



## Commodity Levies (Pipfruit) Order 2012

Jerry Mateparae, Governor-General

### Order in Council

At Wellington this 29th day of October 2012

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 and on the recommendation of the Minister for Primary Industries 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 (Pipfruit) Order 2012.

## 2 Commencement

This order comes into force on 1 December 2012.

## 3 Interpretation

In this order, unless the context otherwise requires,—

**apple** means any fruit of any species of the genus *Malus*, and any variety of those species

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

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

**grower** means the occupier of land—

- (a) that is used in any levy year for growing pipfruit; and
- (b) from which there was harvested at least 1 000 kilograms of pipfruit during the 12 months immediately before the commencement of that levy year

**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 the money paid under this order as a levy

**levy year**—

- (a) means a period of 12 months starting on 1 November in any year and ending on 31 October of the following year; but
- (b) in the case of the **first levy year**, means the period starting on the commencement of this order and ending on 31 October 2013

**mediator** means a person appointed under clause 23 to resolve a dispute

**nashi pear** means any fruit of the species *Pyrus pyrifolia* or of any plant that is a hybrid of that species and the species *Pyrus ussuriensis*

**occupier** means—

- (a) a person who has the right to occupy land under a tenancy granted for a term of 12 months or more; or
- (b) if paragraph (a) does not apply, the owner of the land

**pear** means any fruit of any species of the genus *Pyrus* except a nashi pear

**pipfruit** means apples and pears

**PNZI** means the industry organisation known on the commencement of this order as Pipfruit New Zealand Incorporated.

#### **4 Levy imposed**

- (1) A levy is imposed on all pipfruit grown in New Zealand by growers and—
  - (a) sold for consumption as whole fresh fruit; or
  - (b) sold for resale as whole fresh fruit; or
  - (c) exported as whole fresh fruit.
- (2) The levy is payable to PNZI.

#### *Payment of levy*

#### **5 Growers primarily responsible for paying levy**

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

#### **6 Responsibility of collection agents to pay levy**

- (1) Despite clause 5, a collection agent must pay any levy on pipfruit that the collection agent—
  - (a) buys from a grower (other than through another collection agent); or
  - (b) sells on a grower's behalf; or
  - (c) exports on a grower's behalf.
- (2) A collection agent who has paid the levy in accordance with this clause may recover from the grower the total amount of—
  - (a) the levy; and
  - (b) any GST paid on the levy.
- (3) The collection agent may recover the total amount—
  - (a) by deducting it from any amount the collection agent owes the grower; or
  - (b) as a debt due to the collection agent from the grower.
- (4) A collection agent who pays the levy may deduct from the payment a collection fee of—
  - (a) not more than 4% of the amount of the levy (exclusive of GST); and
  - (b) any GST payable on the fee.

*Rate of levy*

- 7 Levy to be fixed at single rate**  
A single rate of levy must be fixed for all pipfruit.
- 8 Basis of calculation of levy**  
The levy payable in a levy year is to be calculated on the basis of the number of kilograms of pipfruit sold or exported in that year.
- 9 Maximum levy rate**  
The maximum levy rate is 1.5 cents per kilogram of pipfruit (exclusive of GST).
- 10 Fixing of levy rate**
- (1) The levy rate for the first levy year is 1.25 cents per kilogram of pipfruit (exclusive of GST).
  - (2) PNZI 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.
  - (3) Growers who are not members of PNZI must—
    - (a) be allowed to attend the meeting; and
    - (b) be given speaking rights on the levy rate.
- 11 Previous rate to apply**  
If PNZI does not fix the levy rate before the start of a levy year, the levy rate for that year is the rate last fixed under clause 10.
- 12 Notification of levy rate**
- (1) As soon as practicable after fixing a levy rate for a levy year, PNZI must notify the rate and the year to which it applies in—
    - (a) *Pipfruit Newz*; and
    - (b) the *Gazette*.
  - (2) If *Pipfruit Newz* ceases to be published, the levy rate must be notified in—
    - (a) any publication that replaces it; or
    - (b) if no publication replaces it, a publication specified for the purposes of this order by the Minister for Primary Industries by notice in the *Gazette*.

*Time for payment of levy*

**13 When levy payable**

- (1) The due date for payment of any levy is,—
  - (a) for pipfruit sold in New Zealand by or on behalf of a grower, the date of sale;
  - (b) for pipfruit exported by or on behalf of a grower, the earlier of—
    - (i) the date of sale;
    - (ii) the date on which the pipfruit is loaded on an international carrier for export.
- (2) However, the due date for payment of any levy is,—
  - (a) for pipfruit sold by a grower to a collection agent who resells the pipfruit in New Zealand, the date of sale by the collection agent;
  - (b) for pipfruit sold by a grower to a collection agent who exports the pipfruit, the earlier of—
    - (i) the date of sale by the collection agent;
    - (ii) the date on which the pipfruit is loaded on an international carrier for export.
- (3) The latest date for payment of the levy is 90 days after the due date for payment.

**14 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 **original amount**), the following amounts of additional levy must also be paid:

- (a) 5% of the original amount; and
- (b) 2% of any part of the original amount that remains unpaid, for each month that the part remains unpaid after the latest date for payment.

*Expenditure of levy money by PNZI*

**15 Levy money must be spent by PNZI or subsidiary**

PNZI, or any subsidiary of PNZI, must—

- (a) spend all levy money paid to PNZI; and
- (b) invest all levy money until it is spent.

**16 Purposes for which levy money may be spent**

- (1) PNZI, or any subsidiary of PNZI, may spend levy money for the following purposes relating to pipfruit or growers:
  - (a) product research and development, including the development of new varieties:
  - (b) production research and development:
  - (c) market research and development, including the development of access to markets:
  - (d) education and training:
  - (e) provision and application of technology:
  - (f) promotion of pipfruit:
  - (g) quality assurance programmes:
  - (h) development of a central registration system and database:
  - (i) development and maintenance of an industry Internet site:
  - (j) day-to-day administration of PNZI:
  - (k) representation of the views of growers.
- (2) PNZI, or any subsidiary of PNZI, must not spend levy money on any commercial or trading activities.

**17 Consultation on spending levy money**

- (1) PNZI must consult growers who pay the levy on how it proposes to spend levy money at—
  - (a) its annual general meeting; or
  - (b) any special general meeting called for the purpose.
- (2) PNZI must—
  - (a) give growers adequate notice of an annual general meeting or a special general meeting at which the spending of levy money is to be discussed; and
  - (b) allow growers at the meeting to speak on all matters relating to the spending of levy money.

*Information and record-keeping requirements***18 Confidentiality of information**

- (1) No officer, employee, or agent of PNZI may disclose 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 prevent the disclosure of information—
  - (a) to another officer, employee, or agent of PNZI; or
  - (b) with the consent of the person who provided the information, and of every identifiable person to whom it relates; or
  - (c) for statistical or research purposes, if the information is 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) enforcing this order, including collection of the levy; or
  - (b) complying with section 17(1) or 25 of the Commodity Levies Act 1990; or
  - (c) giving evidence in any legal proceedings taken under or in relation to this order.

## **19 Returns to be provided to PNZI**

- (1) PNZI may make a written request for information from any of the following persons for the purpose of enabling or assisting PNZI to determine the amount of any levy payable:
  - (a) a grower;
  - (b) a collection agent;
  - (c) a person who exports pipfruit from New Zealand.
- (2) The information must be provided to PNZI in writing as soon as is reasonably practicable, but no later than 30 days, after the request is received.

## **20 Records**

- (1) A grower must, for every levy year, keep records of—
  - (a) all matters that the grower provides information about under clause 19; and
  - (b) each amount of levy that the grower pays to PNZI, and the date of payment; and
  - (c) the number of kilograms of pipfruit to which the levy applies that the grower—
    - (i) sells for consumption or resale in New Zealand;
    - (ii) exports or sells for export.



- (2) A collection agent must, for every levy year, keep records of—
- (a) all matters that the collection agent provides information about under clause 19; and
  - (b) each amount of levy that the collection agent pays to PNZI, and the date of payment; and
  - (c) the number of kilograms of pipfruit to which the levy applies that the collection agent—
    - (i) buys from each grower to resell for consumption or further resale in New Zealand;
    - (ii) actually resells for consumption or further resale in New Zealand (after purchase from each grower);
    - (iii) buys from each grower to export or to resell for export;
    - (iv) actually exports or resells for export (after purchase from each grower);
    - (v) sells on behalf of each grower for consumption or resale in New Zealand;
    - (vi) exports on behalf of each grower, or sells on behalf of each grower for export; and
  - (d) the full name and contact details of each grower referred to in paragraph (c).
- (3) A grower or collection agent must record weights separately for each type of transaction specified in subclauses (1)(c) and (2)(c), and must record separately the weights for apples and for pears.
- (4) A grower or collection agent must retain the records for at least 7 years after the end of the levy year to which the records relate.
- (5) PNZI must, for every levy year, keep records of—
- (a) each amount of levy money paid to it and, in relation to each amount,—
    - (i) the date on which it was received; and
    - (ii) the person who paid it; and
  - (b) how and when PNZI, or any subsidiary of PNZI, invested any levy money; and
  - (c) how and when PNZI, or any subsidiary of PNZI, spent all levy money.

- (6) PNZI must retain its records for at least 7 years after the end of the levy year to which the records relate.
- (7) This clause does not require any person to keep a nil record.

### *Miscellaneous*

#### **21 Conscientious objectors**

- (1) A grower or collection agent who objects on conscientious or religious grounds to paying an amount of levy in the manner provided for in this order may pay the amount to the chief executive of the Ministry for Primary Industries.
- (2) The chief executive must pay the amount to PNZI.

#### **22 Remuneration of persons conducting compliance audits**

A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 is to be remunerated by PNZI at a rate determined by the Minister for Primary Industries after consultation with PNZI.

### *Mediation of disputes*

#### **23 Appointment of mediators**

- (1) This clause applies to any dispute about—
  - (a) whether a person is required to pay a 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 30.

#### **24 Remuneration of mediators**

- (1) A mediator is to be paid remuneration (by way of fees and allowances) agreed to by the parties to the dispute.

- (2) If the parties to the dispute cannot agree on the 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 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 any amount fixed by the President (or authorised person) and specified as an amount to be paid by that party.

**25 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 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 mediator and the parties to a dispute may attend a conference, unless clause 27 applies.

**27 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 to do so in all the circumstances.

**28 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.

**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 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 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.

### **31 Costs of mediation**

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

### **32 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 filing a notice of appeal—
  - (a) within 28 days after 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.

### *Revocation*

#### **33 Revocation**

- (1) The Commodity Levies (Pipfruit) Order 2006 (SR 2006/338) is revoked.
- (2) Amounts of levy that became payable under the Commodity Levies (Pipfruit) Order 2006 before the date this order comes into force continue to be due and payable as if that order had not been revoked.

Michael Webster,  
for Clerk of the Executive Council.

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### **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 1 December 2012, imposes a levy payable to Pipfruit New Zealand Incorporated on apples and pears (other than nashi pears) grown in New Zealand and sold or exported as whole fresh fruit.

This order replaces and revokes the Commodity Levies (Pipfruit) Order 2006.

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

Date of notification in *Gazette*: 1 November 2012.

This order is administered by the Ministry for Primary Industries.

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