

F.No. 279/Misc./M-77/2011-ITJ
Government of India
Ministry of Finance
Department of Revenue
Central Board Direct Taxes
(A&J Division)

New Delhi, the 7th September, 2016

Sub: Guidelines for engagement of Special Public Prosecutors (SPPs) to represent the Income Tax Department before Courts of Session and its subordinate Courts; revision of their schedule of fees and related matters – instructions regarding.

With a view to streamline the process of engagement of Special Public Prosecutors (SPPs) by the Department to represent before Courts of Session and its subordinate Courts in prosecution cases and in supersession of the existing Instructions of the CBDT on the subject matter in general and Instruction No. 1880 dated 30.01.1991 and Instruction No. 1925 dated 31.03.1995 in particular, the following instructions are issued herewith for compliance by all concerned:-

2. Procedure for engagement

The procedure for engagement of Special Public Prosecutors, renewal of their terms, requisite qualifications and terms and conditions of their engagement shall be as follows:

2.1 Qualification of Special Public Prosecutors

In order to be eligible for engagement as an SPP, a person should:

- a) be eligible to appear before the court as an Advocate and
- b) have a minimum experience of 7 years as a Practicing Advocate, in criminal matters. Adequate experience of handling trials relating to Direct Taxes is desirable.

2.2 Procedure for engagement of Special Public Prosecutors

- (a) For the purpose of engagement, the CCIT shall call for applications in **Proforma 'P1'** either by advertisement in local newspapers or from Bar Association. It should, however, be ensured that the process of engagement is transparent and broad based.
- (b) A five-member Screening Committee headed by a Pr.CIT/Pr.DIT shall be formed by the CCIT for the purpose of evaluation of proposals received. The Screening Committee shall have representatives from DGIT (Inv.) and DGIT (Intelligence & Criminal Inv.). CIT (J) shall also be part of the Screening Committee wherever possible. Officer looking after prosecution matters may work as Member-Secretary of the Committee. The particulars of the applicants' experience in handling criminal cases and their suitability to represent the prosecution cases of the Department will be evaluated by the Committee. It shall have interaction with the applicants to assess their suitability for the purpose of engagement. The CCIT shall forward the proposal to the Board with his recommendation along with the report of the Screening Committee and copies of applications received in Proforma P1.
- (c) The First engagement of SPP shall normally be for a period of 18 months. Such engagement will be renewable on receipt of recommendation of the CCIT alongwith annual performance appraisal on completion of first 12 months of the engagement.

2.3 Renewal of the term of engagement / performance review

- 2.3.1** The performance of the SPPs shall be reviewed by the jurisdictional Pr.CsIT/Pr.DsIT/CsIT/DsIT whose cases have been represented by the SPP, on an annual basis and a report in **Proforma-P2** shall be submitted to CIT (J)/CCIT before 31st May of the following year. The CCIT shall submit the annual performance of the SPP (Proforma-P2) to the Board so as to reach before 30th June of the year.
- 2.3.2** The CCIT shall submit a proposal for renewal of period of engagement to the Board **at least three months before the expiry of the term**, if the performance of the SPP is found to be satisfactory. The performance appraisal should be sent along with the proposal in **Proforma-P3**. The renewal of the term shall normally be for a period of 3 years.

2.4 Allocation of cases to Special Public Prosecutors

The CCIT shall be the overall in charge of entire prosecution work on behalf of the Income Tax Department in his Region. Work allocation amongst the SPPs in a Pr. CCIT Region shall be done by the CCIT/DGIT. However, a copy of the list of SPPs and the cases assigned to them shall also be forwarded to the CIT (J)/Addl CIT (J)/ Technical in the O/o the Pr. CCIT for maintaining a centralized database for prosecution cases in the Region.

2.5 Termination of engagement/resignation/expiry of term

The engagement of SPP can be terminated through written intimation by either side without assigning any reason. The CCIT is authorized to act on behalf of the department for the purpose. On expiry of the term or termination or resignation, the SPP shall immediately handover the briefs and other related papers to the Pr. CIT/Pr. DIT/CIT/DIT concerned or the other SPPs nominated by the CCIT for the purpose and the pending bills of the SPP should be settled within three months of the end of the term.

2.6 Duties of the Special Public Prosecutors

Duties of the Special Public Prosecutors shall include:

- (i) To represent the Department personally and effectively in conduct of trial for prosecution matters in the Trial courts/ Courts of Session.
- (ii) To give opinion when it is sought about the feasibility of filing a prosecution case or any other prosecution matter.
- (iii) To draft complaints and assist in compliance of the technical requirements.
- (iv) To intimate criminal complaint number to the officer concerned/ complainant.
- (v) To intimate the Assessing Officer/ officer concerned about the outcome of each hearing and the date of next hearing, immediately after the hearing.
- (vi) To assist the witnesses of the Department before their evidences and guide them in facing cross examination. The SPP should prepare each witness and its statement in such a manner that there is consistency in the stand of the Department.
- (vii) To apply for the certified copy within 3 days of the judgement and deliver it to the Pr. CIT/Pr. DIT/CIT/DIT concerned within 10 days (excluding the time taken by the Courts).
- (viii) When a case represented by him/her is decided against the Department, to apply for certified copy of the judgment within three working days of pronouncement and give his opinion regarding the advisability of filing an appeal against such a decision within seven days of taking delivery. In other cases also the same time limits shall be applicable, though opinion will not be required;

- (ix) To draft revision petition, if required or to draft reply to the revision petition, if preferred by the accused.
- (x) To represent the Department in revision matters before the Court of Session.
- (xi) To furnish a statement of the cases handled to the Pr. CIT/Pr. DIT/CIT/DIT concerned, by 30th April of every year, indicating the performance in preceeding financial year in 'P2'.
- (xii) To perform such other duties of legal nature as may be assigned to him/her by the Department.

2.7 Assistance to Special Public Prosecutors by the Department

- (i) The Investigation or Assessing Officer having jurisdiction over the case or the Directorate of Criminal Investigation (DCI), shall provide all assistance to the SPPs such as providing original records; producing the Departmental Officers as witness, etc.
- (ii) The SPP shall be kept informed of the decisions of Appellate Authorities having bearing on prosecution cases.

3. Schedule of Fees, Allowances and Terms of Payment:

3.1 The SPPs will be engaged in accordance with the revised schedule of fees and related terms & conditions applicable to them as given below:

S.No	Activity	Fees Payable
1.	Effective Hearing ¹	Rs. 2,000/- per day per case (there shall be no ceiling per day, irrespective of the number of cases heard on a day)
2.	Non-effective Hearing	Rs. 500/- per day per case (subject to the payment for maximum 5 non-effective hearings in a case/connected cases).
3.	Drafting Complaints ²	Rs. 2,000/- per complaint
4.	Drafting Revisions, Replies, Written Arguments, Affidavits, etc. ³	Rs. 1,000/- per case
5.	Conference fees (With Assessing Officer or above)	Rs. 750/- per conference limited to payment for a maximum of 5 conferences in a case/connected cases.
6.	Clerkage	10% of fee at Sl. No. 1 to 4 above.
7.	Opinion fees (written opinion in cases/matters, other than those where adverse orders have been passed by the Court in the cases represented by the SPP)	Rs. 2,000/- per case/connected cases

I. A substantial and effective hearing is one in which either one or both the parties involved in a case are heard by the Court. If the case is mentioned and adjourned or only directions are given or only judgement is delivered by the Court, it would not constitute an effective hearing.

II. If substantially identical complaints, affidavits etc. are drafted in connected cases (as defined in para 3.2), drafting fees of Rs. 2,000/- will be paid for the main case only. For other cases drafting fees of Rs. 750/- per case will be paid.

III. If substantially identical Revisions, Replies, Written Arguments etc. are drafted in connected cases, drafting fees of Rs. 1,000/- will be paid for the main case only. For other cases drafting fees of Rs. 500/- per case will be paid.

3.2 Appearance fee in connected cases

When more than one complaint involves substantially identical issues, where the arguments are heard in the main case and the other cases are decided accordingly, such complaint in which the arguments are heard shall be treated as the main case and the others as connected cases irrespective of the fact whether all the cases are heard together or not. The SPP shall be paid appearance fee as per para 3.1 above in the main case and only Rs. 750/- in each of the connected cases for every effective hearing.

3.3 Out of pocket expenses

The amount required for court fees at the time of filing a case and other miscellaneous expenses including for obtaining certified copies of judgement/order shall be reimbursed to the SPP on receipt of the claim.

3.4 For matters outside Headquarters

(The headquarters of the SPP shall be the station where the Trial Court for which the SPP is engaged is stationed)

3.4.1 When the SPP is required to go out of headquarters in connection with any litigation or for conference outside the headquarters, he will be entitled to a daily fee of Rs. 3,000/- per day for the days of his absence from the headquarters including the days of departure from, intervening holidays and arrival back to the headquarters. However, no fee will be paid for the day of departure if he leaves headquarters after court hours and for the date of arrival if he arrives at the headquarters before the court hours. The daily fee will be in addition to the normal appearance fee as prescribed in para 3.1 above.

3.4.2 Travel/ Hotel Expenses: In addition to the daily fee, the SPP will be entitled for travel expenses by train in First Class/AC 2 Tier. Road mileage for the journey actually performed by Bus/Taxi/Own Car will be paid as per Mileage Allowance in the T.A. Rules applicable to Central Government Servants at the rate admissible to officers drawing grade pay of Rs. 6600/-. He will also be paid a lump-sum amount of Rs. 750/- as conveyance charges for performing local journey while outside the headquarters. He will also be entitled to actual expenses for staying in hotel, subject to maximum of Rs.3000/- per day.

3.5 Late submission of certified copies of judgement

If the certified copy of the judgement is not delivered to the office concerned within 10 days (excluding the time taken by the Courts) from the date of judgement, 20% of the hearing fees payable to the SPP shall be deducted.

3.6 Procedure for submission and payment of bills to Special Public Prosecutors

The SPPs should submit professional bills in **proforma 'P4'** of this Instruction by 10th of every month. The bills should enclose copy of documents drafted, in case of claim for drafting fee, and minutes/gist of proceedings or a copy of order/judgement where it is necessary in case of claim for appearance fee. The bills shall be scrutinized within 30 days of receipt and deficiencies or excess

claim, if any, shall be communicated to the SPP within a week of such scrutiny. The scrutiny of bills should not be kept pending due to non-availability of funds.

After passage, the bill should be arranged in seriatim of receipt, for payment. The cheque should be sent to the SPP concerned giving particulars of bills covered by the payment.


4. Right to Private Practice

- (i) The SPP will have the right to private practice, but he shall not appear in the prosecution matters against the Department in any court or be associated with any assessee in respect of any offence under the Direct Taxes laws in any manner.
 - (ii) If the SPP happens to be a partner of any firm of lawyers or solicitors, it will be incumbent on the firm not to take up any prosecution case against the Department in any court.
5. **The CCIT referred to in this Instruction means the Pr. Chief Commissioner of Income-tax/ Chief Commissioner of Income-tax in charge of Prosecution matters in the CCA Region.**
 6. The Prosecution Counsels currently engaged by the Department on the basis of Instruction No. 1925 will henceforth be called as Special Public Prosecutors.
 7. These guidelines and the revised schedule of fee and allowances shall come into effect from 07.09.2016.
 8. The SPPs will be paid fee at the old rates in respect of their appearance and other work done by them on or before 06.09.2016 and at the revised rates in respect of the work done by them on or after 07.09.2016.
 9. This issues with the concurrence of Ministry of Law and Justice vide their I.D. No. J,11019/2/2016-Judl.Part(1) dated 24.06.2016 and the Department of Expenditure I.D. No.9 (4)/2012-E.II(B)-Pt.dated 29.08.2016.

(D.S. Rathi)
DCIT(OSD)(ITJ)
CBDT

Copy to:

1. The Chairperson, Members and other officers in CBDT of the rank of Under Secretary and above.
2. The Comptroller and Auditor General of India
3. The Joint Secretary & Legal Advisor, Ministry of Law & Justice, New Delhi
4. Department of Expenditure, Ministry of Finance, New Delhi w.r.t. their Expenditure I.D. No.9 (4)/2012-E.II(B)-Pt.dated 29.08.2016.
5. The DGIT(Systems), ARA Centre, Jhandewalan Extension, New Delhi
6. DIT(PR,PP & OL), Mayur Bhawan, New Delhi for printing in the quarterly Tax Bulletin and for circulation as per usual mailing list.
7. ITCC (3 copies)
8. Official Language section for Hindi translation


(D.S. Rathi)
DCIT(OSD)(I.T.J)
C.B.D.T.

PROFORMA 'P1'

Particulars to be furnished by an Advocate applying for engagement as Special Public Prosecutors

1. Name of the person
2. Permanent Account No.
3. Father's Name
4. Date of Birth
5. Address :- (i) Residence :
(ii) Office:
6. Telephone, Mobile Number and E-mail ID
7. * Educational Qualification
8. * Date of Enrolment as an Advocate in the State Bar Council and Registration No.
9. If a partner in a firm, name(s) of the firm(s) and other partners
10. Number of criminal cases dealt with during last five years as an Advocate
11. Brief particulars of experience in handling prosecution cases under Direct Taxes
12. Income from professional practice (copy of the latest IT Return to be attached)

Verification

I _____, S/o/D/o/W/o _____ do hereby declare that whatever has been stated in the above application is true to the best of my knowledge and belief.

Signature

DATE:

PLACE:

* Applicant to submit documentary proof with respect to aforesaid items / information

Undertaking

I, S/o/D/o/W/o do hereby declare that if engaged by the Department, I shall fully abide by the terms and conditions of the engagement.

Signature

Date:

Place:

ANNUAL PERFORMANCE APPRAISAL OF SPECIAL PUBLIC PROSECUTOR FOR THE FINANCIAL YEAR _____		
PART-I		
Name of the Pr. CCIT /CCIT Region / Pr. CIT/CIT Charge		
Name of the Special Public Prosecutor		
Date of Birth		
Date of Engagement		
PART-II		
PERFORMANCE REPORT		
Complaints handled during the period under review		
1	No. of cases handled by the SPP (list of cases to be enclosed)	
2	Cases decided in favour of the Department	
3	Cases decided against the Department	
4	Complaints Quashed by Hon'ble High Court	
5	Offences Compounded by the Department	
6	Cases closed by the Court	
7	Cases adjourned Sin-a-die	
PART- III		
Comments of the Pr.CIT/Pr.DIT/CIT/DIT on the performance of the SPP		
Pr. Commissioner of Income Tax/ Commissioner of Income Tax		
Review of the performance by the Pr. CCIT/CCIT		
Whether the performance is found satisfactory		YES/ NO
Pr. Chief Commissioner of Income Tax/ Chief Commissioner of Income Tax		

NOTE:

Part-I and Part-II of the pro forma are to be filled by the SPP. Part-II should be verified by the respective Pr.CsIT/Pr.DsIT/CsIT/DsIT before offering their comments on the performance.

PERFORMANCE APPRAISAL OF SPECIAL PUBLIC PROSECUTOR FOR THE PERIOD _____ (To be sent at the time of renewal of term of engagement)		
PROFORMA		
PART-I		
1.	Pr. CCIT/CCIT Region	
2.	Name of the Special Public Prosecutor	
3.	Date of Birth	
4.	Date of First Engagement	
5.	Date of expiry of existing Tenure (Board's reference No. by which last Renewal was sanctioned should be specified)	
PART-II		
PERFORMANCE REPORT		
1.	No. of cases handled by the SPP	
2.	Cases decided in favour of the Department	
3.	Cases decided against the Department	
4.	Complaints Quashed by Hon'ble High Court	
5.	Offences Compounded by the Department	
6.	Cases closed by the Court	
7.	Cases adjourned Sin-a-die	
PART-III		
1.	Does the SPP take interest in his work and generally alert in the Department's interest in various litigation entrusted to him	
2.	Specific comments should be given about the promptness in:	
	2.1. Informing the Department from time to time regarding hearing of Cases, supply of copies of Judgment etc.	
	2.2. Taking steps for Vacation/Variation of stay	
3.	Whether the Pr.CCIT/CCIT satisfied with the performance of the SPP? If no, the instances may be indicated.	
4.	Whether continuance is recommended? If so, for what period?	

Pr. CHIEF COMMISSIONER OF INCOME TAX/ CHIEF COMMISSIONER OF INCOME TAX

PROFORMA 'P4'

Bill for claim of professional fees by Special Public Prosecutors (case wise) to be submitted to the
Pr.CIT /CIT concerned/CIT (J)

PRE-RECEIPTED

1.	Name of the SPP	
2.	Pr.CIT/CIT Charge	
3.	Circle/Ward	
4.	Name of the accused	
5.	Asst. Yr.	
6.	Section(s) of the Act involved	
7.	Case Title	
8.	Dates and amount of bills earlier claimed in this case	

PART A (Bill for Drafting), as applicable

(Amount in Rs.)

1.	Complaints	
2.	Revisions, replies, written arguments etc.	
3.	Written opinion	
	Total	

PART B (Bill for appearance etc.), as applicable

(Amount in Rs.)

1.	Substantial and effective hearing (Whether Connected case- Yes / No)	
2.	Non-effective hearing	
3.	Conference fees	
4.	Clerkage @ 10%	
5.	Out of pocket expenses (particulars to be given)	
6.	For performing duties outside headquarters (as per para 3.4)	
	Total	

Certified that the above information is correct and in accordance with the terms of engagement. The above claims have not been made earlier.

Received Payment

Revenue Stamp

Signature and Name
Of Special Public Prosecutor
Mobile/Tel. No.

For office use only**Total Bill**

Part A	
Part B	
Total Amount claimed	
Deductions, if any*	
Amount passed for payment	

*The SPP shall be intimated of the deductions made before payment of the bill.

Signature and Name of the D.D.O.