

*(Re)Structuring Investments In/Out
of Venezuela
in Troubled Times*

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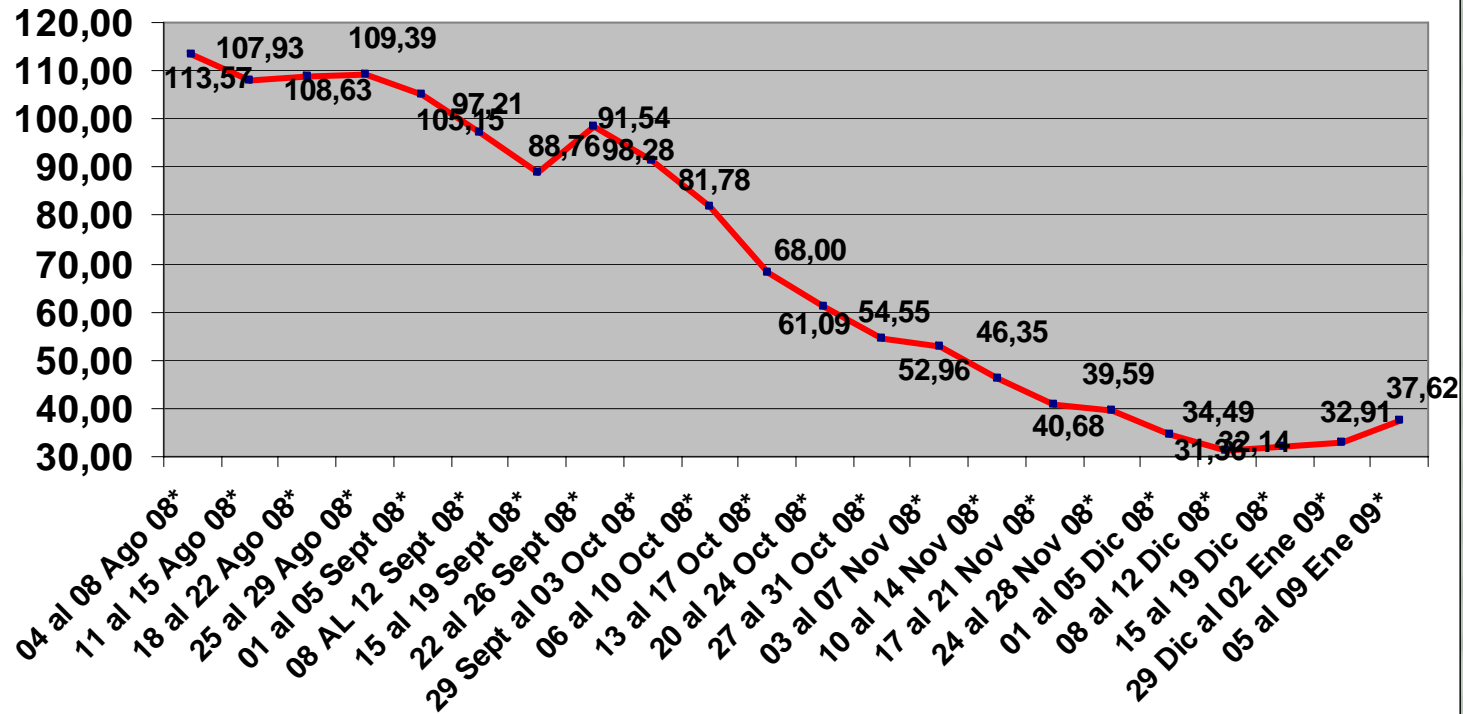
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ENVIRONMENT

- Venezuelan economy relies heavily on oil/products exports.***
- Nationalization of Basic Industries (oil, steel, cement, banking) underway.***
- Land Confiscation/Appropriation.***
- Foreign Currency Exchange Controls.***
- Price controls and Heavily Regulated Economy.***
- Freeze on labour layouts/biased authority in collective bargaining negotiation.***

Developments & Issues

Cesta Venezolana (US\$)



ENVIRONMENT

- ❑ *Difficult to operate in Venezuela due to limited certainty, predictability and enforceability.*
- ❑ *Consumer goods industries have showed positive results (high demand).*
- ❑ *Dealing with Expropriation/Nationalization:*
 - ✓ *Confiscation.*
 - ✓ *“Voluntary” associations (empresas mixtas) under State control.*
 - ✓ *Creeping expropriation.*
 - ✓ *Third party agents supported by Government.*

Developments & Issues

1. *Foreign Currency Exchange*
2. *Expropriation / Price Regulations*
3. *Tax Amendments*
 - *Income Tax Amendments vs. VAT Rate Increase*
 - *Income Tax Rate vs. Wealth Tax Proposal*

Estructuring & Reestructuring

- *A need in Venezuela amidst the current Governmental Policies*
- *Asset Protection against confiscation and for obtaining a better footing in negotiating price*
- *Forum shopping BIT and tax treaty*

Estructuring & Reestructuring

- ❑ *Treaties Rank higher than Domestic Law.*
- ❑ *Venezuela has entered to date:*
 - *25 Bilateral Investment Treaties.*
- ❑ *With effect from November 1st.2008 the BIT with NL was terminated.*
 - *Grandfather rights for 15 years for investments prior to said date.*
- ❑ *Experience has shown that broader protection is achieved through BITs:*
 - ✓ *Confiscation – access to Institutional Arbitration (ICSID).*
 - ✓ *Negotiation with Government instrumentalities.*

Estructuring & Reestructuring

➤ *Bilateral tax treaties:*

- ✓ *Taxes on income and/or capital.*
- ✓ *25 broad tax treaties.*
- ✓ *24 treaties on Air and/or Sea Transportation (cover income tax and other taxes).*
- ✓ *For some the scope extends to municipal taxes (in addition to the non-discrimination provisions which apply to all taxes).*

Estructuring & Reestructuring

- 1. There are No Broad Reorganization Provisions under the Income Tax Law*
 - *Domestic Statutory Mergers do not trigger a taxable event (need to be careful about VAT).*
 - *Cross border mergers into and out of Venezuela*
 - *Overseas mergers rendering effects into Venezuela*

Estructuring & Reestructuring

2. Equity Contributions

- *Need to review all facts and circumstances*
- *Equity Contributions should not commonly trigger a taxable event (only if value recognized in excess of basis).*
- *Alternatives to capital contribution / Premium & Supplementary payments*

Estructuring & Reestructuring

3. Taxation of gain in Excess of Basis

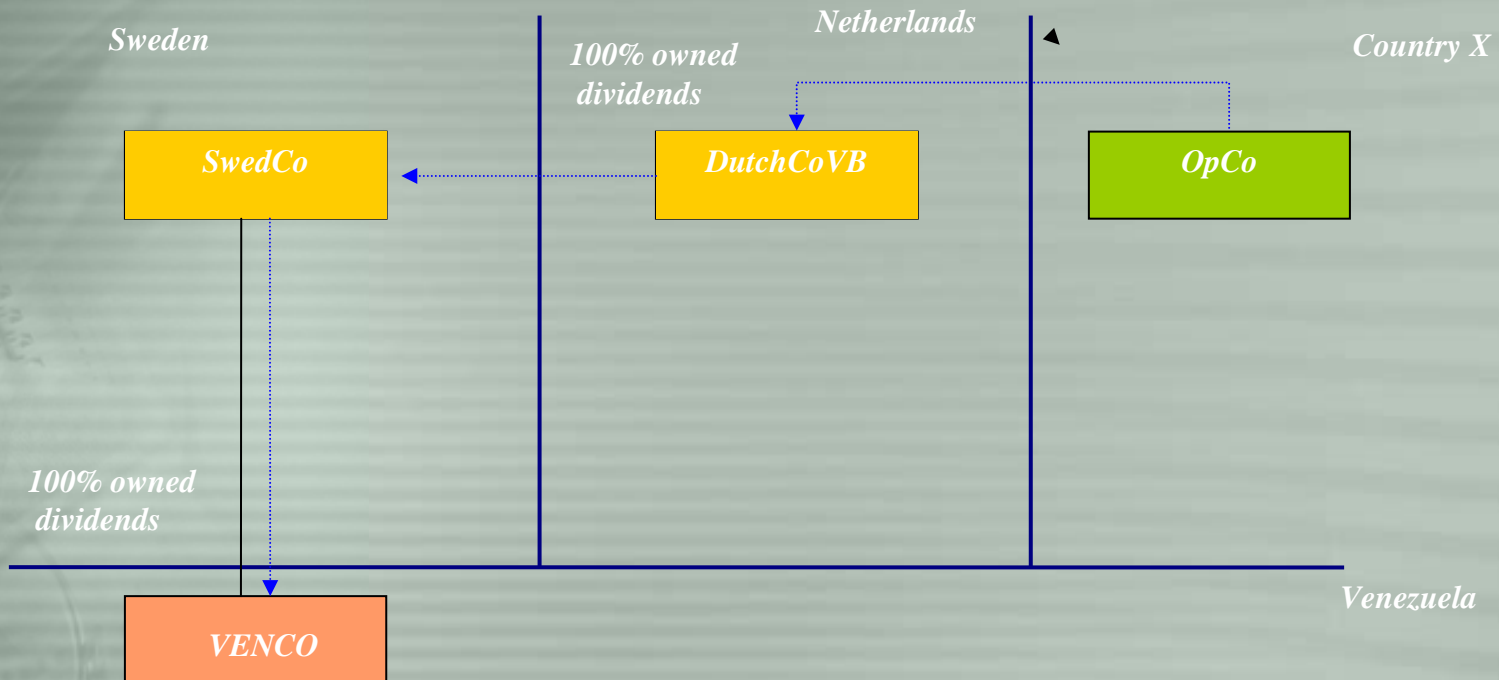
- *Loss in Sale of Shares only if Active Business during last 2 years*
- *WHT of 5% on Amount of Sale*
- *No step up basis of underlying assets*
- *Availability of Tax treaty benefit (The case for companies engaged in oil activities)*

Estructuring & Reestructuring

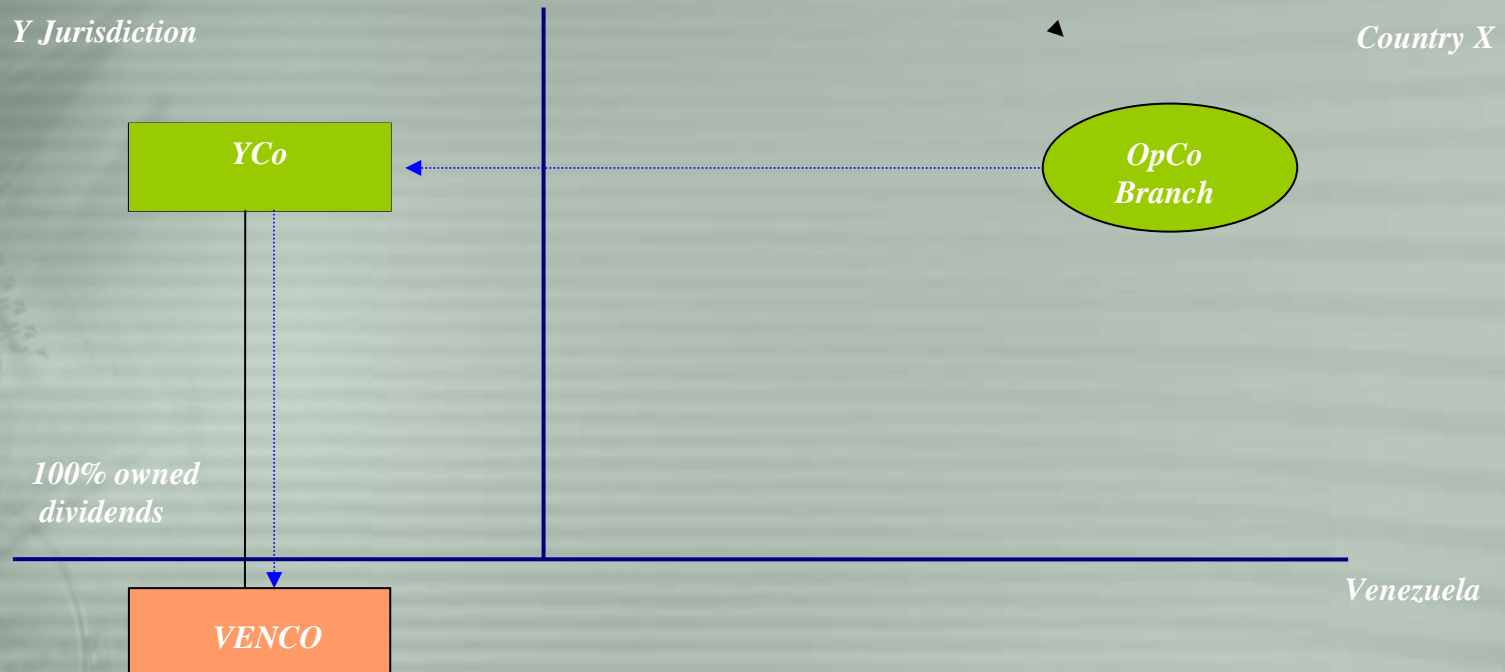
4. Asset Deals

- *Taxation of gain in Excess of Basis*
- *Losses are fully deductible*
- *WHT of 5% on Amount of Sale only if sale of line of business (fondo de comercio)*
- *Step up of basis of assets*
- *Availability of Tax treaty benefit (if reestructuring implies moving IP to a different jurisdiction)*

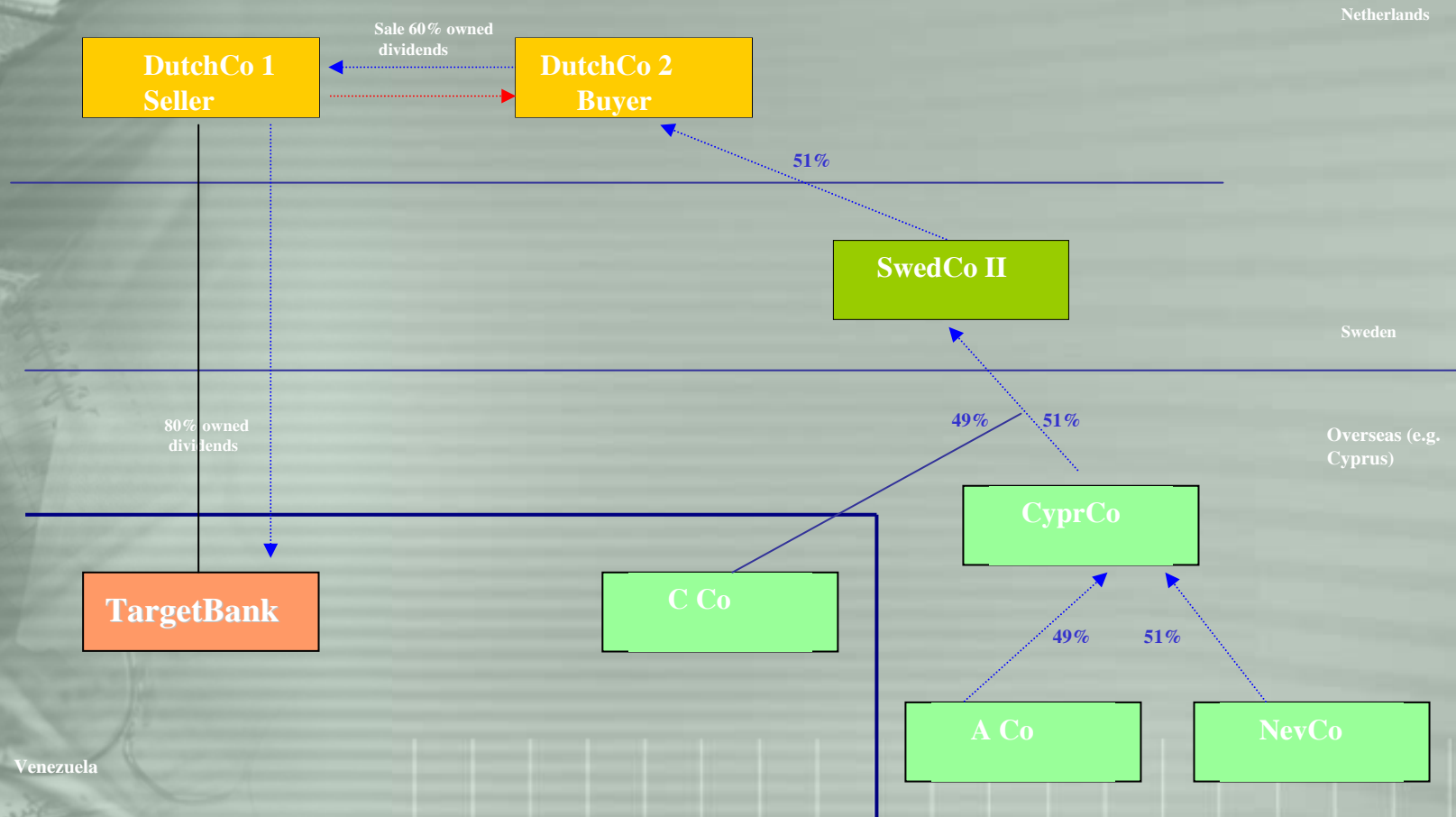
Outbound structure



Overseas structure



Inbound Structure



Inbound Structure

