

# IFA Annual Meeting 2018

## Reorganization of Companies or Groups (mergers, business contribution, exchange of shares and similar operations)

Olivier Vergniolle, Partner, ARSENE

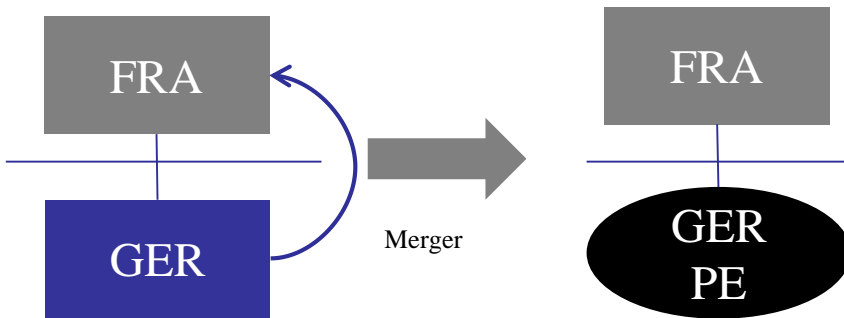
Jörg Schindler, Global Head of Tax, Vonovia,

Franz Prinz zu Hohenlohe, Member of the Board, WTS Group AG

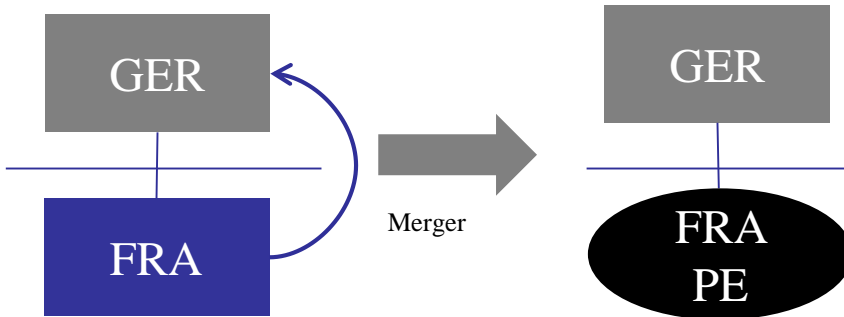
Frankfurt/Main, June 15, 2018

# Scenario 1 – cross border merger

Scenario 1a:



Scenario 1b:

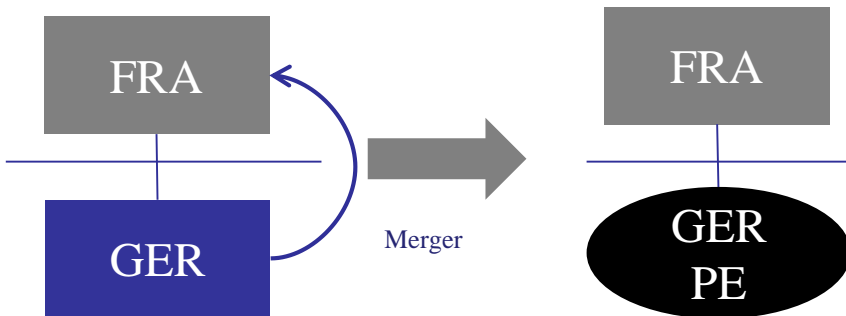


## Considerations:

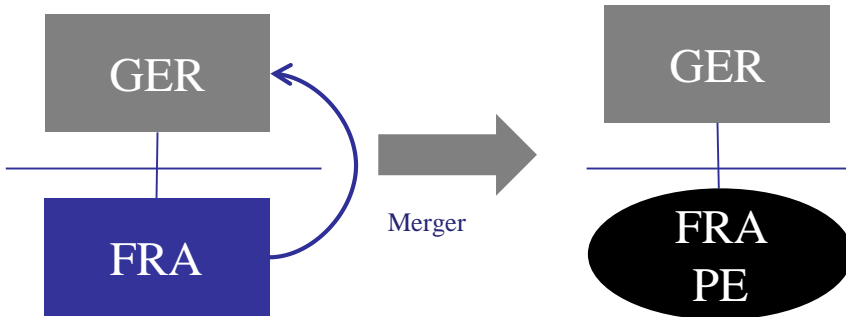
- Tax book value versus fair market value – requirements
- Loss carry forward of merged entity
- Attribution of assets to permanent establishment vs HQ upon merger
- How to avoid double taxation in case of different asset attribution under German and French tax law

# Scenario 1 – cross border merger

Scenario 1a:



Scenario 1b:

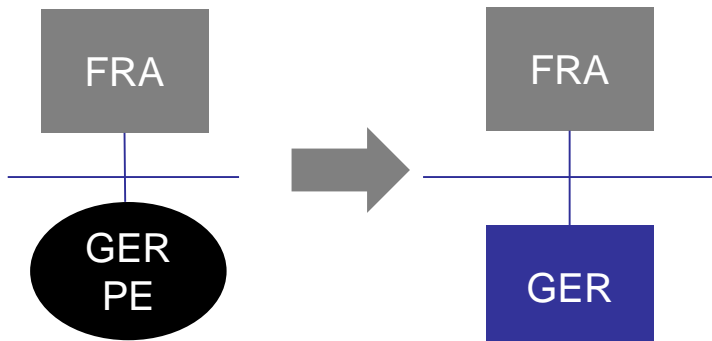


## Considerations:

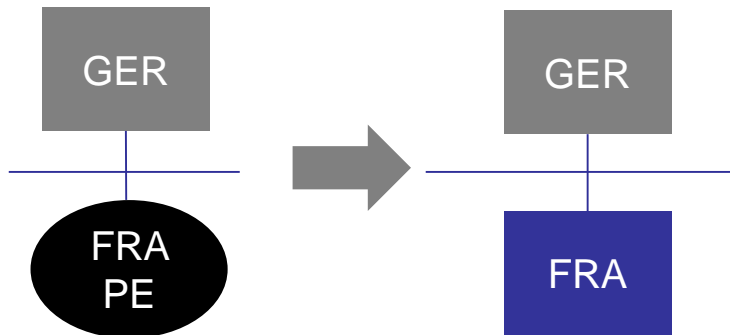
- Retroactive effect of merger for German and French tax purposes
- Ruling practice
- German anti license box regime (§ 4j EStG)
- RETT (Germany: RETT group exemption and EU state aid)
- Legal aspects (France: merger or dissolution without liquidation)

# Scenario 2 – Incorporation of PE

Scenario 2a:



Scenario 2b:

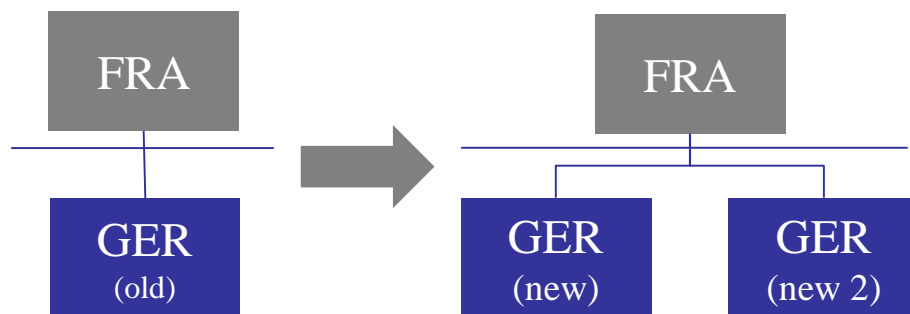


## Considerations:

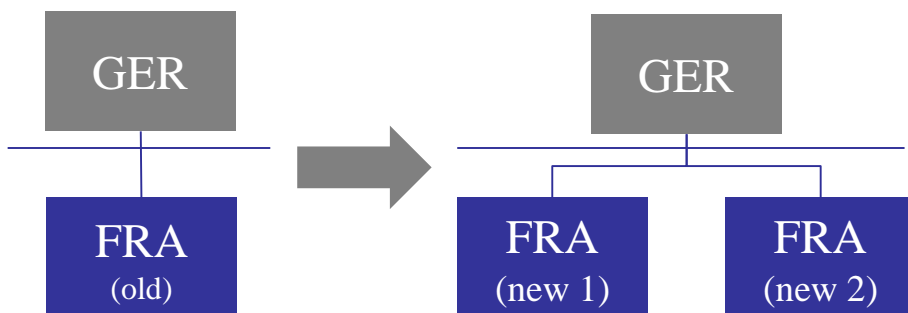
- Incorporation at tax book value or fair market value at the level of the PE and at the level of the shareholder
- Loss carry forward at the level of the PE
- Retroactive effect for German and French tax purposes
- Asset allocation for French and German tax law (eg, IP that is used by the HQ and PE)
- Anti abuse provisions
- RETT
- Legal aspects

# Scenario 3 – split

Scenario 3a:



Scenario 3b:

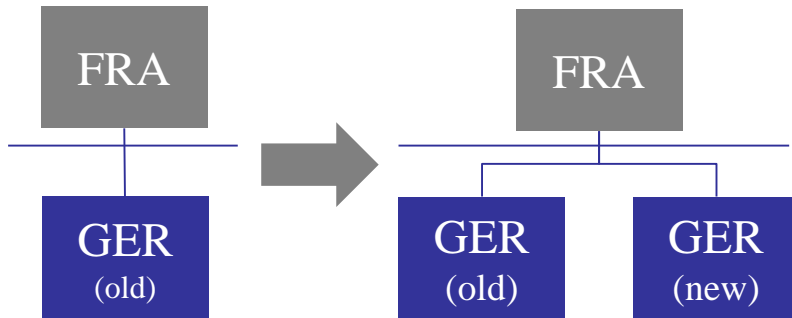


## Considerations:

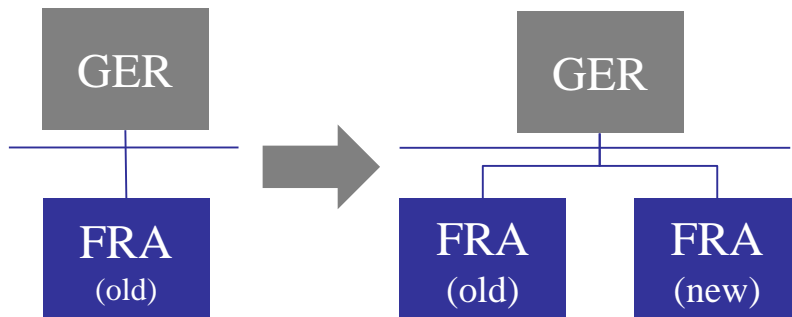
- Requirements for tax exempt split
- Loss carry forward
- Tax considerations at the level of the shareholder
- Anti abuse provisions
- RETT
- Legal aspects

# Scenario 4 – spin off

Scenario 4a:



Scenario 4b:

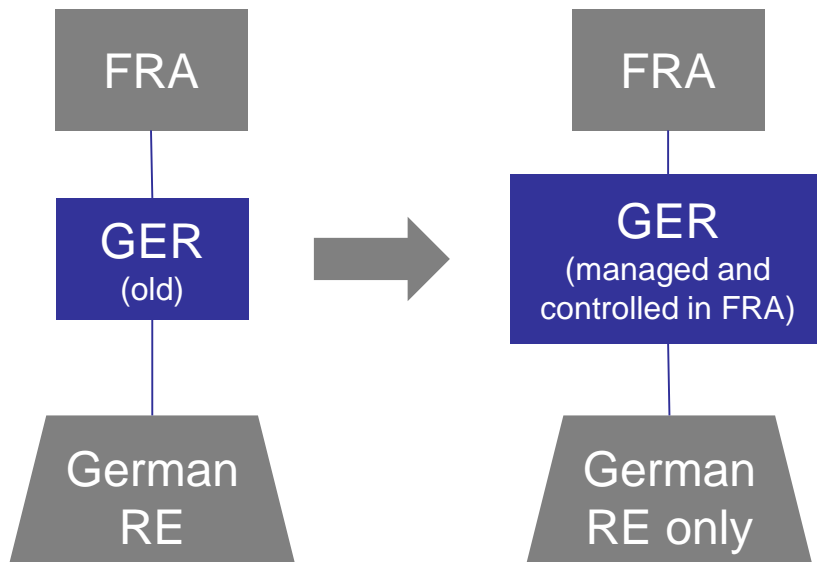


## Considerations:

- Spin off at tax book value vs fair market value  
- requirements for tax exempt spin off
- Loss carry forward
- Anti abuse provisions
- Tax consequences of spin off at the level of the shareholder
- Retroactive effect for German and French tax purposes
- RETT
- Legal aspects

# Scenario 5 – relocation without leaving a PE but Real Estate behind

Scenario 5



## Considerations:

- German income tax: relocation of GER from Germany to France and build in gains in the assets (German Real Estate)
- German trade tax
- RETT
- French tax implications
- legal implications