

# WELCOME

TO

## CROSS BORDER HOLISTIC PLANNING WITH NAMIBIA – SOME IMPLICATIONS OF MOVING TO A SOURCE BASED TAX

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BY

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# FORMAT

Focus will be on **practical discussion** and points substantiated by principles, case and relevant law and divided in:

1. **PART 1 : CROSS BORDER HOLISTIC PLANNING WITH NAMIBIA**
2. **PART 2 : SOME IMPLICATIONS OF MOVING TO A SOURCE BASED TAX**
3. **PART 3 : ADDITIONAL REFERENCE SLIDES AS FURTHER READING MATERIAL -- NOT DISCUSSED (AS SUPPLEMENTED BY THE BIBLIOGRAPHY IN Slides 74-75)**

**PART 1**  
**CROSS BORDER HOLISTIC  
PLANNING WITH NAMIBIA**

**HOLISTIC PLANNING ?**

**VS**

**ESTATE PLANNING ?**

**VS**

**SCENARIO PLANNING ?**

# HOLISTIC

- **Holism** (from ὅλος *holos*, a **Greek word** meaning *all, whole, entire, total*) = the treatment of any subject as a whole integrated system

It is the idea that all the properties of a given system (physical, biological, chemical, social, economic, mental, linguistic, etc.) cannot be determined **or explained by its component parts alone**. Instead, the system as a whole determines in an important way how the parts behave.

- **Collins English Dictionary (Millenium Ed) & Wikipedia definition**

# HOLISTIC

- The term holism was coined in 1926 by Jan Smuts, a South African statesman, in his book, *Holism and Evolution*. Smuts defined holism as:

"The tendency in nature to form wholes that are greater than the sum of the parts through creative evolution."

# “PLANNING”

According to Koontz & O’ Donell,

- “Planning is **deciding in advance** what to do, how to do and who is to do it. **Planning bridges the gap** between where we are to, where we want to go. It makes possible things to occur which would not otherwise occur”.
- Essentials of Management by Koontz & O'Donell ( Mc Graw Hill Publications)

# “ESTATE”

- “An estate is the net worth of a person at any point in time. It is the sum of a person's assets - legal rights, interests and entitlements to property of any kind - less all liabilities at that time.”

“The total extent of the real and personal property of a deceased person or bankrupt.”

Collins English Dictionary (Millenium Ed) See also [Pace & Van der Westhuizen \*Wills & Trusts\* LexisNexis 18<sup>th</sup> service issue A38](#)



# TO SUMMARISE : HOLISTIC (ESTATE) PLANNING IS :

“The **deciding in advance** by an **estate owner** of **what** to do with his assets and liabilities during his **lifetime** and upon **his death**, **how** to do it, **when** to do it and **who** to do it”

Van der Westhuizen WM as per Davis DM et al *Estate Planning*  
LexisNexis Service Issue 28 par 1.1

Estate Planning can also be described as the  
**‘Science of choices’**

# **“CROSS BORDER PLANNING”**

- **Between RSA & Namibia in particular (because of the history of the two countries ) there are many cross border families**
- **This affects far more than just the tax implications of the individuals**
- **Lately Namibia has become very sought after as a tourist destination**
- **Vastness of the land, Namib dessert with some of the world’s highest sand dunes, extreme nature experiences. Abundance of big game**

# **“CROSS BORDER PLANNING”**

- **What is necessary for this planning?**
- **The individual’s total picture consisting of different “environments” or “landscapes” that can have an affect in both (or any other relevant) countries.**
- **This include the personal, social (including cultural, political & religious) psychological, legal (eg legislation re TAX), economical or financial environments**
- **These require different sub-plans for the individual**



# But how accurate is our planning prognosis / predictions?

CONSIDERING THE FACT THAT **PLANNING IS ABOUT THE FUTURE (NEAR AND FAR)** WITH ALL THESE TO BE CONSIDERED THE QUESTION CAN RIGHTLY BE ASKED, **HOW ACCURATE CAN THIS BE?**

HOW DO WE REDUCE THE GUESS WORK OUT OF OUR FUTURE PLANS? For instance how do we reduce the guessing with possible tax changes?

# How accurate is our planning prognosis / predictions?

- Thus when having to do planning, be it local or cross border, because of all the uncertainties of the future the inevitable question always is (or should be): **What if my plan / prognosis / predictions, are wrong, especially where tax laws are involved?**
- The two exponents of scenario planning in South Africa, Clem Sunter and Chantell Ilbury states that **“it’s much better being vaguely right than precisely wrong”** (*The Game Foxes Play in The Fox Trilogy* at 166)
- They may have a point.....

# How accurate can our planning prognosis / predictions be?

- In their letter in 2001 to Pres George W Bush they wrote:
- “So what are the scenarios that arise from these rules of the game and key uncertainties? **We’ll sketch two mainframe scenarios which for convenience are named ‘Friendly Planet’ and ‘Gilded Cage’.** In Friendly Planet the rich old millions resolve to find common ground with the poor young billions to eradicate poverty and disease... to bring international criminal syndicates to justice and to root out dangerous terrorist organisations. **All nations jointly agree to solve any problems which are a threat to world peace.** It sounds terribly utopian, but the alternative for the rich old millions is to hole themselves up in a **Gilded Cage”**

# How accurate can our planning prognosis / predictions be?

- “That cage [the Gilded one] could be blown to smithereens at any moment by nuclear-armed terrorists or be gradually overwhelmed by millions of illegal immigrants slipping through the bars to escape anarchy elsewhere”
- What is noteworthy about this letter to President George W Bush in their book *Mind of a Fox* at 132 by Clem Sunter & Chantell Ilbury published in June 2001, is it was written:
- Three months before the Twin Towers were hit on 11 Sept 2001 (commonly now known as “9/11”)
- Fourteen years before the flood into Europe of refugees fleeing from their home countries.



# How accurate is our planning prognosis / predictions?

- With all the future uncertainties that a client may have **personally**, the family of the client, his / her **society**, the country in which the client is resident, **the government of that country**, its rules, **regulations and legislation**, (including its tax policies) all of us in this industry can also but **only aspire to be vaguely right than precisely wrong with our planning** prognosis and predictions of our clients affairs
- How can we limit the uncertainties and reduce the guess work in our plans?

# How accurate is our planning prognosis / predictions?

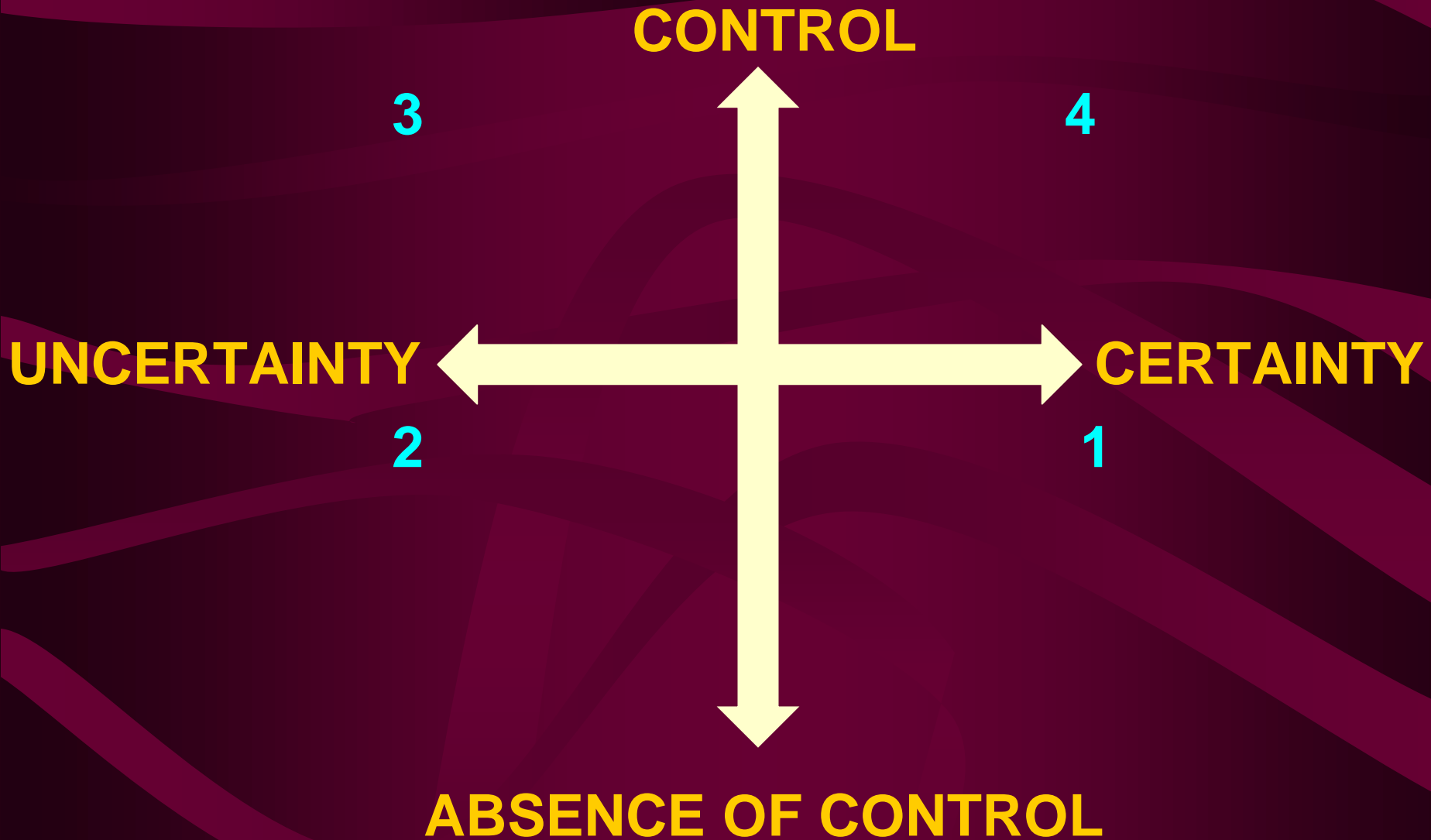
- For this and before we get to the vast landscapes of Namibia and its rules for cross border holistic planning, we take a very brief detour of the rules of what I term **scenario holistic (estate) planning**
- These rules **begin with an analysis** of the relevant personal as well as legislative landscapes, then a look at the social / economical / even religious / psychological and ultimately also the political **landscapes** (Sometimes also referred to as “**environments**”) that can play a role for this **client**

# How accurate is our planning?

## Decision making process (1)

1. Determine the rules of the game (also called **predetermined elements**) **into the planning decision that has to be made**-These are things that are certain but over which we have no control (**next slide block 1**)
2. Select from the “environments” the (i) **key uncertainties (“driving forces”)** over which we have no control and (ii) those **plausible & relevant scenarios** (which is **vivid & different enough to take us out of our comfort zone**) derived from these uncertainties (**block 2**)

# DECISION MAKING MATRIX

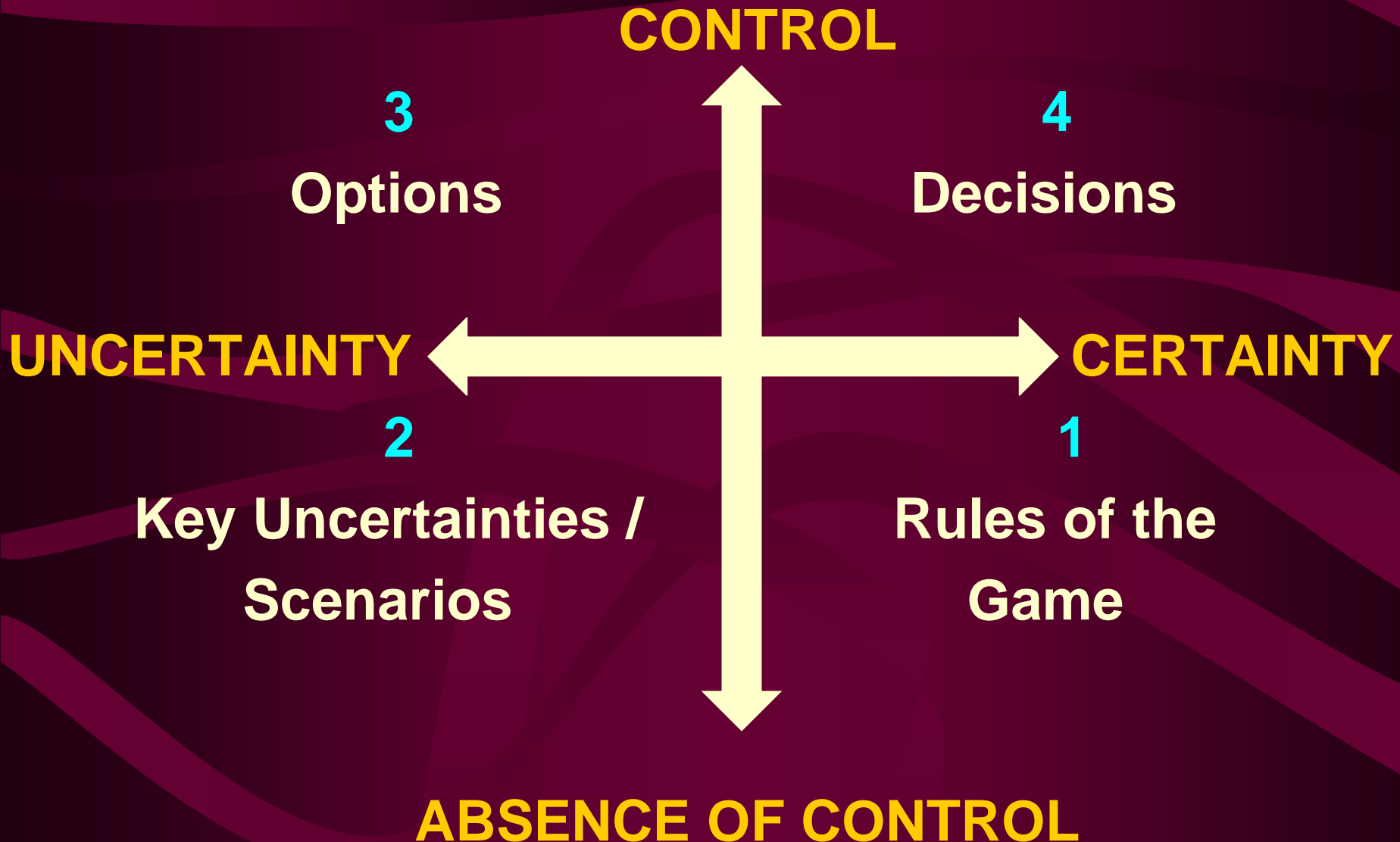


# How accurate is our planning?

## Decision making process (2)

3. Then by looking at all the options presented by the scenarios, **formulate the options**. This is crucial and allows us to operate with more control in an uncertain environment (**next slide block 3**)
4. **Decide on the plan based on the preferred scenario and linked to the preferred option**. Develop a strategic plan and programmes of action – decision paths formulated in advance (**next slide block 4**)

# DECISION MAKING MATRIX



# How accurate is our planning?

## Decision making process (3)

This is also **Sherlock Holmes'** line of thinking: **first eliminate the the impossible before concentrating on the possible**

**Clem Sunter** also states that if you truly want to **be in charge of your destiny**, you first require **to know your limitations and be humbler than you think**

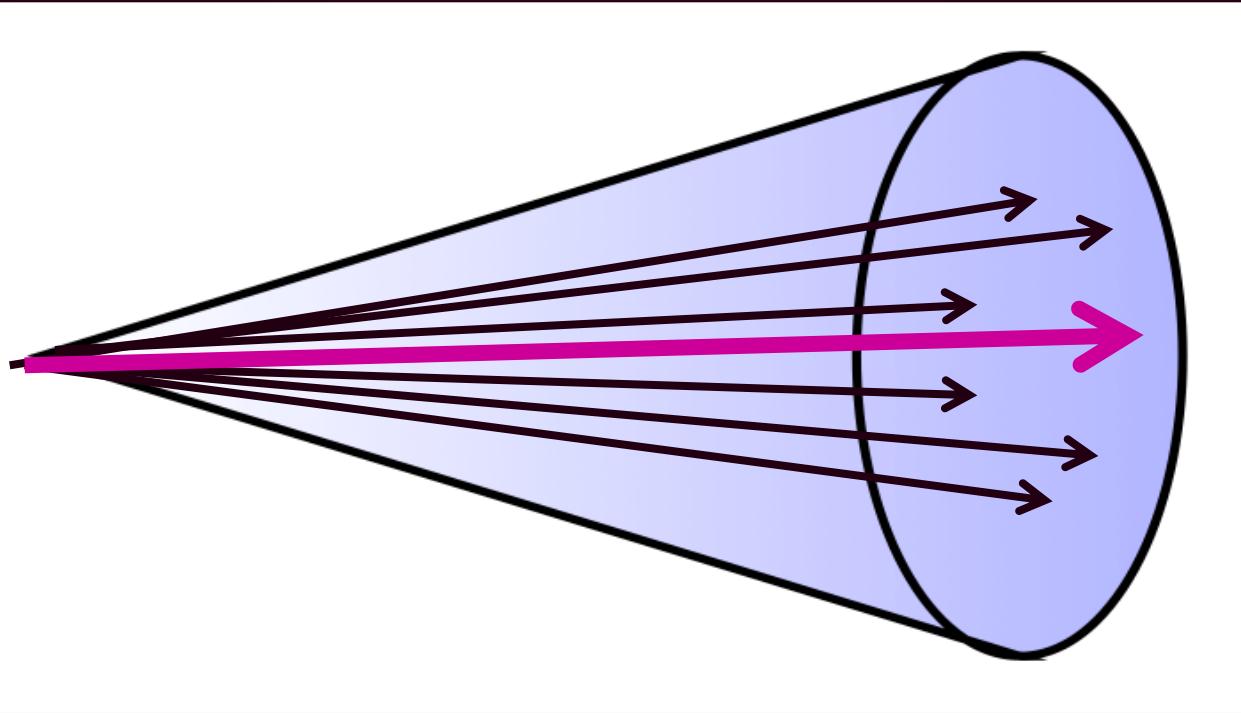
**An important message for those of us who think that we know and (even worse) for those of us who do not even know how little we know....**

# SCENARIO PLANNING

- Scenario planning can thus be defined as the “*Process of visualizing (1) what future conditions or events are probable, (2) what their consequences or effects would be like, and (3) how to respond to, or benefit from, them.*”
  - (BusinessDictionary.com)
- Remember with future planning: “it’s much better being vaguely right than precisely wrong”  
(Sunter & Ilbury)



# SCENARIO PLANNING

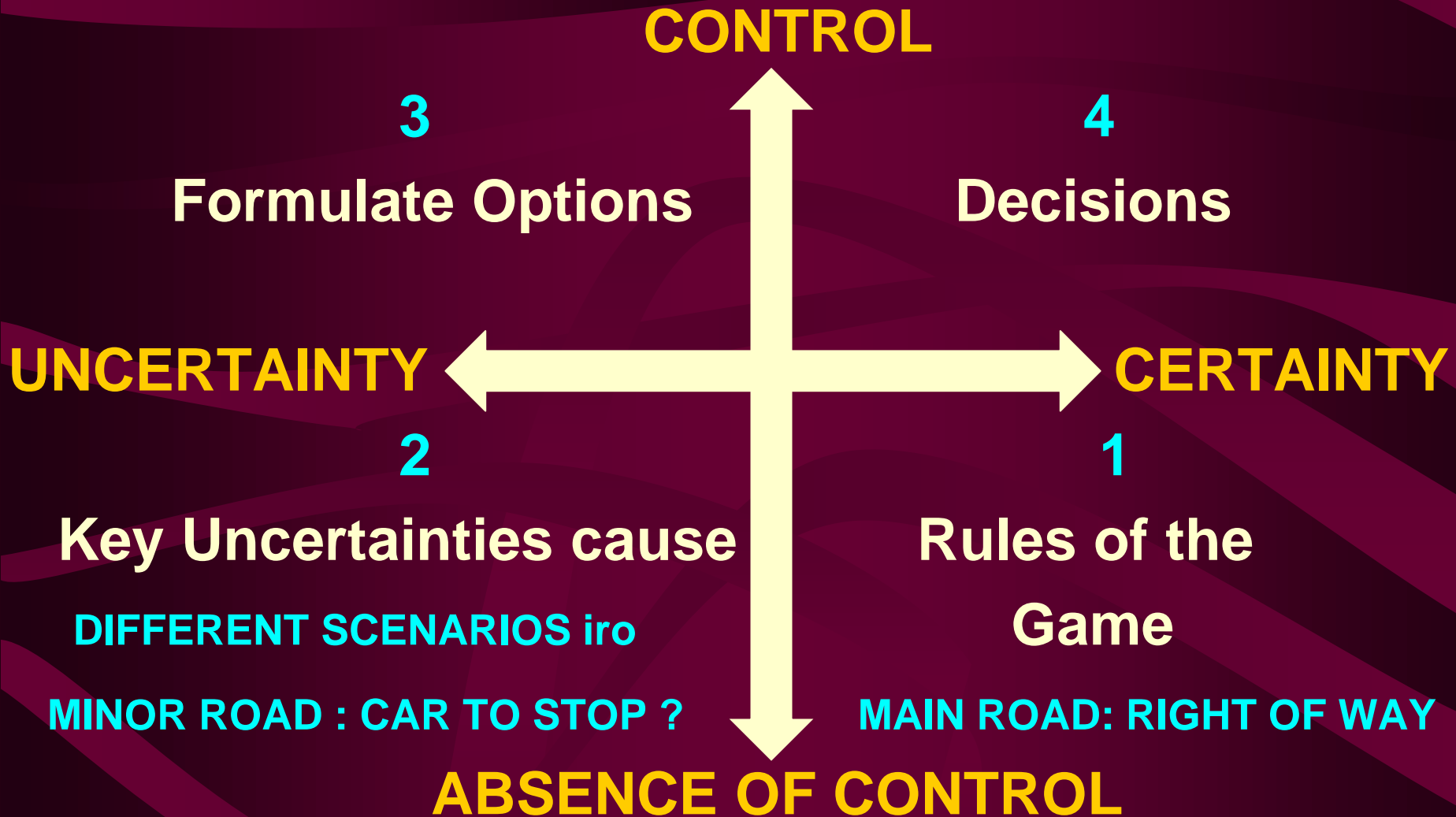


PRESENT

FUTURE

TIMELINE

# DECISION MAKING MATRIX



# RULES OF THE GAME:

**Holistic planning  
environments  
can influence the client's  
cross border plan?  
WHICH?**

# DIFFERENT HOLISTIC (ESTATE) PLANNING ENVIRONMENTS

**1. FACTUAL / PERSONAL**

**2. SOCIAL**

**\* Cultural**

**\* Religious**

**3. ECONOMICAL / FINANCIAL / POLITICAL**

**4. PSYCHOLOGICAL**

**5. LEGAL**

# 1.(a) DETERMINING PERSONAL / FACTUAL ENVIRONMENT

1.1 **Personal particulars**, family ties, parents, children etc, matrimonial regimes, in / out / accrual ? Family entities

1.2 **Estate profile**: assets & liabilities, limited interests i.e. usufructs, fideicommissum, use, habitatio, **digital assets i.e. web site, domain names, immaterial property, trade marks/names, passwords, virtual secrets, access to online life, profiles etc**

**FOR SCENARIO PLANNING SKIP THIS /**  
**FOR ESTATE PLANNING DO THIS**

**1.(b) DETERMINING PERSONAL /  
FACTUAL ENVIRONMENT**

**1.3 CGT / income tax / transfer duty /**

**VAT calculation & structuring**

**1.4 Calculation of accrual claims**

**1.5 Determining / analysing estate  
liquidity**

**FOR SCENARIO PLANNING CONTINUE FURTHER**

## 2. DETERMINING SOCIAL: CULTURAL / RELIGIOUS ENVIRONMENT

Be aware of **tenets of belief or rules / customs of culture** of estate owner and family members i.e. :

1. British (traditional) origin– eldest son inherits everything
2. Namibian / SA Indigenous (traditional)– eldest male relative inherits everything
3. Eastern beliefs– Sharia rules
4. “Afrikaner” (rural) – sons inherit farm land daughters have to “find wealth in matrimony”

**ALL CONTAIN ELEMENTS OF / RECIPES FOR FAMILY DISPUTES**

### **3. DETERMINING POLITICAL / ECONOMICAL ENVIRONMENT**

Take cognisance of **current economic climate** and the effects of inflation / interest rates & exchange rates / political statements & trends etc which may have an affect on growth i.e. For **each possible cross border jurisdiction:**

- 1. Using recession values for pegging values**
- 2. Changes in government policies e.g. on expropriation, nationalisation, wealth & other taxes etc**
- 3. Do scenario planning on this**



# 4. DETERMINING PSYCHOLOGICAL ENVIRONMENT

- WHAT MOTIVATES / DE-MOTIVATES A PERSON TO DO HOLISTIC (ESTATE) PLANNING ?
  - \* PERCEIVED INCREASED RISK (Going on holiday / Long journey or ill health)
  - \* CHANGES IN TAX LAWS or possible changes
  - \* RECENT DEATH IN FAMILY / FEAR OF DEATH
  - \* BRAIN PROFILES (Left/right- brain also 4 quadrants)
  - \* FEARS / CONCERNS
    - \* Affairs not in order
    - \* Financial / other risks
    - \* Relationships that can go wrong family feuds / “in-laws becoming outlaws”
  - \* DO SCENARIO PLANNING iro KEY UNCERTAINTIES

# 5(a) DETERMINING JURIDICAL ENVIRONMENT (1)

Introduce estate owner to holistic estate planning tools (briefly)

- **Matrimonial property system/s (also Civil & Customary Marriages)**
- **Business entities**
- **Donations (different forms – inter vivos or mortis causa)**
- **Sales**
- **Limited interests (usufructs fideicommissums)**
- **Investments**
- **Assurance**
- **Trusts**
- **Wills & testamentary trusts**

# 5(b). DETERMINING JURIDICAL ENVIRONMENT (2)

Consider **existing plan/deficiencies** and the restructuring of estate and different options / choices: i.e.

1. Discuss use or unbundling of existing structures How ? Costs?
2. If unbundling of e.g. a trust is considered, look at **roll-over facility** but **check validity of stipulation** (See later slides for how)
3. If there is an **existing trust/s analyse** (legal audit) the trust/s deeds, update it and synchronise it with plan Costs?

# **5(c) DETERMINING JURIDICAL ENVIRONMENT (3)**

**Consider existing plan** and the restructuring of estate and different options / choices: i.e.

- 1. Discuss choice of or effect of a matrimonial property system?**
- 2. Depending on risk profile and number of children discuss one or more trusts?**
- 3. One or more companies?**
- 4. Other entities and legal & tax implications?**
- 5. Determining objectives & deficiencies in current plan**

# 5(d) DETERMINING JURIDICAL ENVIRONMENT (4)

Does existing & new plan provide for objectives of:

- **Flexibility**
- **Prevention of family disputes**
- **Protection against risks**
- **Providing for dependants**
- **Providing for retirement**
- **Providing for liquidity**
- **Easier estate administration**
- **Tax saving**

# **5(e) DETERMINING JURIDICAL ENVIRONMENT (5)**

## **7. RECOMMENDATIONS IRO PLAN TO:**

**7.1 Separate risks**

**7.2 Structure family relationship plan**

**7.2 Consider “moving” assets**

**7.3 Quantify costs :**

- \* Tax, duty/transfer**

- \* Commission vs Charging fee?**

- \* Time based or lump sum?**

# **5(f) DETERMINING JURIDICAL ENVIRONMENT (6)**

## **8. RECOMMENDATIONS IRO WILL**

**8.1 Usually joint will for spouses**

**8.2 Offshore estate/s : a will for each jurisdiction NB Synchronise these iro revoking & country of application**

**8.3 Use of testamentary trust/s**

**8.3.1 Flexibility**

**8.3.2 Wide powers to trustees.**

**8.3.3 Capacity to inherit from anybody**

# HOLISTIC ESTATE PLANNING

## Disciplines / skills (7) INCLUDE:

### ESTATE PLANNER TO UNDERSTAND :

- The psychology of testation / estate planning
- CLIENT'S CULTURE: Does culture play a role? If so, what effect will it have? Moral and legal obligation to abide? Constitutionally correct?
- CLIENT'S RELIGION: Does client's religion play a role? If so, what will the religious rules be? Is it reconcilable with the Namibian Constitution?



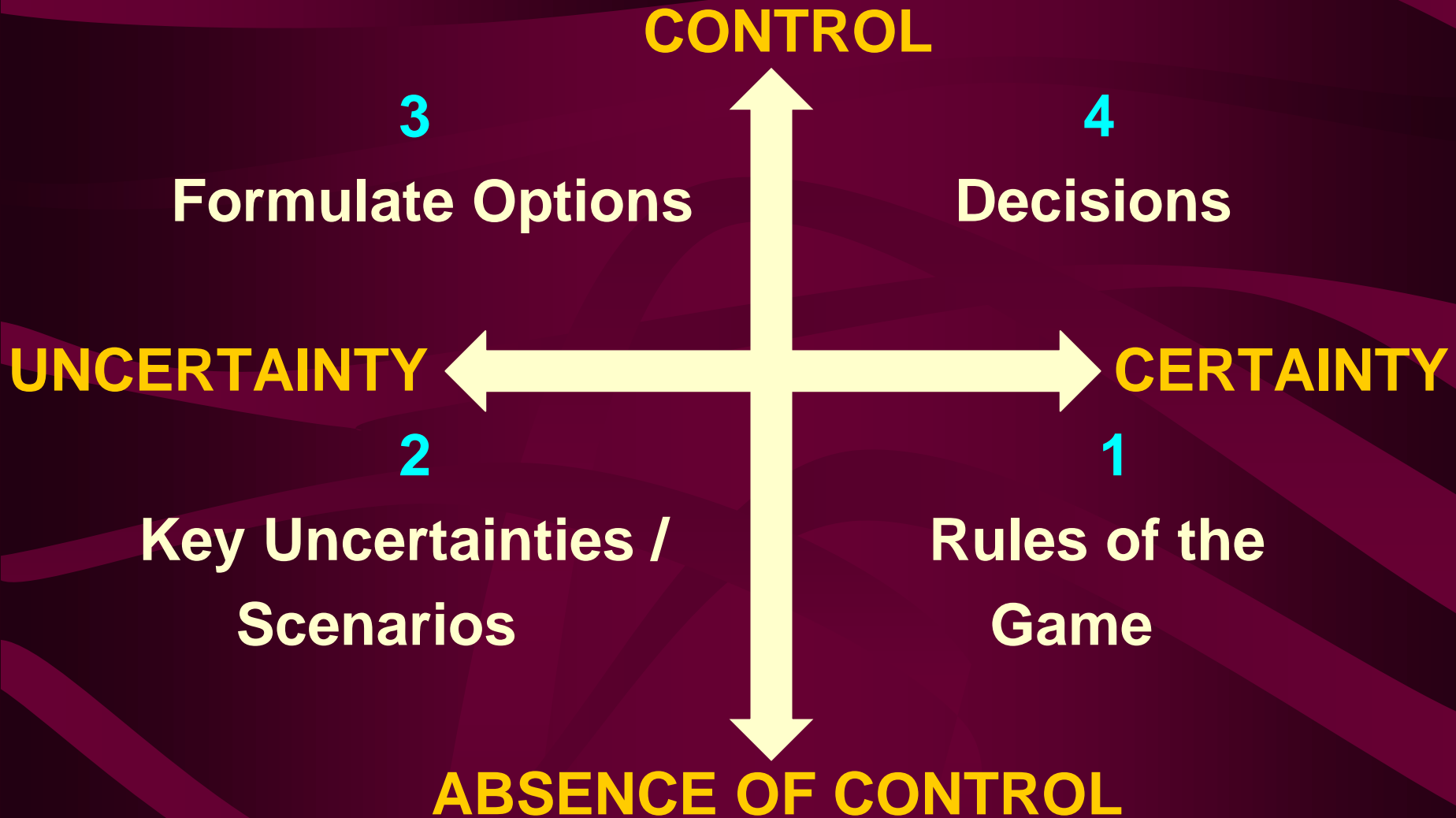
# HOLISTIC ESTATE PLANNING

## Disciplines / skills (8) INCLUDE:

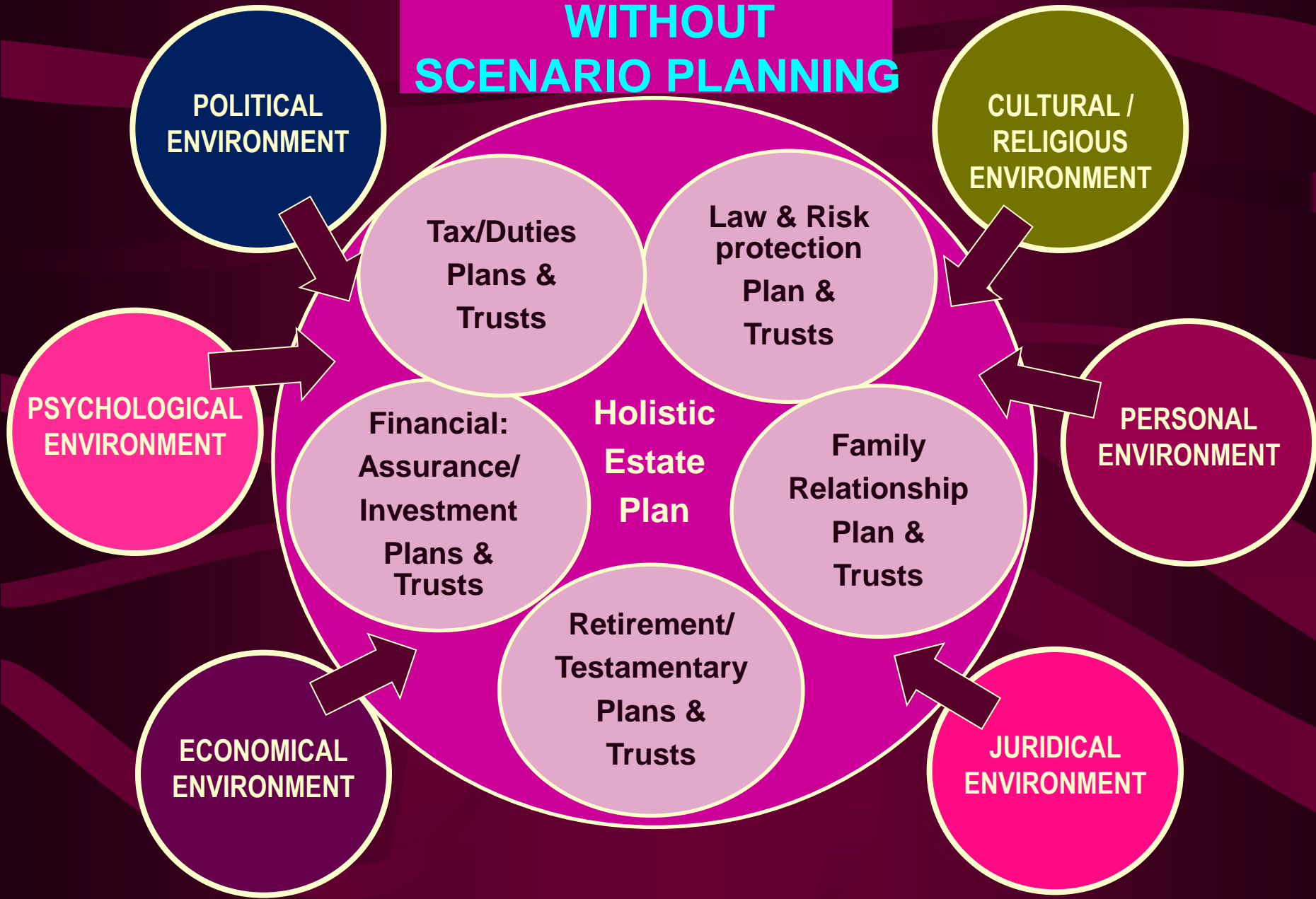
### ESTATE PLANNER SELF TO HAVE:

- Big picture ability Be able to see and to explain the bigger picture and alternatives available
- Whole brain ability (all 4 quadrants) or at least right brain dominance (creative with emotions analytical with detail) to assist client with alternatives / choices (Move comfort zones)
- To know how much or how little he/she knows (of each relevant discipline) Thus knows where the grey area of one's ignorance begins

# DECISION MAKING MATRIX

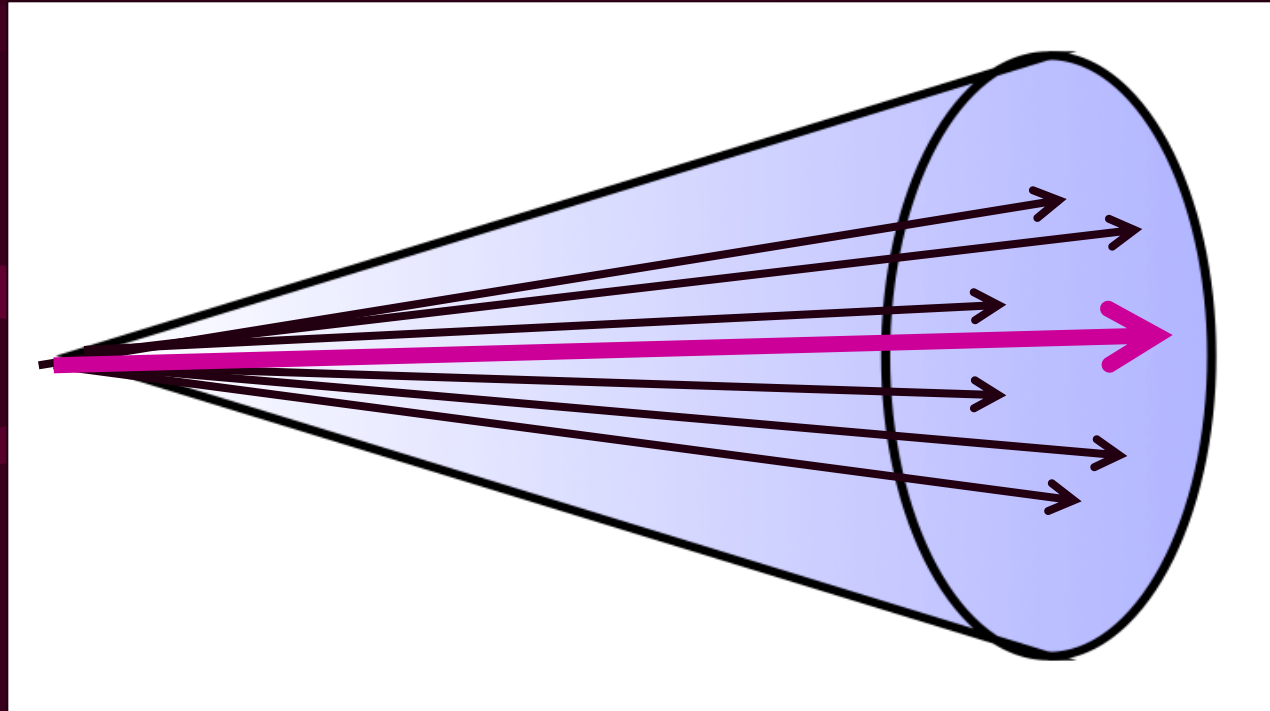


# WITHOUT SCENARIO PLANNING



# SCENARIO PLANNING

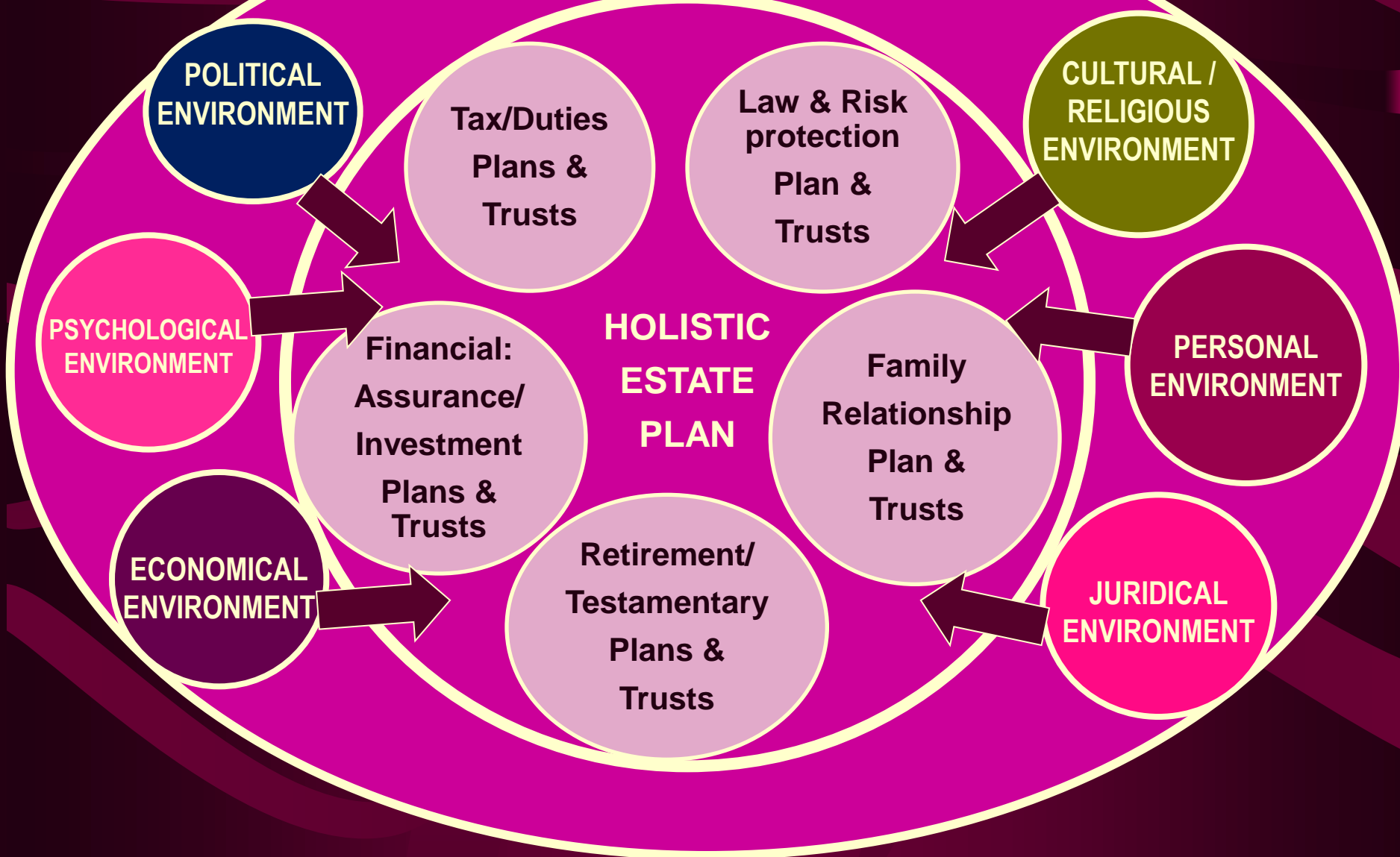
PRESENT



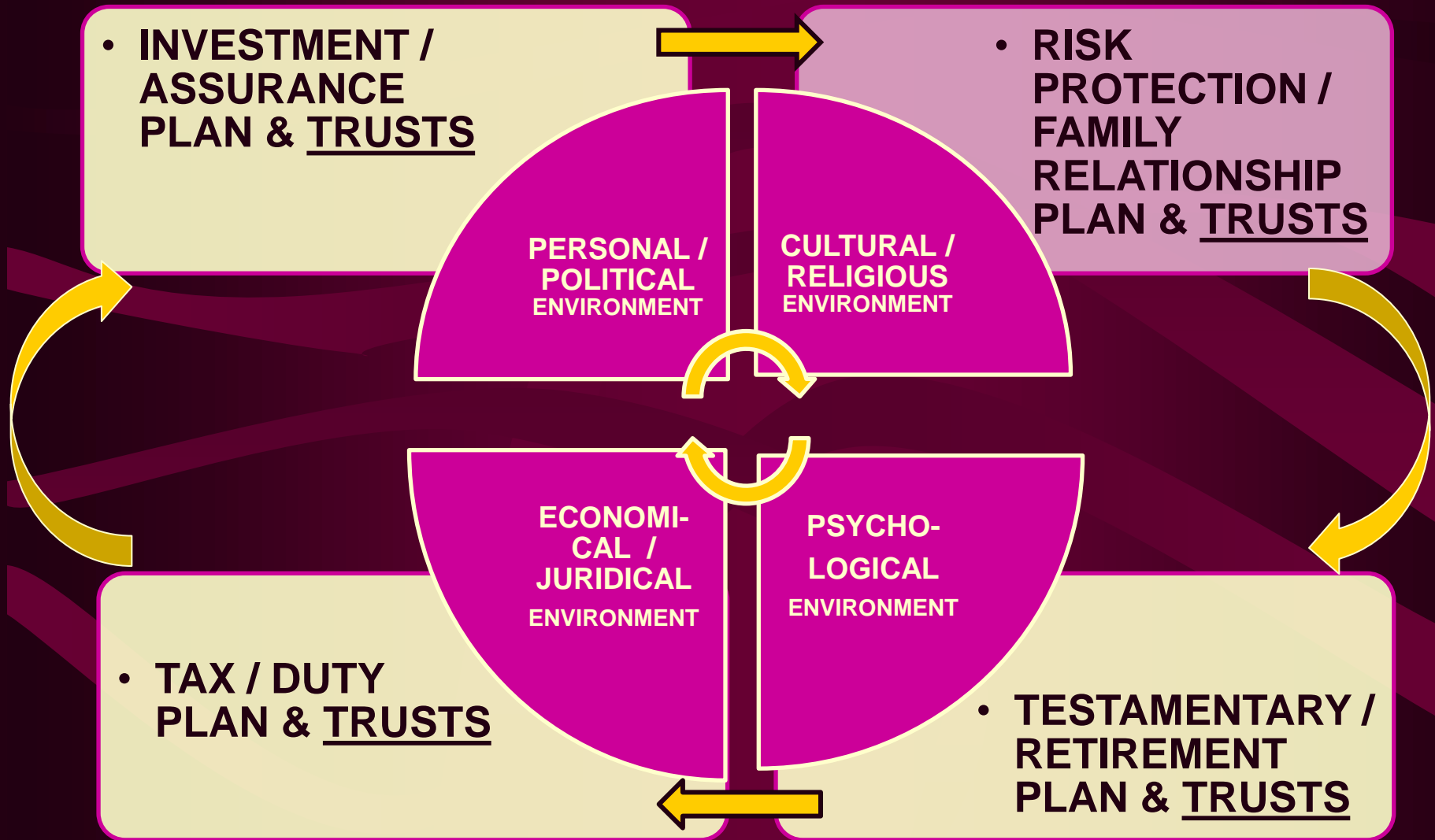
FUTURE

TIMELINE

# SCENARIO PLANNING



# HOLISTIC (ESTATE) PLAN



**PART 2**

**SOME IMPLICATIONS OF  
MOVING TO A SOURCE BASED  
TAX**

# What taxation system is in Namibia? Source based?

- A study into Namibian Tax Laws in 2001 concluded the **Namibian tax base is to be broadened. (Flag to watch)**
- It stopped short of recommending that the basis of the income tax system should change from source to residence. **Thus a key uncertainty or flag to watch**
- Many of the recommendations made by the advisors have been implemented albeit that it has taken quite a long time to get the proposals enacted into law. (C Kotzé)



# What taxation system is in Namibia? Source based?

## Source basis of Income Tax Act

- “Gross income” “in relation to any year or period of assessment, means, in the case of any person, the total amount, in cash or otherwise, received by or accrued to or in favour of such person during such year or period of assessment **from a source within or deemed to be within Namibia**, excluding receipts or accruals of a capital nature”
- **Term ‘source’ not defined in Act.** ‘Source’ is determined with reference to case law, which establishes the meaning to be ‘originating cause’ ie where capital is employed, trade carried on, services rendered, contract entered into

# What taxation system is in Namibia?

## DEEMED SOURCE

- Typical with many source based tax systems the Namibian system is also not a pure one as there are **various deemed sources**
- A **withholding tax on services rendered by non-residents to residents** has also been introduced recently, and applies **irrespective of where the services are rendered**. Thus, the source based principle has been extended to catch services rendered outside Namibia, on the basis that the Namibian taxpayer can claim a deduction for the amount paid to a non-resident

# What taxation system is in Namibia?

## SOURCE OF EMPLOYMENT

- **Non-residents\*** are taxable on their **Namibian-sourced income only**, by virtue of the true source of their income.
- The source of employment income is **determined as the place where the services are rendered**, irrespective of the residency of the person making the payment or the place from where the payment is made.
- \* **The Namibian Income Tax Act defines “Non-resident” as “...a person, other than a company, not ordinarily resident or carrying on business in Namibia.”**

# What taxation system is in Namibia?

## SOURCE OF EMPLOYMENT

- Where an ordinary resident of Namibia renders services outside Namibia during any temporary absence, for or on behalf of any employer\* by whom the ordinary resident is employed in Namibia, the income received by the ordinary resident is subject to tax in Namibia, subject to DTA relief if a DTA is available.
- \* “Employer” is defined by the Income Tax Act as “...any person...who pays or is liable to pay to any person other than a company any amount by way of remuneration...”

# What taxation system is in Namibia?

## DEEMED SOURCE

Sec 15 of the Income Tax Act (24 of 1981) deems certain amounts to be from sources in Namibia namely:

- any contract made by him within Namibia for the sale of goods, whether such goods have been delivered or are to be delivered in or out of Namibia;
- the use or right of use in Namibia, or the grant or permission to use in Namibia any patent or design
- the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information for use in Namibia,

# What taxation system is in Namibia?

## DEEMED SOURCE

**Sec15(c)** the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information for use in Namibia, or the rendering of or the undertaking to render, any assistance or service in connection with the application or utilisation of such knowledge or information, wheresoever such knowledge or information has been obtained or such knowledge or information has been imparted or is to be imparted or such assistance or service has been rendered or is to be rendered or any such undertaking has been given, and whether payment for such knowledge, information, assistance, service or undertaking has been made or is to be made by a person resident in or out of Namibia;

# What taxation system is in Namibia?

## DEEMED SOURCE & DTA

- Therefore where **a person** (i.e. an ordinary resident of Namibia or a non-resident of Namibia) receives income where the ‘originating cause’ is **services rendered within Namibia, the income will be subject to Namibian tax.**
- Where the **person is a non-resident**, the person may receive relief from being taxed in Namibia if a **Double Taxation Agreement (“DTA”)** is available which **provides for exemption or a credit for tax.**

# DOUBLE TAXATION

## AGREEMENTS (DTA between RSA & Namibia)

### HEADING:

“AGREEMENT BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE REPUBLIC OF NAMIBIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS”

- This Agreement shall apply to **taxes on income and on capital gains imposed** on behalf of a Contracting State or its political subdivisions, irrespective of the manner in which they are levied.



# DOUBLE TAXATION AGREEMENTS (DTA between RSA & Namibia)

3. The existing taxes to which the Agreement shall apply are in particular:

- (a) in the case of **Namibia**:

- (i) the income tax;

- (ii) the non-resident shareholders' tax;

- (iii) the petroleum income tax;

(hereinafter referred to as "Namibian tax");

- (b) in the case of **South Africa**:

- (i) the normal tax;

- (ii) the secondary tax on companies;

(hereinafter referred to as "South African tax").

# DOUBLE TAXATION AGREEMENTS (DTA between RSA & Namibia)

## ARTICLE 23 ELIMINATION OF DOUBLE TAXATION

“Where a resident of a Contracting State derives income or capital gains which, in accordance with the provisions of this Agreement, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income or capital gains of that resident an amount equal to the tax paid in that other State. Such deduction shall not, however, exceed an amount which bears to the total tax payable the same ratio as the taxable income concerned bears to the total taxable income.”

# INCOME TAX RATES FOR NAMIBIA

## 2016

ALL INDIVIDUALS (INCL. DECEASED ESTATES AND TRUSTS) OTHER THAN COMPANIES.

<u>Taxable Income</u>	<u>Rates of Tax</u>
• N\$ 0 - N\$ 50 000	Not taxable
• N\$ 50 001* - N\$ 100 000	N\$ 0 + 18% above*
• N\$ 100 001* - N\$ 300 000	N\$ 9 000 + 25% above*
• N\$ 300 001* - N\$ 500 000	N\$ 59 000 + 28% above*
• N\$ 500 000* – N\$800 000	N\$ 115 000 +30% above*
• N\$ 800 001* – N\$ 1 500 000	N\$ 205 000 +32% above*
• Over N\$ 1 500 001*	N\$ 429 000 +37% above*

# COMPANY TAX RATES

## 2015 / 2016

- **Corporate tax rate** 32%
- **Branch income tax** 32%
- **Diamond mining companies** 55%
- **Mining Companies (other than diamond mining companies)** 37.5%
- **Long term insurance companies (40% of gross investment income taxed at 32%)** 12.8%
- **Petroleum Companies (exploration development - or production operations)** 35%

# LOANS (OTHER THAN HOUSING LOANS)

- The taxable value of interest-free or subsidised loans that are not utilised for further study by the employee or exceed **N\$3 000 p.a.**, is **12% p.a.** of the loan amount less interest actually paid on the loan.

# CAPITAL GAINS TAXES

## NO GENERAL CGT **BUT** SALE OF MINING LICENSES

- Any sale/donation/ expropriation cession, grant or other alienation or transfer of ownership of a licence or right to mine minerals shall be included in gross income. The sale of shares in a company for a licence or right to mine minerals in Namibia is included in gross income and taxed accordingly.

# PAYMENTS TO NON-RESIDENTS WITHHOLDING TAX

- Dividends paid to non-residents (NRST) < 25% shareholding 20%
- Dividends paid to non-residents (NRST) > 25% shareholding 10%
- Interest paid to non-residents 10%
- Royalties paid to non-residents 10%
- Management, technical, admin, consulting, entertainment and directors' fees 10%
- Dividends received are exempt in the hands of companies, individuals and trusts. Dividends declared to foreign shareholders are however subject to NRST as indicated above.

# TRANSFER PRICING AND THIN CAPITALISATION

Transfer pricing was introduced in May 2005.

**Cross-border transactions with connected persons must be entered into on an arm's-length basis.** A taxpayer is required to be in possession of transfer pricing documentation. **Financial assistance by foreign investors to connected persons in Namibia** should not be excessive in relation to the fixed capital of the recipient; else interest payable on loans will be disallowed.



# VALUE-ADDED TAX

- Value-added tax is payable on the taxable value of all goods sold or imported.
- **The standard rate is 15%.**
- Direct exports of goods and services are zero-rated. A number of other zero-ratings and exemptions are also provided for.
- **A person (company, individual, trust and partnership) carrying on a taxable activity with a turnover for the past or future 12 month period in excess of N\$500,000, must register for VAT.**

# STAMP DUTY

## NATURAL PERSONS:

Value of property N\$

- **0 - 600 000** **Exempt**
- **600 001 - 1 000 000** **N\$10 for every N\$1 000 or part thereof**

## OTHER PERSONS:

- **Any value** **1,2%**

# HOUSING LOANS AND MORTGAGE SUBSIDIES

- Housing loans provided to employees at a subsidised rate are taxable to the extent that the interest rate payable by the employee is less than 12% per annum (p.a.). The taxable value of housing benefits comprising free or subsidised housing is determined with reference to the location and size of the housing, as indicated in the following table:

ROOMS	1	2	3	4	5	6	7	8	8+
Windhoek	500	750	1,000	1,400	1,800	2,200	2,800	3,400	4,000
Walvis Bay	350	550	750	1,000	1,300	1,700	2,100	2,550	3,000
Large Towns	250	375	500	700	900	1,100	1,400	1,700	2,000
Small Towns	125	175	250	300	450	550	700	850	1,000

The taxable value of housing benefits granted, in terms of housing schemes approved by Inland Revenue, is reduced by one-third thereof (the reduction increases based on a formula for remuneration below N\$30 000 p.a.).

# FOREIGNERS OR NON RESIDENTS - SUMMARY

- **Non residents temporarily employed in Namibia, or a foreign company trading within Namibia, will be liable for all taxable income earned within Namibia, as provided for in article 15 of the Double Taxation Agreement.**

# INDIVIDUALS TAXED IN NAMIBIA (SUMMARY)

- According to the country's taxation guide, individuals are taxed on a **progressive marginal scale over a series of income brackets** with the highest marginal rate being **37% for individuals & trusts while Income Tax is levied on companies at a rate of 32%.**
- The corporate tax rate for companies other than mining and manufacturing reduced from 33% to 32% for years commencing on or after 1 January 2015

# INDIVIDUALS & TRUSTS TAXED IN NAMIBIA (SUMMARY)

- The maximum marginal rate for the year of assessment ending 29 February 2016 remains unchanged at **37%** and applies to taxable income in **excess of N\$1,500,000**.  
The **minimum tax threshold remains unchanged at N\$50,000**.

# NAMIBIAN FARM LAND

- Keep in mind **AGRICULTURAL (COMMERCIAL) LAND REFORM ACT 6 OF 1995**
- To provide for the acquisition of agricultural land by the State for the purposes of land reform and for the allocation of such land to Namibian citizens who do not own or otherwise have the use of any or of adequate agricultural land, ...**to vest in the State a preferent right to purchase agricultural land for the purposes of the Act; to provide for the compulsory acquisition of certain agricultural land by the State for the purposes of the Act; to regulate the acquisition of agricultural land by foreign nationals; ...**

# TRANSFER DUTY

## NATURAL PERSONS: FIXED PROPERTY

### Value of property N\$

- **0 - 600 000** Nil
- **600 001 - 1 000 000** 1% of value exceeding N\$ 600 000
- **1 000 001 - 2 000 000** N\$4 000 plus 5% of value exceeding N\$1 000 000
- **2 000 000 and above** N\$54 000 plus 8% of value exceeding N\$2 000 000



# Transfer Duty

## OTHER PERSONS

- **Any value 12%**
- **A transfer tax on the transfer of shares in property owning companies has recently in 2015 Budget been proposed. This proposal will ensure that the effective transfer of ownership of all properties (residential and commercial) will become subject to transfer duty. The draft legislation is very complex and will probably result in taxpayers seeking various avenues to reduce the tax payable (C Kotzé)**

## Estate Duty & Donations Tax

- **There is no estate duty or donations tax in Namibia !!!**

# FURTHER READING MATERIAL

- PACE R P & VAN DER WESTHUIZEN WM : *Wills And Trusts* SERVICE ISSUE 19 (2015/16) LEXISNEXIS
- OOSTHUIZEN W, KING R, V VUREN L & Van Der WESTHUIZEN W M *Estate Planning & Fiduciary Services Guide 2016* LexisNexis
- CAMERON E, DE WAAL M & WUNSH B : *Honore's SA Law of Trusts* 5<sup>TH</sup> ED (2002) JUTA
- DAVIS, BENEKE & JOOSTE : *Estate Planning* SERVICE ISSUE 37 (2013) LEXISNEXIS
- MEYEROWITZ D : *Meyerowitz On Income Tax* THE TAXPAYER CAPE TOWN

# FURTHER READING MATERIAL

- **Sunter C** *Flag Watching* Tafelberg 2015
- **Ilbury C & Sunter C** *The Fox Trilogy* Human Rossouw / Tafelberg 2001-2007
- **Mosupye, S.** *Expatriate tax in Africa : the taxation of inbound Expatriate working in Botswana, Namibia, Nigeria and South Africa* 2014 M.Com Dissertation Univ of Namibia
- **Cameron Kotzé,** *Namibia's Changing Tax Landscape – From Simple to Complex* E&Y Newsletter 2012 Partner, Ernst & Young Namibia
- **PWC** *Namibia Tax Reference and Rate card 2016*
- **DELOITTE** *Namibian tax alerts 2015*
- **KPMG** *Expect booklet 2015*

# SERVICES

- **SEMINARS / COURSES**

- \* PROFESSIONAL AUDIENCES

- \* GENERAL PUBLIC / ADVISORS & THEIR CLIENTS

- **HOLISTIC ESTATE PLANNING**

- **DRAFTING TRUST DEEDS : FAMILY, BUSINESS  
& PBO TRUSTS**

- **LEGAL AUDITS ON TRUST DEEDS**

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**Millers Attorneys George © Member of the PhatshoaneHenney Group**

# END

## THANK YOU



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# **PART 3**

**ADDITIONAL  
REFERENCE SLIDES AS  
FURTHER READING  
MATERIAL BUT  
NOT DISCUSSED**

# DIFFERENT SUB-PLANS

- Holistic Estate Planning does **not** consist of **only one plan** but of **several sub-plans**  
All of which have to be co-ordinated / synchronised & merged into the one broader estate plan

**Example :**

**Beneficiary nomination** on insurance policy (Assurance plan) **vs** **bequest of policy** in a will to someone else (Testamentary plan)

# HOLISTIC ESTATE PLANNING

## Disciplines / skills (1) INCLUDE:

- | <u>Discipline/Skill</u>                          | <u>DIY Put your name here</u> |
|--|-------------------------------|
| • LAW IN GENERAL                                 |                               |
| • TAX LAWS                                       |                               |
| • SUCCESSION LAW                                 |                               |
| • FAMILY LAW (Married Persons Equality Act 1996) |                               |
| • LAW OF THINGS                                  |                               |
| • INTERNET LAW                                   |                               |
| • CORPORATE LAW                                  |                               |
| • PARTNERSHIPS LAW                               |                               |



# HOLISTIC ESTATE PLANNING

## Disciplines / skills (2) INCLUDE:

Discipline/Skill

DIY Put your name here

- LAW OF TRUSTS
- LAW OF PERSONS
- INSOLVENCY LAW
- ASSURANCE (LAW & PRODUCTS)
- PENSIONS (LAW & PRODUCTS)
- VALUATIONS
- ETHICS e.g. Rules in re ethics of different professions
- VARIOUS STATUTES

# HOLISTIC ESTATE PLANNING

## Disciplines / skills (3) INCLUDE:

- Discipline/Skill DIY Put your name here
- INVESTMENTS
- INFLATION
- FINANCIAL STATEMENTS
- PLANNING PRINCIPLES
- ECONOMY: TRENDS
- POLITICS: AFFECT
- EXCHANGE CONTROL

# HOLISTIC ESTATE PLANNING

## Disciplines / skills (4) INCLUDE:

- Discipline/Skill      DIY Put your name here
- PSYCHOLOGY

### DETERMINE CLIENT'S :

- FEARS / CONCERNS
- WISHES / OBJECTIVES (EVEN DREAMS)
- FEELINGS
- CHARACTERISTICS
- CULTURE
- RELIGION

# **HOLISTIC**

## **ESTATE PLANNING OBJECTIVES**

**(ALSO FOR THE TRUST)**

- **FLEXIBILITY**
- **PREVENTION OF FAMILY DISPUTES**
- **PROTECTION AGAINST RISKS**
- **PROVIDING FOR DEPENDANTS**
- **PROVIDING FOR RETIREMENT**
- **PROVIDING FOR LIQUIDITY**
- **EASIER ESTATE ADMINISTRATION**
- **TAX SAVING**



# END

## THANK YOU



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