appointment of mediators**

- (1) This clause applies to any dispute about—
 - (a) whether or not 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 Institute of Chartered Accountants of New Zealand to appoint a person to resolve the dispute by mediation; and, in that case, the President (or a person authorised by the President to do so) may appoint a person to resolve the dispute by mediation.
- (3) 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 30.

24 Remuneration of mediators

- (1) A mediator must be paid the 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 Institute of Chartered Accountants of New Zealand (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 is to 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.

25 Time and place of conference

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

26 Conference to be held in private

Only the parties to a dispute and the mediator may attend a conference organised by the mediator.

27 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.

28 Right to be heard

Every party to a dispute, 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.

29 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 a dispute to verify the evidence by statutory declaration.

30 Mediator may resolve dispute in certain cases

- (1) A mediator may resolve a dispute for the parties if—
 - (a) the mediator has organised and presided at a conference of the parties, but the dispute has not been resolved; or
 - (b) the mediator believes that the parties are unlikely to resolve the dispute, whether or not they confer directly.
- (2) If subclause (1) applies, 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 the decision of the mediator.

31 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the decision made by a mediator under clause 30 may appeal to a District Court against the decision.
- (2) The appeal must be brought by the filing of a notice of appeal within 28 days after the making of the decision concerned, or within any longer time 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 notify the appellant and the other parties to the dispute; and
 - (b) serve a copy of the notice of appeal on every other party 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.

*Revocation***32 Revocation**

- (1) The Commodity Levies (Tamarillos) Order 1997 (SR 1997/59) is revoked.
- (2) Despite subclause (1), amounts of levy that became payable to NZTGA under the Commodity Levies (Tamarillos) Order 1997 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 the 28th day after the date of its notification in the *Gazette*, imposes a levy on tamarillos grown for commercial purposes. The levy is payable to the New Zealand Tamarillo Growers Association Incorporated. Growers are primarily responsible for paying the levy. However, a collection agent who buys tamarillos from a grower must pay the levy to the New Zealand Tamarillo Growers Association Incorporated and recover it from the grower.

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

Date of notification in *Gazette*: 13 November 2003.

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