



Article from

Taxing Times

March 2016

Volume 12

Issue 1

Meet Alexis MacIvor, New Chief of the Insurance Branch

By Mark S. Smith

In February 2015, the Internal Revenue Service (IRS) Chief Counsel appointed Alexis MacIvor as the chief of Branch 4 of the Office of the Associate Chief Counsel (Financial Institutions & Products). That branch (sometimes referred to by our readers as the “Insurance Branch”) has seven attorneys who work exclusively on issues concerning the taxation of insurance companies and the products those companies issue. Because of the importance of that branch’s work product to the issues that life actuaries must address every day, the TAXING TIMES Editorial Board and the Taxation Section Council thought our readers would appreciate the opportunity to meet Alexis and welcome her to the insurance tax actuarial community.¹ Mark Smith of our editorial board recently met with Ms. MacIvor to talk about her background and her new role.

Smith: Alexis, thank you so much for taking the time to talk with us today. I know the first year in this position can be very hectic. Perhaps we could start by talking a little bit about your background. Did you always aspire to be a tax attorney?

MacIvor: When I went to college, I thought I wanted to be a scientist. Once at college, I figured out that I liked the analysis part, interpreting experimental results and comparing them to other scientific studies, but I did not like the field and lab work. I ultimately majored in environmental biology, a degree that included science and also added economics, sociology and other interdisciplinary courses. In exploring other fields that had similar analysis, I discovered law, and went to the University of Washington Law School.

While I was in my first year at law school, someone recommended that I take tax courses. So, I took a basic tax course. My professor, Sam Donaldson, was incredible. He would assign an Internal Revenue Code (Code) section or two for each class and spend a lot of time teaching the class how to read those sections. I found myself spending hours trying to figure out how the different Code provisions fit together. The Code was a puzzle, and I enjoyed trying to figure out how the pieces came together and which pieces were missing. I enjoyed tax so much that I decided to go to the University of Florida to receive an LLM in taxation.



Smith: So how did you end up specializing in insurance?

MacIvor: Before I joined the Insurance Branch, I was at Steptoe & Johnson LLP for about 9 years. At Steptoe, my practice included tax planning but focused on tax controversy and litigation. I spent significant time preparing for litigation and for conferences with Appeals. Some of this involved insurance issues for insurance companies and for non-insurance companies.

One of the things I enjoyed most about my practice was learning about a client’s business. Once I understood it, I could chart a legal course taking into account the client’s normal business operations and needs.

Drawing from these experiences, I took a step further and started teaching a course as an adjunct professor at the Georgetown LLM program that covers real estate investment trusts (REITs), regulated investment companies (RICs) and real estate mortgage investment conduits (REMICs); and also life insurance companies, property and casualty (P&C) companies, products and captives.

Smith: I understand you’ve been in the Insurance Branch for some time and have worked with many practitioners in your role with the government, as well as in the private sector. What has that been like, and how has it prepared you for this new challenge?

MacIvor: In the Insurance Branch I have worked on a variety of projects across the branch’s jurisdiction, including life insurance, non-life insurance and product taxes. I prepared private letter rulings (PLRs) and change in method of accounting letter rulings, and provided support to litigation attorneys. I also provided legal advice to Exam, Appeals, and the Issue Practice Groups (IPGs).

I worked with attorneys within the Insurance Branch, other branches in Financial Institutions & Products, and elsewhere in the Office of Chief Counsel, including other Associate Chief

Counsel offices and Division counsel on the examination side. The Chief Counsel's office has a wealth of specialized knowledge.

Smith: Could you elaborate on this a little bit? What are some of the circumstances where the branch works with other divisions in the Office of Chief Counsel? And, can you talk a little bit about some of the ways the branch works with the Large Business and International (LB&I) division?

MacIvor: The Office of Chief Counsel includes the operational side, such as LB&I and Small Business/Self-Employed (SBSE), and the technical side. On the technical side, the groups are divided by subject matter expertise. If the Insurance Branch is issuing a PLR regarding an insurance issue that also involves a provision within the jurisdiction of the Associate Chief Counsel International, we would work with those attorneys. Similarly, if attorneys in the Associate Chief Counsel Corporate are working on a PLR involving Subchapter L provisions, they would reach out to us for assistance. We also work with other attorneys within Financial Institutions & Products on financial products issues.

In addition to working with other attorneys on the technical side, we also work with attorneys on the operational side, including LB&I, and with agents. This assistance can result in Chief Counsel Advice (CCA), which is published. We also issue Technical Advice Memoranda (TAMs), which require the cooperation of the taxpayer and exam to submit a technical issue to us. TAMs may require assistance from attorneys in other divisions of Chief Counsel with subject matter expertise.

Smith: How would you describe the work environment in the branch itself, and how do you view your new role?

MacIvor: The Insurance Branch has strong attorneys who work very hard to get to the right answer. I have enjoyed learning from them since I started at the IRS, and I am excited to have this opportunity to lead them.

I also enjoy the camaraderie we have developed in the Insurance Branch. I have a tremendous amount of respect for the attorneys and am honored to be their branch chief. The attorneys collectively have a great depth of experience, and we work well together on projects. As the new branch chief, I want to encourage our attorneys to continue to expand the range of their experience and knowledge.

Smith: How does an attorney in government gain an understanding of the business of a taxpayer, and how important is that to figuring out how a particular issue should be treated?

MacIvor: I come from a private practice background and understand that business needs are key to companies. In my prior position, I could ask the client about its business. In my current

position, it is more difficult to achieve the same level of understanding about business practices and needs, and therefore more difficult to determine whether a technical response can accommodate those needs. In order to find creative solutions that best serve everyone, the Insurance Branch needs the industry to share information and educate us about current business practices. The industry changes and products change, sometimes rapidly. We learn about these changes from publications and from people telling us about them. The more we know, the better we are able to provide consistent guidance across the insurance tax community. I would encourage your readers to reach out and talk to me and to attorneys in the Insurance Branch so we understand your evolving business.

Smith: Funny you should mention the evolving business of insurance taxation. One of the most important developments in company taxation will be the adoption of a principle-based approach to life insurance reserves. There has been a long and productive dialogue between the branch and life insurers around tax

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issues that will arise as a result of that adoption. Can you share with our readers your thoughts on the work that has been done to date on Life PBR?

MacIvor: As a new branch chief, I am getting up to speed on all of the work the Insurance Branch has done on various issues, including Life PBR. We are currently thinking about principle-based reserves and plan to coordinate closely with Treasury Office of Tax Policy on this issue. I look forward to continuing the productive dialogue between the branch and life insurers around Life PBR.

Smith: You've talked about the importance of the insurance tax community being open to the government and sharing information about the evolving issues that companies face. Likewise, the industry is always eager to learn about what's hot from the branch's perspective and what is the current thinking around particular issues. Your predecessor was very generous with her time and opinions on a variety of issues. Do you have thoughts on continuing that openness?

MacIvor: I fully support this open dialogue to the extent it is permitted. Since joining the branch, I have spoken on panels at the Federal Bar Insurance Tax Seminars and the Society of Actuaries Product Tax Seminar. I anticipate that the Insurance Branch will continue to participate in similar conferences. These conferences are an opportunity for the industry to ask questions and hear directly from attorneys in the Insurance Branch. Many times we are able to clarify the scope of recently published guidance, PLRs, TAMs and CCAs.

While we want to have a productive dialogue with the industry, we are limited on what information we can share. For example, we cannot discuss a matter pending before another office of the IRS or before a court, and Code section 6103 prohibits us from sharing taxpayer and return information.

Smith: One question I hear often in practice is how long a particular work product, such as a PLR, might take once it is submitted. Do you have any suggestions how one might tee up issues for the branch in a way that they can be processed efficiently from your own perspective?

MacIvor: Well, for one thing I encourage pre-submission conferences. For the Insurance Branch, a submission is much easier to process if we have an opportunity to discuss with the taxpayer the information we need. In addition, we have an opportunity to explain potential problems and lay out coordination that may be required. If the subject matter is not under our jurisdiction, we may need to coordinate with another office within Chief Counsel.

Smith: What about life insurance products? I know there has historically been anxiety around guidance in the product area because of a fear that changes in the IRS' ruling position will create a hardship for products that already have been issued. Do you have any thoughts on this?

MacIvor: I understand that changes to the tax rules may impact the taxation of those products and their pricing. I also appreciate that companies cannot retroactively change the price of products. That being said, seeking a PLR is a good way to obtain some certainty. A taxpayer may ordinarily rely on a PLR it receives, and if there is a subsequent change in ruling position or guidance, the change ordinarily is applied prospectively. But I also think this issue goes back to making sure we have a productive dialogue with the industry. If we know that the industry has

taken a certain position, or that companies are taking different positions, we can be sensitive to these issues.

Smith: That's interesting. On the products side, many of the existing rules (such as the definition of life insurance contract) were new in 1984. But as to Company side, some issues have a very much longer history. How does one approach that?

MacIvor: The majority of Subchapter L was enacted in 1984. These provisions have significant similarities and also clear deviations from prior insurance provisions. This historical background in conjunction with major changes in the industry results in some of our most significant challenges. In the Insurance Branch, we have attorneys with a lot of historical and institutional knowledge. We rely on them to help us understand this history and to determine whether it influences our interpretation of those provisions.

Smith: Is there anything else you would like to share with us today?

MacIvor: I appreciate this opportunity to tell you a little about myself. I encourage members to reach out and introduce themselves to me and the other attorneys in the Insurance Branch. We are interested in having a dialogue with the industry and hearing about the industry's priorities and issues. ■

The content of this article is the opinion of the writer and does not necessarily represent the position of the Internal Revenue Service.

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END NOTES

¹ *TAXING TIMES* previously interviewed William J. Wilkins, IRS Chief Counsel, 1 *TAXING TIMES*, Vol. 6, Issue 1 (February 2010); Helen Hubbard, Associate Chief Counsel (FI&P), 1 *TAXING TIMES*, Vol. 10, Issue 2 (May 2014);