CGT on shares of SABMiller a point of dispute

By Hanna Ziady

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Despite rumblings from SA's tax authority suggesting that the opposite could be true, Nedbank Private Wealth believes its offer to SABMiller shareholders - which would delay capital gains tax (CGT) liabilities on profit earned in the Anheuser-Busch InBev (AB InBev) takeover - is provided for in the Income Tax Act.

Bottles of SABMiller's flagship brew, Castle Lager, at a bar in Cape Town. Almost 120 years after first listing, its name will disappear from the JSE board this week.

Picture: Reuters/Mike Hutchings

The South African Revenue Service (SARS) on Friday warned SABMiller shareholders that entering into transactions that postponed potential CGT liabilities might be considered "impermissible avoidance arrangements" under the Income Tax Act, given that they resulted in a tax benefit and that their main purpose was to obtain such a benefit. Individual shareholders pay CGT on profit made when selling shares.

Nedbank Private Wealth, which is among a number of boutique fund managers offering clients a way of delaying CGT, said its action "followed careful consideration of the facts and circumstances relating to the investment, client, business and regulatory contexts".

It referred to an earlier statement from SARS spokesman Sandile Memela, which said that the Income Tax Act made provision for the type of transaction it was offering.

The wealth unit earlier said SABMiller shareholders could switch their shares for units in the Nedgroup Investments Private Equity Wealth Fund without triggering an immediate CGT event on profit earned in the £45 per share AB InBev offer.

Section 42 of the Income Tax Act exempts pension funds and unit trusts from CGT on trading shares. A tax event is triggered only when the units are sold. SABMiller's share price has soared over the past 10 years. Depending on when individual shareholders bought the stock, they might be subject to considerable CGT.

But swapping their shares for units in a unit trust fund might not result in a more favourable outcome.

Any profit earned on the disposal of the shares by the fund as part of the takeover could be taxed as revenue, according to SARS, which said it had not made any decision on this question yet.

"SARS wishes to advise original shareholders and schemes to carefully consider the questions set out above with respect to any decisions to enter into the transactions described," it said.

Source: Business Day