

For the attention of Mr. Marius Kohl

Administration des Contributions Directes
Bureau d'imposition Sociétés VI
18, Rue du Fort Wedell
L-2982 Luxembourg

October 22, 2008

References: VTLN/MCMT/Q5108016M-JOMS

Mytilus LuxCo I S.à r.l. – Tax number: 2008/24/36341
Mytilus LuxCo II S.à r.l. – Tax number: 2008/24/36295



Dear Mr. Kohl,

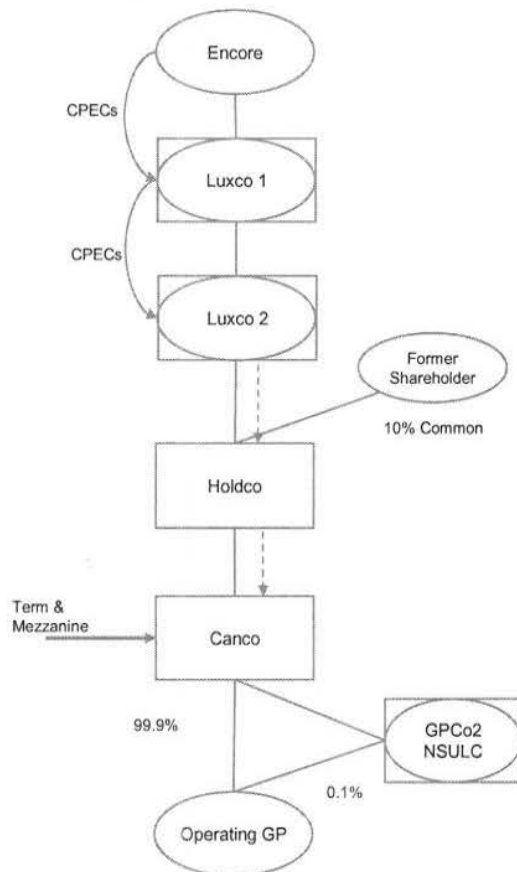
On behalf of the above-mentioned companies and further to our meeting of 30 July 2008, we would like to submit to your attention the following situation and obtain your agreement and/or your comments on the tax treatment described herein.

A Background

A.1 Facts

- 1 Encore Consumer Capital Fund L.P., a Delaware Fund managed and advised by Encore Consumer Capital, ("Encore" or "the Fund") acquired Atlantic Aqua Farms, a Canadian group specialized in the growing and processing of farm-raised mussels ("Canadian Cove"). For your information, you will find enclosed a brief description of Encore and Canadian Cove (**Appendix 1**).
- 2 The investment was structured through a double tier Luxembourg holding structure. Accordingly, Encore holds two fully taxable Luxembourg companies having the legal form of *Sociétés à responsabilité limitée*, Mytilus LuxCo I ("LuxCo 1") and Mytilus LuxCo II ("LuxCo 2"), and funded these companies with 1% equity and 99% Convertible Preferred Equity Certificates ("CPECs").
- 3 LuxCo 2 holds a 90% participation in Mytilus Holding Limited, a Nova Scotia limited liability company ("HoldCo"), that in turn holds a participation in another Nova Scotia limited liability company ("CanCo") that acquired Canadian Cove. For your information, you will find the relevant acquisition steps depicted in **Appendix 2** attached hereto.

A.2 Simplified structure



B Tax Regime

B.1 Luxembourg tax residency

- 4 LuxCo 1 and LuxCo 2 have their statutory seat and central administration¹ in Luxembourg. It follows that the companies will be considered to be Luxembourg tax-residents within the meaning of Article 159 of the Luxembourg Income Tax Law (“LITL”). A tax residence certificate may be requested in the future for these companies.

B.2 Luxembourg tax treatment of the CPECs issued by LuxCo 1 and LuxCo 2

- 5 Based on the characteristics of the CPECs issued by LuxCo 1 and LuxCo 2, they will be treated as debt for Luxembourg income tax and also net wealth tax purposes. Therefore, the interest expenses will be fully tax deductible at the level of both LuxCo 1 and LuxCo 2 and not subject to withholding tax (see our technical analysis on the debt characterization of the CPECs instrument provided in **Appendix 3**).

¹ The shareholders’ meetings as well as the meetings of the board of directors of LuxCo 1 and LuxCo 2 will be regularly and physically held in Luxembourg. The management decisions will be effectively taken in Luxembourg. Their accounting and archives will also be kept in Luxembourg.

- 6 An optional repurchase (i.e. redemption at fair market value) of the CPECs should not be subject to withholding tax. Moreover, should LuxCo 1 / LuxCo 2 realise a loss on the repurchase of the CPECs, said loss would be deductible at LuxCo 1 / LuxCo 2 level (yet subject to recapture in the case of LuxCo 2).

B.3 Compliance with the Luxembourg debt-to-equity ratio

- 7 LuxCo 2's participation in HoldCo was financed with 1% equity and 99% debt CPECs. However, as the interest market rate on the CPECs has been discounted by 15%, LuxCo 2 should be deemed to comply with the Luxembourg debt-to-equity ratio usually required by the Luxembourg tax authorities for the financing of shares through intra-group debt.
- 8 Consequently, any interest paid under the CPECs will not be re-characterized into dividend distributions neither for Luxembourg corporate income tax nor for municipal business tax purposes and will thus not be subject to any Luxembourg withholding tax (see our technical analysis provided in **Appendix 4**).

B.4 Back-to-back financing activity of LuxCo 1

- 9 LuxCo 1 is in a back-to-back situation for an amount of circa € 7.54 million. Given the amounts involved and the financing risk profile of the company, an appropriate net taxable margin of 0.25% will be reported by LuxCo 1 on its back-to-back CPECs financing (see our technical analysis provided in **Appendix 5**).

B.5 Luxembourg participation exemption regime

- 10 HoldCo was incorporated as a Nova Scotia limited liability company. Hence, HoldCo is a fully taxable company in Canada at the standard Canadian corporate income tax rate (combined federal and provincial) of circa 30%, and does not benefit from any specific preferential tax regime.
- 11 Accordingly, LuxCo 2 will benefit from the Luxembourg participation exemption regime in Luxembourg with respect to dividends and capital gains derived in relation to its qualifying participation in HoldCo, provided LuxCo 2 holds or commits to hold a participation of at least 10% (or with an acquisition price of at least € 1.2 million for dividends and € 6 million for capital gains) in HoldCo for an uninterrupted period of at least 12 months pursuant to Article 166 LITL and the Grand Ducal Regulation of 21 December 2001 for the application of Article 166 LITL, subject however to the recapture rules.
- 12 In addition, said participation in HoldCo will also benefit from the participation exemption regime for net wealth tax purposes, pursuant to section 60 of the Property and Securities Act.



We respectfully request that you confirm the tax treatment of the situation described above or that you provide us with your remarks, if any.

We remain at your disposal should you need any further information and would like to thank you for the attention that you will give to our request.

Yours sincerely,



Vincent Lebrun
Partner



João Martins
Manager

Appendices:

- Appendix 1: Description of Encore Consumer Capital and Canadian Cove
- Appendix 2: Description of the steps implemented
- Appendix 3: Characteristics / tax treatment of the CPECs
- Appendix 4: Compliance with the Luxembourg debt-to-equity ratio
- Appendix 5: Back-to-back financing activity of LuxCo 1
- Appendix 6: Legal documentation

For approval

Le préposé du bureau d'imposition Sociétés 6
Marius Kohl

Luxembourg, le 22 OCT. 2008



This tax agreement is based on the facts as presented to PricewaterhouseCoopers S.à r. l. as at the date the advice was given. The agreement is dependent on specific facts and circumstances and may not be appropriate to another party than the one for which it was prepared. This tax agreement was prepared with only the interests of Mytilus LuxCo I S.à r.l., and Mytilus LuxCo II S.à r.l. in mind, and was not planned or carried out in contemplation of any use by any other party. PricewaterhouseCoopers S.à r. l., its partners, employees and or agents, neither owe nor accept any duty of care or any responsibility to any other party, whether in contract or in tort (including without limitation, negligence or breach of statutory duty) however arising, and shall not be liable in respect of any loss, damage or expense of whatever nature which is caused to any other party.

DESCRIPTION OF ENCORE CAPITAL GROUP AND CANADIAN COVE

A Description of Encore Consumer Capital Group

- 1 Encore Consumer Capital (www.encoreconsumercapital.com) is an innovative private equity firm focused on investing in food and consumer products manufacturing and marketing companies with greater than USD 10 million in revenue. Encore Consumer Capital manages more than USD 175 million in committed equity capital and is a partnership between experienced principal investors and veteran industry operators from Encore Associates, Inc. (“EAI”). EAI provides strategic advisory services to middle market food and consumer products companies. Encore Consumer Capital and EAI work closely together to identify new investment opportunities and drive portfolio company performance. Encore Consumer Capital’s focus is for companies serving consumer sectors with favorable dynamics for sustainable earnings growth which have resisted down cycles and show a compelling potential to improve margins such as Food & Beverage, Health and Beauty Care and Sporting Goods, among others.

B Description of Canadian Cove

- 2 Canadian Cove is the main brand of Atlantic Aqua Farms, located in eastern Prince Edward Island, Canada. Atlantic Aqua Farms has been growing and processing cultured mussels since the late 1980's and has become the largest mussel operation in North America. Atlantic Aqua Farms is the leading supplier of farm-raised, premium, live mussels in North America.

DESCRIPTION OF THE STEPS IMPLEMENTED

Step 1: Establishing the holding structure

- 1 On 22 August 2008, Encore incorporated a new Luxembourg company named Mytilus LuxCo II (hereinafter referred to as “LuxCo 2”) as a Luxembourg *Société à Responsabilité Limitée* with minimum share capital (EUR 12,500).
- 2 On the same day, Encore incorporated another Luxembourg *Société à Responsabilité Limitée* named Mytilus LuxCo I (hereinafter referred to as “LuxCo 1”) by contributing its shares in LuxCo 2 in exchange for new shares in LuxCo 1.
- 3 In August 2008 it was also incorporated Mytilus Holdings Limited, a Nova Scotia limited liability company (hereinafter referred to as “HoldCo”). HoldCo was in turn acquired by LuxCo 2.

Step 2: Funding of the structure

- 4 On 30 September 2008, Encore decided to create a special reserve account connected to the share capital of LuxCo 1 without the issuance of shares, for an amount of € 76,144.65. Subsequently, LuxCo 1 decided to create a special reserve account connected to the share capital of LuxCo 2 without having any shares issued, also for an amount of € 76,144.65.
- 5 Also on 30 September 2008, Encore subscribed for 7,538,321 Convertible Preferred Equity Certificates (“CPECs”), having a par value of € 1 each, issued by LuxCo 1. Subsequently, LuxCo 1 used these proceeds to subscribe for 7,538,321 CPECs with a par value of € 1 each issued by LuxCo 2.
- 6 LuxCo 2 used funds received under the special reserve connected to its share capital and the CPECs issued to capitalize HoldCo with equity for a total amount of CAD 11,475,000 (equivalent of € 7,614,465.65). Consequently, LuxCo 2 will hold a 90% participation in HoldCo while 10% will still be held by Canadian Cove's former shareholders.

Step 3: Acquisition of Canadian Cove

- 7 Subsequently HoldCo used the funds received under the previous step to capitalize a new Nova Scotia limited company (“CanCo”). CanCo also borrowed a combination of senior term loans and mezzanine financing, and used its equity and debt funding to acquire, on 30 September 2008, Canadian Cove.

A Main features of the CPECs issued by LuxCo 1 and LuxCo 2

Features	CPECs issued by LuxCo 1	CPECs issued by LuxCo 2
Term	49 years	49 years
Return	0.5% discounted by 15% resulting in an effective rate of 0.425% <i>per annum</i>	0.5% discounted by 15%, plus a margin of 0.25%, resulting in an effective rate of 0.675% <i>per annum</i>
Redemption alternatives	<ul style="list-style-type: none"> ▪ Redemption at maturity at a value equal to the par value plus accrued and unpaid return. ▪ Redemption upon liquidation at a value equal to the par value plus accrued and unpaid return. ▪ Optional redemption at a price equal to the greater of (i) par value plus accrued and unpaid return or (ii) fair market value on a fully diluted basis, of the shares into which the CPEC would have been convertible or converted. 	<ul style="list-style-type: none"> ▪ Redemption at maturity at a value equal to the par value plus accrued and unpaid return. ▪ Redemption upon liquidation at a value equal to the par value plus accrued and unpaid return. ▪ Optional redemption at a price equal to the greater of (i) par value plus accrued and unpaid return or (ii) fair market value on a fully diluted basis, of the shares into which the CPEC would have been convertible or converted.
Conversion	On a Conversion Event, at any time before maturity, each Holder shall have the right to have any or all of its CPECs converted into shares of the Company by requiring the Company to exchange the CPECs for shares at the conversion ratio (i.e. 1 to 1).	On a Conversion Event, at any time before maturity, each Holder shall have the right to have any or all of its CPECs converted into shares of the Company by requiring the Company to exchange the CPECs for shares at the conversion ratio (i.e. 1 to 1).
Ranking	The CPECs shall, with respect to payment rights, redemption and rights of liquidation, winding up and dissolution, rank prior to all Subordinated Securities of the Company, rank <i>pari passu</i> with any Preferred Equity Certificates issued by the Company and be subordinated to all other present and future obligations of the Company, whether privileged, secured or unsecured.	The CPECs shall, with respect to payment rights, redemption and rights of liquidation, winding up and dissolution, rank prior to all Subordinated Securities of the Company, rank <i>pari passu</i> with any Preferred Equity Certificates issued by the Company and be subordinated to all other present and future obligations of the Company, whether privileged, secured or unsecured.
Liquidation proceeds	No entitlement to liquidation proceeds.	No entitlement to liquidation proceeds.
Transfer restrictions	The CPECs are freely transferable and assignable, subject to any restrictions on transfer imposed by any agreement.	The CPECs are freely transferable and assignable, subject to any restrictions on transfer imposed by any agreement.
Voting rights	No voting rights attached.	No voting rights attached.

B Characterisation of the CPECs issued by LuxCo 1 and LuxCo 2 as debt for Luxembourg tax purposes

- 1 Based on the characteristics above mentioned, the CPECs issued by LuxCo 1 and LuxCo 2 will be treated as debt for Luxembourg income tax and net wealth tax purposes.
- 2 In this respect, the explanatory note to the income tax reform law no. 571 of 1955 (*Projet de Loi* on Article 114 – currently Article 97 LITL) points out that the distinction between debt and equity must be done on the basis of the economic characteristics of the financial instrument. In particular, the main economic features that characterise a financial instrument as debt are:
 - The fact that the instrument yields a fixed income (as opposed to an equity participation which gives right to a percentage of the company's profits); and
 - A privileged ranking over the company's shares.
- 3 Considering the above criteria and given that the CPECs meet them, they will qualify as regular debt for Luxembourg income tax and net wealth tax purposes at the level of both LuxCo 1 and LuxCo 2.
- 4 The interest paid thereon will be booked as a yearly financial cost (even if not paid but only accrued for). This accounting treatment will be followed for tax purposes as no specific tax rules depart there from (cf. Article 40 LITL). Consequently, the interest will constitute a yearly tax-deductible charge.

Tax treatment of the interest payments on the CPECs

- 5 Articles 146(1)-3 LITL provides for the application of a withholding tax upon payment of interest arising from profit participation bonds or other similar securities. Indeed, interest may be subject to the 15% domestic withholding tax in Luxembourg if the following conditions are met:
 - The loan is structured under the form of bonds or other similar securities; and;
 - Aside from the fixed interest, a supplementary interest varying according to the amount of distributed profit is paid, unless said supplementary interest is stipulated simultaneously with a momentary decrease of the fixed interest.
- 6 Consequently, as the CPECs issued by LuxCo 1 and LuxCo 2 will bear a fixed interest, are not profit participating bonds and, moreover, carry an arm's length interest rate, such withholding tax will not apply to interest payments made under these instruments.

- 7 Besides, as the debt-to-equity ratio is deemed to be respected at the time of the acquisition of the shares (in this respect, we refer to Appendix 4) in HoldCo, interest paid by LuxCo 2 on the CPECs financing the shares in HoldCo will be deductible and exempt from withholding tax. The deductibility is however subject to recapture upon a potential gain derived from the participation in HoldCo.

C Tax treatment of the CPECs issued by LuxCo 1 and LuxCo 2 upon repurchase

- 8 With respect to the repayment of the principal, the instruments providing for the CPECs issuance lay down that it can be carried out in the following ways.
 - **Redemption at maturity/liquidation date:** The CPECs shall be redeemed at maturity date (i.e. 49 years) or liquidation date at a price equal to the sum of (i) the par value for each outstanding CPEC plus (ii) the accrued and unpaid return.
 - **Conversion:** The Holders may convert all or part of the CPECs into ordinary shares upon a conversion event.
 - **Optional repurchase:** The Holders may request, under certain conditions, that the CPECs are repurchased at a price equal to the greater of (i) par value plus accrued and unpaid return or (ii) fair market value on a fully diluted basis, of the shares into which the CPEC would have been convertible or converted.
- 9 An optional repurchase by LuxCo 1 and LuxCo 2 of the CPECs will neither be re-characterized into a hidden dividend distribution nor into any other similar operation in the sense of Article 164 (3) LITL. As a consequence, the redemption of the CPECs will not be subject to any Luxembourg withholding tax in accordance with Article 146 (1) LITL. An optional redemption of LuxCo 1's CPECs should neither fall within the scope of Article 56 LITL.
- 10 In case of the sale of LuxCo 2/HoldCo's shares, LuxCo 1/LuxCo 2 would realize a capital gain if the value of LuxCo 2/HoldCo's shares would be superior to their book value at the time of the disposal. This potential capital gain may benefit from the Luxembourg participation exemption regime on capital gains, provided that LuxCo 1/LuxCo 2 has held for at least 12 months more than 10% of the shares in LuxCo 2/HoldCo (or a participation with an acquisition cost of at least € 6 million).
- 11 In these circumstances, recapture rules would apply up to the aggregate amount of the interest expenses borne by LuxCo 2 and which are related to the participation in HoldCo (i.e. the interest payments on the CPECs) deducted the year in which the disposal takes place as well as in previous years.
- 12 In addition, a potential loss realized by LuxCo 2 upon the redemption of the CPECs at fair market value will also be subject to recapture rules.

- 13 In case LuxCo 2 may not benefit from the Luxembourg participation exemption regime on the capital gain realized at the time of the sale of HoldCo's shares, such a taxable gain may be offset, yet not completely insofar as LuxCo 2 has financed part of HoldCo's shares with equity, against the tax-deductible loss realized upon the redemption of the CPECs at fair market value in favour of LuxCo 1.

COMPLIANCE WITH THE LUXEMBOURG DEBT-TO-EQUITY RATIO

- 1 Both LuxCo 1 and LuxCo 2 will be compliant with the 85/15 debt-to-equity ratio usually required by the Luxembourg tax authorities for the financing of shares through intra-group debts.
- 2 The Luxembourg companies were funded through equity for 1% (i.e. € 76,144.65) and 99% (i.e. € 7,538,321) through debt CPECs. In addition, the interest rate on the CPECs is duly discounted by 15%.
- 3 Luxembourg companies should in principle comply with a debt-to-equity ratio of 85/15, as this is the ratio generally used by the Luxembourg tax administration with respect to intra-group financing of participations.
- 4 In view of its CPECs back-to-back financing activity, LuxCo 1 will not be considered thinly capitalized. All interest paid by LuxCo 1 under the CPECs will be considered tax deductible expenses.
- 5 Given that the interest market rate applicable to the CPECs will be duly discounted by 15%, the interest paid on these CPECs will not exceed the amount of interest expenses due if the debt-to-equity ratio of 85/15 was respected. Hence, LuxCo 2 will not be considered thinly capitalized.
- 6 Consequently, pursuant to article 97-1 (5) LITL in combination with Article 146 LITL, the entire interest payment on the CPECs would not be subject to any withholding tax.
- 7 Based on this background, LuxCo 1 and LuxCo 2 comply with the Luxembourg debt-to-equity ratio. Thus, the interest on CPECs issued by LuxCo 1 and LuxCo 2 will not be re-characterised as dividend neither for Luxembourg corporate income tax and nor for municipal business tax purposes and will not be subject to any Luxembourg withholding tax.
- 8 The premium paid upon an optional redemption of the CPECs at fair market value shall not be deemed an interest payment and thus it is outside the scope of thin-capitalisation rules. Respectively, any premium paid on the repurchase of the CPECs will not be subject to withholding tax.

BACK-TO-BACK FINANCING ACTIVITY OF LUXCO 1

- 1 LuxCo 1 is in a financing back-to-back position for an amount of € 7,538,321 (i.e. the back-to-back CPECs).
- 2 The terms and conditions of the CPECs issued by LuxCo 1 correspond – aside from the slight difference in the return (i.e. margin of 0.25%) – to the terms of the CPECs issued by LuxCo 2. In addition, LuxCo 1 will neither bear a foreign exchange risks (i.e. the CPECs are denominated in the same currency) nor any credit default risk.
- 3 Considering the amounts involved and the risk profile, the taxable profit realized by LuxCo 1 in relation to its financial activities will be considered as appropriate and acceptable (with respect to Articles 56 and 164 (3) LITL) insofar as it represents a net taxable margin of 0.25%.
- 4 Taking into account that (a) a sufficient annual net taxable margin remains on the on-lent amount at the level of LuxCo 1, (b) LuxCo 1 does not bear a currency and/or credit risk, (c) the agreed interest rates are at arm's length and (d) the terms of the CPECs issued by LuxCo 1 correspond largely to the terms of the CPECs issued by LuxCo 2, the interest on the CPECs issued by both LuxCo 1 and LuxCo 2 are deductible for Luxembourg corporate and municipal business tax purposes and will not be subject to any Luxembourg withholding tax.
- 5 In case the accounting profit of LuxCo 1 is higher to this minimum margin, the taxable base would be computed according to said accounting profit.
- 6 Expenses are deductible according to standard tax rules. However, the minimum taxable margin is to be understood as a net remuneration. Hence, no expenses in relation to this back-to-back arrangement shall reduce the above minimum taxable basis. This implies that specific expenses (direct expenses) in relation to the back-to-back situation will be deductible only from the part of income over and above the margin and will not be offset against the margin. This still holds true as regards general expenses (i.e. indirect expenses, overhead expenses or operating expenses of LuxCo 1 as a whole such as supervisory, general and administrative expenses), as long as the company does not run another activity.
- 7 LuxCo 1 will be entitled to deduct the entire amount of its € 7,538,321 back-to-back CPECs financing from its unitary value for net wealth tax purposes.

LEGAL DOCUMENTATION

1. Terms and conditions of the CPECs issued by Mytilus LuxCo I S.à r.l.;
2. Terms and conditions of the CPECs issued by Mytilus LuxCo II S.à r.l.;

