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[Third Party Communication:

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**From:** [REDACTED]

**Sent:** Thursday, October 30, 2014 1:42:08 PM

**To:** [REDACTED]

**Cc:** [REDACTED]

**Bcc:**

**Subject:** Source of Interest Payment by Foreign DE (POSTU-133504-14)

This is in response to your recent inquiry whether interest paid by a foreign disregarded entity of a U.S. domestic corporation to a foreign corporation is U.S. source income under section 861(a)(1) and, therefore, subject to withholding under section 1442 . The foreign corporation payee is a controlled foreign corporation and the U.S. domestic corporation is a United States shareholder of that controlled foreign corporation. In this case, the foreign disregarded entity payor, which is wholly owned by the U.S. domestic corporation, elected under Treas. Reg. § 301.7701-3(c) to be treated for federal tax purposes as disregarded as an entity separate from its owner. Pursuant to Treas. Reg. § 301.7701-2(a), the activities of a business entity that has made the election to be treated for federal tax purposes as a disregarded entity are treated in the same manner as a branch or division of its sole owner. (Certain provisions of the Treasury regulations provide that an entity that has made this election will be treated as an entity separate from its owner for limited purposes; sourcing of interest payments is not one of the limited purposes.) Accordingly, interest paid by the foreign disregarded entity to the foreign corporation payee is considered to have been paid by the U.S. domestic corporation. With exceptions not relevant here (relating to interest paid on certain deposits with banks and savings institutions) interest paid by a domestic corporation is U.S. source income under section 861(a)(1) and so is subject to withholding under section 1442. In its protest, the taxpayer has offered several arguments in support of its position that under the facts of this case the interest should not be considered to have been paid by the U.S. domestic corporation. For the reasons you set forth in your rebuttal, taxpayer's arguments are not persuasive.

Although we do not discuss them in this email, we want to point out that the facts in this case raise many possible subpart F issues that warrant further development. It is also possible that the facts in this case may raise issues under a relevant tax treaty that could warrant further development. Let us know if we can be of further help.