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The sale of shares from a trust – the Koos Bekker scenario

TRUST-WORTHY

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THE recent Prosus JSE SENS announcement stated that "the [Bekker] family trust sold a parcel of Prosus shares to fund building operations at hotels in various countries in which the family trust has an interest." It is not clear what the Prosus statement implies – whether these interests are held by the trust or by Bekker and his wife personally, or even through other entities.

The Bekker family owns the Babylonstoren estate, in the Western Cape, which houses luxury hotels, directly or through the trust or other entities. In 2019, they also opened The Newt in Somerset, about 180 km southwest of London, in the UK.

That may have influenced the trustees' decision on whether to distribute the trust's capital gain or not. The statement would, however, not make sense as far as it relates to foreign property, as to date South African trusts are not allowed to invest in foreign assets.

But what are some of the other notable details from Koos Bekker's recent share sale from his family trust?

Naspers was founded in 1915 as Die Nasionale Pers. The company was listed on the JSE in 1994 and changed its name to Naspers. Over the years it held well-known brands like Media24 and Multichoice and of course Tencent, one of China's biggest technology companies (it acquired a 46.5% stake in 2001). Tencent was the goose that laid the golden egg, as its market capitalisation grew from R 5.3 billion to R 83.3 trillion. Prosus, now a global consumer internet group and one of the largest technology investors in the world, was unbundled in 2019 into a separate holding company of Naspers (holding 73% of its shares), holding most of the Naspers investments, including that of Tencent, listed through a primary listing on Euronext Amsterdam and a secondary local listing.

Although Naspers was one of the top-performing shares on the JSE over the last twenty years with a compounded annual return of 32% (with Tencent as the main contributor), the discount to its top-performer Tencent grew. The group decided to start a share buyback programme. Shortly after this announcement, since June 2022, Naspers and Prosus directors and executives sold over R 5 billion in Naspers and Prosus shares.

The man behind Naspers

While Koos Bekker was CEO of Naspers (1997 to 2014), he grew Naspers's capitalisation from US $ 1.2 billion to US $ 45 billion, which initially represented less than 1% of the JSE's total value, but grew to more than 5%, largely due to Tencent's growth. By 2018, Tencent's continued exponential growth increased the market cap of Naspers to more than R1 trillion, 25% of the JSE's shareholder-weighted index.

Although he retired as CEO in March 2014, he returned as chairman in April 2015. Bekker's current net worth is estimated at US$ 2.5 billion, which probably includes the assets held in 'his' family trust as discussed below.

How did his remuneration work?

Whilst CEO of Naspers, Bekker earned no salary and was compensated solely through a share option scheme that vested over time. In Naspers's 2014 annual report, his interest in the Naspers N shares totalled 16 376 499 shares, of which 11 687 808 shares were held in a direct beneficial and 4 688 691 in an indirect beneficial capacity. The 4 688 691 indirect beneficial shares were held in 'his' family trust.

The sale of shares in the trust

Koos Bekker's direct beneficial shares were sold in 2014 and 2015 for R 20 billion; that was 70% of his Naspers shares. On 29 March 2023, in a JSE SENS announcement, Prosus stated that the "trustees of the family trust acquired Prosus shares as a consequence of owning Naspers Limited N ordinary shares during the listing of Prosus in September 2019. Not having sold any Naspers or Prosus shares since 2013, during 24 - 28 March 2023 the family trust sold a parcel of Prosus shares to fund building operations at hotels in various countries in which the family trust has an interest." It also stated that the "family trust continues to retain all its Naspers shares and three-quarters of its total interest in Prosus that it had prior to the disposals noted above." The share sale transactions amounted to a total transaction value of R 3.4 billion.

What are the tax consequences?

It will be interesting to know how income tax was paid on his "remuneration" at the time, as he did not earn any cash, but rather share options. It will also be interesting to know whether the shares held by the trust formed part of his remuneration package and whether employee tax was paid thereon. Government has, since 2009, introduced stronger anti-avoidance measures for employees' tax purposes, including where persons were providing services through trusts.

A 'personal service trust' is one which provides services provided by a person compared to, for example, income generated from assets, such as rental property. As a result, 'personal service providers', as defined, are deemed 'employees', which requires of 'employers' to deduct PAYE before amounts are paid to 'employees'.

When the shares were sold by the trust, the differences between the base costs of the shares and their sales prices would have constituted the capital gains. Assuming the shares in question formed part of his remuneration package (and were not sold to the trust by him on a loan account basis, upon which a portion of the capital gains might have been attributed to him), the trustees have the option to either distribute the capital gains to one or more of the beneficiaries before 29 February 2024, utilising the Conduit Principle, to reduce the tax liability to a maximum of 18%, or to retain the capital gains in the trust upon which the trust will be liable for capital gains tax at a rate of 36% for the year ending 29 February 2024.

If they have decided to achieve a lower capital gains tax rate through the distribution of the capital gains to beneficiaries, it would have undone the main benefit of estate planning to grow assets in the trust.

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