

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 30th November, 2023

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.

- Ref:** (i). Letter in F.No. 279/Misc./M-77/2011-ITJ(Part-3) dated 17.10.2017
 (ii). Letter in F.No. 279/Misc./M-77/2011-ITJ(Pt.) dated 08.04.2019 reg. reappointment and biodata.
 (iii). Letter in F.No. 279/Misc./M-77/2011-ITJ dated 17.03.2023
 (iv). Instruction No. 06/2016 dated 07.09.2016

Reference is invited to the earlier letters/Instruction issued by the ITJ Division of CBDT (hereafter referred to as Board) governing various aspects of engagement of Special Public Prosecutors. 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 modifying the earlier Instruction No. 6/2016 dated 07.09.2016, the following Instruction is issued herewith on the subject matter for compliance by all concerned henceforth:-

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 practising Advocate, in criminal matters. Adequate experience of handling trials relating to Direct Taxes is desirable.

2.2 Hiring of Special Public Prosecutors

[The CCIT referred to in this Instruction means Chief Commissioner of Income-tax in charge of Prosecution matters in the CCA Region, if any]

- (a) Term of engagement of SPPs shall be for a period of 3 years and the proposal for the same is to be sent at least 6 months prior to the expiry of existing panel of SPPs. Timely compliance of the same is mandatory as proposals for ex-post facto approval of panels may not be considered by the Board.
- (b) In order to ensure continuity of services, temporary hiring may be granted to SPPs of expired panel as per the following conditions:
 - (i) In cases where proposals for SPPs have been sent to the Board as per extant Instruction and no concurrence has been received from the competent authority till date and the existing panels

have expired, temporary hiring of SPPs from expired panels or the proposal for the extension of the expired panel may be approved till sanction order for the new panel is passed by the Board or

- (ii) Where the existing panels have expired and steps are being actively undertaken by the field formations to send proposals to the Board as per extant Instruction (including publishing of the advertisement and formation of Screening Committee with a representative of MoLJ). In such cases, temporary hiring of SPPs from expired panels will be approved. However, in such cases, no approval for temporary hiring from expired panels beyond 3 months may be accorded. In cases, where the proposal for the new panel is not forwarded by the field within the specified time due to factors beyond their control, such as, delay by MoLJ in nominating a member of MoLJ in the Screening Committee, a further extension of three months may be granted on case to case basis.

2.3 Procedure for engagement of Special Public Prosecutors

- (a) For the purpose of engagement, the Pr.CCIT/CCIT shall call for applications in Proforma 'P1' by advertisement in local newspapers and from Bar Association. It should, be ensured that the process of engagement is transparent and broad based.
- (b) A five-member Screening Committee headed by Pr.CCIT/CCIT shall be formed by the Pr.CCIT/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. A representative of Ministry of Law and Justice (Joint Secretary Level Officer/Director/Addl. Legal Adviser level Officer) is to be a part of the Screening Committee.
- (c) Meeting of the Screening Committee may be convened if the quorum of 2/3rd has been achieved subject to the presence of Chairperson 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 Pr.CCIT/CCIT shall forward the proposal to the Board and the same shall invariably include:
 - (i) Composition of the Screening Committee
 - (ii) Pendency of cases/appeals
 - (iii) Minutes of meeting with details of selection procedure starting from placing advertisement to final evaluation.
 - (iv) List of existing SPPs along with number of cases handled by each SPP and their outcome performance, evaluation and reasons for their non-inclusion in the fresh panel if any
 - (v) Grading/evaluation sheet of the fresh panel

2.4 Performance review

2.4.1 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 Pr.CCIT/CCIT/ shall submit the annual performance of the SPP (Proforma-P2) to the Board so as to reach before 30th June of the year. Timely compliance of the same is mandatory for ensuring effective representation of the Department before various judicial fora. Non-compliance of the same may lead to non-processing of fresh proposals received for engagement of SPPs.

2.5 Allocation of cases to Special Public Prosecutors

2.5(a) The Pr.CCIT/CCIT shall be the overall in charge of entire prosecution work on behalf of the Income Tax Department in the 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(b) Further the size of the panel should be carefully decided based on the pendency of cases and on an average one Special Public Prosecutor may handle 200 cases. A buffer of at least 25% of the required strength or a workable buffer should be considered while determining the size of panel. The panel of counsels proposed along with the buffer (hereafter called 'extended panel') shall be forwarded to Board. The names in the extended panel would be considered in cases of exigencies like resignation, termination etc. of the counsel in the panel. Further, the names in the extended panel should be proposed for regular empanelment to the Board by the Pr. CCIT/CCIT, immediately following such exigency. The tenure of such counsel/s would be valid for the remainder of the tenure of the panel. Having this extended panel ready would ensure that time is not lost in re-doing the whole process of advertisement etc. for filing up one or two vacancies in the panel.

2.5(c) Further, in case of proposal of re-appointment of any SPP(s) who was/were part of the expired panel, re-appointment proforma as per 'P4' of Annexure is to be furnished with the proposal.

2.6 Termination of engagement/resignation/expiry of term

The engagement of an SPP can be terminated through written intimation by either side without assigning any reason. The Pr.CCIT/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 Pr.CCIT/CCIT for the purpose and the pending bills of the SPP should be settled within three months of the end of the term.

2.7 Duties of the Special Public Prosecutors

Duties of the Special Public Prosecutors shall include:

- (a) To represent the Department personally and effectively in conduct of trial in the prosecution matters in the Trial courts/ Courts of Session.
- (b) To give opinion when it is sought about the feasibility of filing a prosecution case or any other prosecution matter.
- (c) To draft complaints and assist in compliance of the technical requirements.
- (d) To intimate criminal complaint number to the officer concerned/ complainant.
- (e) To intimate the Assessing Officer/ officer concerned about the outcome of each hearing and the date of next hearing, immediately after the hearing.
- (f) 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.
- (g) 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).
- (h) 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;

- (i) To draft revision petition, if required or to draft reply to the revision petition, if preferred by the accused.
- (j) To represent the Department in revision matters before the Court of Session.
- (k) 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 preceding financial year in 'P2'.
- (l) To perform such other duties of legal nature as may be assigned to him/her by the Department.

2.8 Assistance to Special Public Prosecutors by the Department

- (a) 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.
- (b) 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 schedule of fees and related terms & conditions applicable to them as given in table below. Bill received by the SPPs as per procedure shall be processed expeditiously, no later than four weeks from raising the same.

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

3.2 Appearance fee in connected cases

¹ 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.

² 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.

³ 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.

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 or she 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/she leaves headquarters after court hours and for the date of arrival if he/she 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 pay of level 11 as per 7th CPC. The SPP will also be paid a lump-sum amount of Rs. 750/- as conveyance charges for performing local journey while outside the headquarters. He/She 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 concerned office 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 'P3' 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. The bills of the fees may be directly submitted to the office of concerned PCIT/CIT concerned /CIT(J) office

4. Private Practice

- (i) The SPP may engage in private practice, but 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.
- (iii) Counsels in buffer/extended panel not rendering any service to the Department and not in receipt of any fees/remuneration/retainership, until their services are regularized may not be covered by the above restrictions.

5. These guidelines and the schedule of fee and allowances shall come into effect from the date of issue.



(Devaki Niranjana)
DCIT(OSD)(ITJ-II)
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 I.D. No.
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
9. Director, Department of Legal Affairs, Ministry of Law & Justice.



(Devaki Niranjana)
DCIT(OSD)(ITJ-II)
CBDT

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 sine 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.

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	

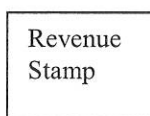
PART B (Bill for appearance etc.), as applicable

(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



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.

PROFORMA 'P4'

FOR RE-APPOINTMENT

Sl. No.	Name of the Council	Bench appearing before		Date of appointment at as Counsel be CBDT	Appointment validity till (date)	No. of Cases in which he represented CBDT	No. of cases in which favourable orders were passed	No. of cases in which adverse orders were passed	No. of cases pending	Average period of pendency	Percentage of success w.r.t decided cases $\frac{8}{8+9} \times 100$
		Respective High Court	Respective CAT								
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)