

G. Venenietis & Partners



Handbook

The transfer of immobile and mobile property by means of parental gifts, gift and inheritance and its taxation according to the new law 3842/2010

“G. Verveniotis & Associates” law firm

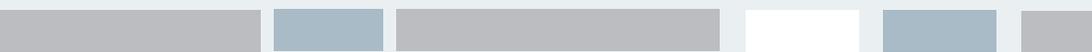
“G. Verveniotis & Associates” law firm was established in 1970 by Georgios P. Verveniotis, PhD., one of the most accomplished lawyers in construction law and arbitration. Apart from its core involvement in construction law, our firm is very active in other sectors of Civil Law (family and inheritance law, lease contracts, etc.), as well as in commercial and corporate law and energy law.

Our goal is to provide our clients with high-quality services and we handle every case in all diligence, constantly keeping abreast of the latest developments. Most of us have studied or worked abroad as well as in Greece and we are thus able to understand the needs of our clients from other countries, consistently and efficiently serving their interests.

In order to optimize our client service, we have developed a network of associate firms throughout Greece, in many European countries and in the USA.

For more information on our firm, please visit www.verveniotis.com

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Foreword

Parents in the Greek family make every effort to financially support their children and secure a better future for them.

The conveyance of property by parents to their children may be effected through the mechanisms provided under inheritance law (e.g. a will) or during the lifetime of the parents under the institution of parental donation, which allows the transfer of assets to children under favourable taxation.

However, in order to avert undue costs, as well as disputes among relatives, it is advisable for parents to proceed to a prompt and fair arrangement of such matters. In planning a course of action, one needs to take into consideration a number of legal and tax issues, as well as the required formalities which may prove to be fairly time-consuming.

Our law firm has drafted this note drawing on the occasion of a law that was recently passed (Law 3842/2010) which brings substantial change to taxation in the acquisition of movable and immovable property through parental donation, donation or inheritance, in order to provide Expatriates and any interested party with fundamental information on such issues. It could not possibly, however, provide a global and specialized coverage of all issues and under no circumstances could it substitute personal and customized consultation with experts, since each case carries its own particular aspects.

We trust that you shall find this note useful in your contacts and transactions in Greece.

Athens, October 2010
Panagiotis. G. Verveniotis

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I. GENERAL REMARKS

1. Which law governs taxation?

Taxation of property derived through inheritance, donation and parental donation is governed by Law 2961/2001, as amended by subsequent laws 3815/2010 and 3842/2010. Taxation extends to all natural persons and legal entities acquiring property by virtue of such cause.

2. What is inheritance ab intestate?

After the passing of a person, the entire deceased's property (assets and liabilities) devolves on one's heirs. When the deceased has not made a will (intestate), the law stipulates the succession to the property in terms of the persons entitled to it and their respective share of the estate.

3. What shares does the law prescribe for inheritance ab intestate?

The law distinguishes among six classes of heirs: the 1st class pertains to the deceased's descendant heirs (children, grandchildren, etc.), the 2nd class to parents, siblings and deceased siblings' children and grandchildren, the 3rd class to grandparents and of their descendants to their children and grandchildren, the 4th class to great-grandparents. No relative is called to the estate if there is a surviving relative of a preceding heir class called to the estate.

The deceased's surviving spouse is called to the estate as ab intestate heir to receive $\frac{1}{4}$ of the estate when in concurrence with 1st class heirs and $\frac{1}{2}$ of the estate when in concurrence with other class heirs. In the absence of heirs, the State is called to the estate in the 6th class.

4. What is a will?

Under the law, any natural person may make a will leaving his/her estate to any chosen beneficiaries. The Greek Law generally provides

for three types of will: (a) the holographic will, entirely handwritten, dated and signed by the testator, and kept by same or a third party; (b) the public will, executed before a notary public in the presence of witnesses; and (c) the secret will, which may be handwritten by the testator or by any third party or which may be typed and which is delivered to a notary public in the presence of witnesses whereupon the testator states that the document consists of his/her will.

5. What is the legal share?

The law stipulates that the testator may not, under a will, omit certain persons from his estate (compulsory heirs) who, by virtue of kinship, enjoy special protection under the law and are called to his/her estate by a compulsory share. Compulsory inheritance thus provides for descendants, parents and surviving spouse – the legal beneficiaries – the right to the so-called "legal share" on the deceased's estate. Unless there are valid grounds for the exclusion of legal beneficiaries, the testator may not, under his/her will, instate third parties as sole beneficiaries thus infringing the legal share of compulsory heirs. Any such clauses under a will are automatically rendered void to the extent that they infringe the rights of compulsory heirs. The legal share of compulsory heirs amounts to one half of the ab intestate share.

6. How is property acquired by demise?

Property may be acquired by demise in a number of ways, including inheritance, bequest, insurance policy of the deceased, etc.

The present does not aspire to provide a global and extensive presentation of all ways in which property may be acquired by demise. We shall therefore only refer to estate derived by inheritance, which is the most common case.

7. Which law applies?

Under Greek Law, inheritance is governed by the law of the testator's citizenship (article 28 of the Civil Code). The same approach applies in other countries, such as Germany (article 25 par. 1 of EGBGB). Hence, if a Greek citizen domiciled in Germany passes away, the Greek inheritance law shall apply. If the deceased had dual citizenship, Greek and German, according to article 31 of the Greek Civil Code the Greek Law shall apply, but according to article EG 5 Absatz 1 Satz 2 EGBGB the German Law shall apply. Special care should be exercised in such instances of conflicting legislation.

8. How does one become an heir/beneficiary?

As explained above, one becomes an heir/beneficiary on the demise of a natural person (the deceased). In particular, if the estate of the deceased includes immovable property, a deed of acceptance of the estate shall have to be drafted before a notary public and the following documents shall have to be submitted for this purpose:

- death certificate
- if there is a will, certified copy of the will as published at the competent First Instance Court and certificate by the same First Instance Court that no other will has been published or
- if there is no will, certificate from the competent First Instance Court that no will has been published
- certificate of the next of kin
- official copy of the inheritance tax return

The notarial deed of acceptance of the estate must then be filed with the competent land registry or cadastre, as the case may be (see www.ktimatologio.gr), provided the immovable property is located in an area that has been included in the cadastre.

If other property is conveyed (such as listed or OTC shares, stake in a company, ships, etc.), the relevant procedures will have to be followed.

9. What should I do if I wish to renounce an inheritance?

Under the law, the heir may renounce the right to inheritance within four months from the time of becoming cognizant of the conveyance and the reasons thereof, such period extending to one year if the deceased's last domicile was abroad. Inheritance is renounced by a declaration filed with the secretary of the competent court.

Acceptance and renunciation of inheritance are both irrevocable.

10. What is a donation?

Under the law, donation envisages any conveyance of property **with no consideration**.

11. What is parental donation?

Parental donation is the free donation by any parent to one's offspring for the purpose of establishing or preserving financial or family independence, or for commencing or upholding a profession, to such amount as allowed under the circumstances.

12. How may donation or parental donation be effected?

- 1) For each parental donation / donation, a relevant declaration shall be filed with the competent fiscal office (DOY).
- 2) For parental donation/ donation of immovable property a notarial deed shall also be drafted. The following documents shall be submitted to the notary public:
 - a) For land: recent topographic plan of the plot with the relevant statements by the engineer as prescribed under Laws 1337/1983 or 651/77.
 - b) For flats/houses: certificate issued by the relevant municipal authority that

no Immovable Property Dues (TAFI) are outstanding for the property.

- c) Tax certificate of good standing for the contracting parties. The request may be submitted by the notary public with the Ministry of Finance.
 - d) A social insurance certificate of good standing is required if one of the contracting parties has a specific capacity (such as administrator of a limited or unlimited liability partnership, or of a limited liability company, or member of the board of directors of a societe anonyme).
 - e) Certificate that the property has been included in the inheritance/ parental donation tax return and the relevant tax has been paid, if the property conveyed/ donated derives from inheritance or parental donation (if death or parental donation occurred after 1.1.1995).
 - f) The relevant cadastral documents must be submitted and appended to the contract if the property is situated in an area which has been included in the cadastre.
 - g) A copy of the ownership deed which has been filed with the competent municipal authority for town-planning purposes must also be submitted if the property is situated in an area pending inclusion in town-planning.
 - h) Other documents may be required (such as building permit, forestry department certificate, etc.) depending on the property and as the case may be.
- 3) For the transfer of shares a notarial deed is not required and such transfer may be effected by virtue of a private agreement for parental donation/ donation of shares, which shall be submitted to the tax office on submission of the parental donation/ donation tax return.

II. INHERITANCE TAX

13. Which property is subject to tax?

Taxable property is any property of any nature located in Greece, i.e. immovable (land, houses, flats, etc.) and movable (funds, receivables, shares, stake in a company, etc.), and abroad.

The new Law 3842/2010 abolished **exemption** from the tax on movable property held abroad by a **Greek citizen** domiciled abroad for a **minimum of ten years**.

14. Who is liable to taxation?

The law specifies the persons liable to taxation in article 5 of Law 2961/2001 where it specifies that the person liable to tax is the beneficiary of the acquisition, i.e. the heir/beneficiary to the inheritance; if there are more than one beneficiaries, each beneficiary is taxed according to the property s/he acquires.

Inheritance tax is imposed regardless of the formalities followed for the acceptance of the inheritance (e.g. drafting of deed of acceptance of inherited immovable property).

15. When does a tax obligation arise?

The time when a tax obligation arises is the time of demise of the person whose estate is inherited.

For inheritance, donation and parental donation cases for which the tax obligation arose before 31/12/1994 the State's right to collect tax has lapsed.

16. Are there any exceptions?

Yes! The time when the tax obligation arises is in some cases postponed to a later date under the law. Below are a few examples:

- when the inheritance is conditional on the fulfillment of a clause or completion of a time period, the tax obligation arises upon the fulfillment of the clause or the completion of the time period;

- when inheritance pertains to the bare ownership, the tax obligation arises when this becomes combined with usufruct, i.e. when the beneficiary/heir acquires usufruct.

17. Is there any other way of postponement?

The time when the tax obligation arises may also be postponed by decision of the director of the fiscal office upon request of the person that is liable to tax. The request must be filed before the lapse of the reason of postponement and within five years, such period commencing on the expiry of the time for submission of the request (see 21 below). This postponement may be granted if, for instance, the acquired objects are the subject of litigation (i.e. if they have been challenged by a third party before a court of law) or if they are pledged abroad and provided, in such cases, the person that is liable to tax is not in possession of the object.

It should be mentioned that the new Law 3842/2010 abolished the possibility of postponement of the time when the tax obligation arises by decision of the director of the fiscal office in cases where the person that is liable to tax **was permanently domiciled** abroad at the time of demise of the person whose estate is inherited.

18. How is the value of property determined?

It would not be feasible to provide an exhaustive presentation of all provisions for the determination of the value of property which generate a tax obligation (*given the volume and complexity of the provisions, it would be advisable to seek expert consultation in each case*) and we shall therefore present a few examples of various property categories:

- In determining the taxable **value of immovable property** the objective value, as determined by the Ministry of Finance, is taken into consideration, which examines such criteria as the location, the size and age of the property. The site of the Ministry of Finance www.gsis.gr provides access to the

relevant tables, but it would be advisable to seek expert consultation, especially from notaries who use special software for the determination of this value. In many areas of the country which have not been included in the system for the determination of objective values yet the comparative value is used, as determined by the tax office on the basis of information it has on file for the transfer of property in the same area.

- In the case of **receivables which pertain to funds**, the amount of the funds plus interest due at the time of death of the person whose estate is inherited are taken into consideration.
- For **shares of listed companies**, bonds and other securities of private companies, public debt instruments or other such securities, the value is determined on the basis of their value on the preceding day to the time when the tax obligation arose.
- For **shares of non-listed companies**, the value is determined on the basis of deeds for the transfer of the company's shares in the last six months before the death of the person whose estate is inherited as well as their intrinsic value which is derived by dividing the company's net worth by the number of shares.
- The value of movable property is determined on the basis of any available evidence.

19. How is the tax calculated?

Subject to the value of the objects and the relationship between the deceased and the beneficiary/heir (see Nos. 2 and 3) the person that is liable to tax is classified under one of the following categories and taxed accordingly:

CLASS A'

- spouse of the deceased
- person that had entered into a cohabitation agreement with the deceased under the provisions of Law 3719/2008 which was terminated on the latter's death, provided such cohabitation lasted for a minimum of two years
- first degree descendants (offspring from legal marriage, offspring born out of wedlock vis-à-vis the mother, acknowledged voluntarily or by court

ruling vis-à-vis the father, legitimized by subsequent marriage or by court ruling vis-à-vis both parents)

- second degree descendants by blood (grandchildren)
- first degree ascendants by blood (parents)

CLASS B'

- third and subsequent degree descendants (great grandchildren)
- second and subsequent degree ascendants (grandparents, etc.)
- offspring acknowledged voluntarily or by court ruling vis-à-vis the ascendants of the father who acknowledged such offspring
- descendants of the acknowledged vis-à-vis the acknowledged and his ascendants
- full or half siblings
- third degree collateral relatives by blood
- stepfathers and stepmothers, offspring from spouse's previous marriage, offspring by marriage (sons & daughters in law), and ascendants by marriage (fathers & mothers in law).

CLASS C'

- any other relative by blood or marriage of the deceased or persons who are not relatives of the deceased.

20. When must I submit the inheritance tax return?

he tax return must be submitted within

- six (6) months if the deceased passed away in Greece
- one (1) year if the deceased passed away abroad or if the beneficiary/heir or legatee was domiciled abroad at the time when the deceased passed away. In such cases, if the beneficiary/heir comes into possession of the objects being inherited within the first six (6) months of the one-year time-limit, the one-year time-limit is reduced to six (6) months from the time of taking possession of such property.

CLASS A'

Scale (€)	Scale Rate (%)	Scale Tax (€)	Taxable property (€)	Tax due (€)
150.000	-	-	150.000	-
150.000	1	1.500	300.000	1.500
300.000	5	15.000	600.000	16.500
In excess	10			

CLASS B'

Scale (€)	Scale Rate (%)	Scale Tax (€)	Taxable property (€)	Tax due (€)
30.000	-	-	30.000	-
70.000	5	3.500	100.000	1.500
200.000	10	20.000	300.000	23.500
In excess	20			

CLASS C'

Scale (€)	Scale Rate (%)	Scale Tax (€)	Taxable property (€)	Tax due (€)
6.000	-	-	6.000	-
66.000	20	13.200	72.000	13.200
195.000	30	58.500	267.000	71.700
In excess	40			

21. When does the time-limit commence?

The time-limit for submission of the inheritance tax return commences:

- at the time of death of the deceased for ab intestate heirs
- at the time the will is publicized for beneficiaries or legatees in a will
- at the time specified by the law in case of postponement of the time when the tax obligation arises (see Nos. 16 and 17)
- at the time the final presumption of death is publicized in the press, in cases of presumption of death
- at the time when the legal representatives, trustees to the estate, executors of the will and trustees in bankruptcy are informed of their appointment
- at the time of acknowledgement by the heirs, in cases of estate in abeyance
- at the time of death of the person that is liable to submit an inheritance tax return, if such person did not submit the return.

The time-limits may be extended by up to 3 months, for an important reason, on request of the party concerned and by decision of the director of the fiscal office.

22. Where must I submit my inheritance tax return?

The inheritance tax return must be filed as follows:

- with the director of the fiscal office at the deceased's domicile
- if the deceased was domiciled abroad and passed away in Greece, with the director of the fiscal office who is in charge of the location where the deceased passed away
- if the deceased was not domiciled and did not pass away in Greece, with the director of the fiscal office in charge of residents abroad

III. TAXATION OF DONATIONS AND PARENTAL DONATIONS

23. Which property is subject to taxation?

The following are subject to tax:

- donation of any property of any nature which is located in Greece
- donation of movable property of a Greek citizen which is located abroad
- donation of any movable property of a foreign citizen which is located abroad to a Greek or foreign citizen who is domiciled in Greece

24. Who is liable to taxation?

The donee (the person to whom the donation is made) is subject to tax.

25. When does the tax obligation arise?

In cases of donation and parental donation of immovable property, the tax obligation arises at the time when the relevant notarial deed is drafted.

In cases of transfer of movable property, if the object of the donation or of the parental donation was delivered without the drafting of a contract or if the contract was drafted after the delivery of the object of the donation or parental donation, the tax obligation arises at the time of delivery. In cases of donation by demise, the tax obligation arises at the time of death of the donor, in the absence of any further suspensive condition.

26. How is the value of the objects determined?

The same criteria shall apply as for conveyance through inheritance (see No. 18 above).

27. How is tax calculated?

The classes and rates provided above for inheritance tax apply (see No. 19 above).

27. When must I submit the tax return?

A tax return must be submitted for donations or parental donations, regardless of whether any tax becomes due. The tax return must be submitted:

- before the drafting of the notarial deed for the donation or parental donation
- if the donation or parental donation was not accepted immediately, before the drafting of the contract of acceptance

For donations or parental donations without a notarial deed or a deed drafted abroad but not before a Greek Consular Authority:

- the tax return must be submitted within six months from delivery of the object to the donee

In case of donation by demise and insurance:

- the tax return must be submitted within six months from the death of the donor or of the insured person, as the case may be

In case of postponement of the time when the tax obligation arises:

- the tax return must be submitted within six months from the time when the obligation arises

29. Where must I submit my tax return?;

The tax return must be filed as follows:

- with the director of the fiscal office of the donor's or parent's domicile
- if submission to the director of the competent fiscal office is evidently not practical because the domicile is in a

town other than where the contract was executed (e.g. when a donation is made in Athens of immovable property located in Xanthi), with the director of the fiscal office where the contract was executed

- if the donor or parent is domiciled abroad, with the director of the fiscal office in charge of residents abroad
- if the notarial deed is drafted abroad, with the relevant Consul of the Greek Consulate abroad

IV. PAYMENT OF TAX

According to the law currently in force, the tax arising in all cases (i.e. through inheritance or donation or parental donation) may be paid as a lump sum (the total amount), with a 5% discount, or in 12 equal bimonthly installments.

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Should you require additional information or legal consultation on any of the matters contained in this Handbook please contact us under info@verveniotis.com or call us under +30 210 3611390.

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