

**GUIDELINES FOR ENGAGEMENT OF STANDING COUNSELS TO  
REPRESENT THE INCOME-TAX DEPARTMENT BEFORE HIGH  
COURTS AND OTHER JUDICIAL FORUMS; REVISION OF THEIR  
SCHEDULE OF FEES AND RELATED MATTERS  
INSTRUCTION NO. 3/2012, [F. NO. 279/MISC./M-75/2011-ITJ],**

**DATED 11-4-2012**

With a view to improve the quality of representation and to streamline the process of engagement of Standing Counsels for the Department to represent before various High Courts and other judicial forums and in supersession of the existing Instructions of the Board on the subject in general, and Board's letter in F. No. 20/20/67-ITJ (1) dated 08.01.1968, Board's letter in F.No. 20/20/67-ITJ (4) dated 11.01.1968, Board's letter in F. No. 20/20/67-ITJ (13) dated 07.03.1968, Instruction No.1/273 dated 03.03.1971, Instruction No. 1828 dated 13.09.1989, Instruction No. 1806 dated 03.02.1989/ Instruction No.1986 dated 03.07.2000 and Instruction No. 8 of 2007 dated 30.08.2007, in particular, the following Instructions are issued herewith for compliance by all concerned:

**2. Procedure for engagement:**

The procedure for engagement of Standing Counsels, renewal of their terms and requisite qualifications and terms and conditions of their engagement shall be as per guidelines at **Annexure-I**.

**3. Schedule of fees, allowances and terms of payment:**

The Standing Counsels will be engaged in accordance with the revised schedule of fees and related terms and conditions applicable to them as given in **Annexure-II**.

**4.** These guidelines and the revised Schedule of the fee and allowances shall come into effect from 11-04-2012.

**5.** The Standing Counsels will be paid fee at the old rates in respect of their appearance and other work done by them prior to 11-04-2012 and at the revised rates in respect of the work done by them on or after 11-04-2012. However, the revised retainer fee shall be applicable only in respect of the engagement of Standing Counsels done based upon proposals received from the Counsels in accordance with the terms and conditions laid down in this Instruction.

6. This issues with the concurrence of Ministry of Law and Justice *vide* their FTS No. 870/Jud.Sec/2012 and the Department of Expenditure I.D. No. 9(4)/2012-E-II(B) dated 10-04-2012.

## ANNEXURE - I

### **PROCEDURE FOR ENGAGEMENT OF STANDING COUNSELS**

#### **1. Category of Standing Counsels**

The Standing Counsels engaged/to be engaged by the department will fall into the following two categories:

- (a) Senior Standing Counsel
- (b) Junior Standing Counsel

In a station where counsels do not have sufficient experience to be engaged as Senior Standing Counsel, the CCIIT may designate a Junior Standing Counsel to perform the functions of Senior Standing Counsel for that station. The Standing Counsel so designated shall perform the function of arguing cases before the Hon'ble High Court/ITAT in the absence of a Senior Standing Counsel.

#### **2. Eligibility Conditions for engagement as Standing Counsel**

The eligibility conditions for each category of counsels shall be as under:

**2.1. Senior Standing Counsel:** In order to be eligible for engagement as Senior Standing Counsel, a person should

- (a) be eligible to appear before the High Court as an advocate and
- (b) have a minimum experience of five years of handling direct tax matters before High Courts or ITAT as an advocate.

OR

have been a Junior Standing Counsel of the Department for three years

OR

have been an officer of the Income-tax Department who is eligible to appear before the High Court as an advocate and has retired/resigned from the post of Commissioner/Director of Income-tax or above or who has been a member of ITAT, provided that he has not been removed/dismissed or compulsorily retired from service on account of disciplinary action and no disciplinary proceeding under service rules or pension rules is pending against him.

**2.2. Junior Standing Counsel:** In order to be eligible for engagement as Junior Standing Counsel a person should

- (a) be eligible to appear before the High Court as an advocate and
- (b) have a minimum experience of three years of handling preferably direct tax matters before High Courts or ITAT.

OR

have been an officer of the Income-tax Department who retired/resigned from the post of Additional/Joint CIT or below and is eligible to appear before the High Court as an advocate, provided that he has not been removed/dismissed or compulsorily retired from service on account of disciplinary action and no disciplinary proceeding under service rules or pension rules is pending against him.

### **3. Procedure for engagement of Standing Counsels**

**3.1** For the purpose of engagement, the CCIT will call for applications in **proforma-A1 & A2** (as applicable), either by advertisement in local newspapers, or from Bar Association of High Court or otherwise. It should, however, be ensured that the process of engagement is transparent and broad based.

**3.2** A Screening Committee headed by the CCIT shall be formed for the purpose of evaluation of proposals received. While considering the applications for Jr. Standing Counsels the screening committee should invariably co-opt at least one of the Sr. Standing Counsel. Particulars of the applicants' expertise in handling direct tax matters, aptitude for interpretation and their suitability to represent the cases of the department will be examined by the committee and an evaluation report along with recommendation of the CCIT will be sent to the Board in pro forma-B.

**3.3** Sr. Standing Counsels should preferably be taken from amongst the panel of Jr. Standing Counsels of at least three years standing, subject to favourable assessment by the screening committee. In assessing suitability, the quality of

drafting, assistance to the appearing counsels and co-ordination aptitude with the officers of the department should be taken into account.

**3.4.** The First engagement of each Counsel shall normally be for a period of three years.

#### **4. Performance review**

**4.1** The performance of the counsels shall be reviewed by the jurisdictional CsIT whose cases have been represented by the Standing Counsel, on a **quarterly basis** and a report in **Pro forma-C** shall be submitted to CIT(Judicial)/CCIT before 15<sup>th</sup> of the month following end of each quarter.

**4.2** On the basis of the reports received from the CsIT, the CCIT shall review the performance of the counsels for every financial year and send an **annual report to the Board** in **pro forma-D** before 30th June of the following year.

#### **5. Renewal of the term of engagement**

**5.1** Proposals for renewal of Counsels should be submitted to the Board **at least 3 months before the expiry of the existing term.** In case the orders of the competent authority for renewal of the term are not received in time, the CCIT may extend the term for a period not exceeding 3 months. The CCIT shall immediately bring to the notice of the Board such a case for appropriate orders.

**5.2** The renewal of the term of engagement of a Counsel shall be generally for a period of three years if his performance is found to be satisfactory. Before making recommendation for renewal of the term, the CCIT shall make an evaluation of the performance of the Counsel during the preceding term and forward it to the Board along with the proposal for renewal in **proforma-E.**

#### **6. Allocation of cases to Standing Counsels**

**6.1** The CCIT will be the overall in charge of entire litigation work on behalf of the Income-tax Department in his region before the High Court concerned. In respect of cases pertaining to DGIT(Inv.)'s jurisdiction, the DGIT concerned will be the in-charge. Allocation of cases to the Counsels may be made by the CCIT/DGIT (Inv.) or by a Commissioner/Director authorized by them or by the Senior Standing Counsel, if so authorized.

**6.2** The Advocate from the panel of Sr. Standing Counsels alone should be authorized to argue cases unless exigency of a particular station requires relaxation of this condition. The CCIT shall be competent to relax this condition and allow Jr.Standing Counsels to argue cases of the department.

## **7. Termination of engagement/resignation/expiry of term**

The engagement of the Counsel would be terminable 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 Standing Counsel shall immediately handover the briefs and other related papers to the CIT concerned or the other Standing Counsels nominated by the CCIT for the purpose and the pending bills of the counsel shall be settled within three months of the end of the term.

## **8. Duties of the Standing Counsel**

**A.** The Counsel shall

**8.1** draft Memorandum of Appeals and related petitions/applications within reasonable time, keeping in view the limitation period;

**8.2** file the appeals/other petitions/applications as required, within limitation and communicate the particulars (Diary number, ITA number etc.) to the CIT concerned;

**8.3** communicate defects/office objections, if any, in the appeals etc. and take prompt steps to rectify the same with the assistance of the CIT;

**8.4** appear on behalf of the department in the High Court/ other judicial forums, as required in the cases assigned to him;

**8.5** keep the CIT informed of the important developments in the case from time to time particularly with regard to dates of hearing, conclusion of hearing, date of judgment/order etc.;

**8.6** when any case attended to by him is decided against the Department, apply for certified copy of the judgment within two working days of pronouncement and give his opinion regarding the advisability of filing an appeal/SLP against such a decision within three days of taking delivery. He shall send an ordinary copy of the

same, as soon as available, to the CIT concerned. In other cases also the same time limits shall be applicable, though opinion will not be required;

**8.7** if required, render all assistance to the law officers, Advocate General of the State Government, special or Senior Counsel, who may be engaged in a particular case before the Supreme Court, High Courts, ITAT, etc.;

**8.8** give legal advice to the Department on such civil, criminal and revenue matters pertaining to direct taxes and such matters arising in the course of administration of the Department as are referred to him by the Department including:

- (a) examination and settling of drafts of legal nature,
- (b) examination of trust deeds and draft rules of provident funds for recognition, and
- (c) drafting of applications, petitions etc. to be filed in Courts of law and other statutory bodies;

**8.9** send the case file and related papers to the CIT concerned after the judgment/order in the case is passed but before submission of the final bill for professional services.

**8.10** perform such other duties of legal nature, which may be assigned to him by the Department..

### **B. Specific duties of Jr. Standing Counsel and related matters**

**8.11** The duties of Jr. Standing Counsel specifically include rendering meaningful assistance to Sr. Standing Counsel in

- (a) Drafting memo of appeal and consulting assessment records etc., if required.
- (b) Removal of defects / office objections in the cases filed by the department.
- (c) Research for preparation of cases for representation.

**8.12** The Sr. Standing Counsels should provide infrastructure facilities to Jr. Standing Counsels such as access to judicial decisions data bank and computers etc. to facilitate effective contribution from them in proper conduct of appeals/cases. However, Jr. Standing Counsels should not be asked merely to attend to clerical work such as filing of appeals or making applications for certified copies etc.

### **9. Assistance to Standing Counsels by the department**

The jurisdictional CsIT/DsIT shall provide all assistance to the Standing counsels such as providing briefs, assessment records, etc. in preparation of a case. In particular, copy of appeal scrutiny report in respect of the impugned order of the ITAT and copy of paper book filed by the assessee before ITAT shall be provided to the counsel for assistance in drafting memo of appeal and preparation of case for representation. The CsIT/DsIT shall respond to communication from the standing counsels promptly and have regular interaction with them in order to keep a close watch on progress of the cases in the Court. The CsIT/DsIT shall, while reviewing the quarterly performance of Counsels, look into the issues, if any, raised by the counsels and ensure their appropriate resolution.

### **10. Right to private practice**

**10.1** The Counsel will have the right of private practice, which should not, however, interfere with the efficient discharge of his duties as counsel of the Department but he shall not advise, hold briefs or appear against the Department before any authority, ITAT or Court in matters under the statutes relating to direct taxes.

**10.2** If the Counsel happens to be a partner of a firm of lawyers or solicitors, it will be incumbent upon the firm not to take up any case against the Department in the High Court concerned or before any authority/ITAT falling within the jurisdiction of the said High Court or any case against the department in other courts arising out of the matters falling within the jurisdiction of the said High Court.

**Note: CCIT referred to in this annexure will mean Chief Commissioner of Income Tax in charge of Judicial work in the CCA region.**

Pro forma-'A1' of Annexure I

### **Particulars to be furnished by an advocate applying for engagement as Jr./Sr. Standing Counsel**

1. Name of the person
2. Permanent Account Number
3. Father's Name
4. Date of Birth
5. Address for correspondence including e-mail, Telephone/Mobile No.
6. Permanent address

7. Educational Qualification \*
8. Category of counsel for which applied (Jr. Standing Counsel/Sr. Standing Counsel)
10. Date of enrolment as an advocate in the State Bar Council and Registration No. \*
11. If a partner in a firm, name(s) of the firm(s) and other partners
12. Number of cases relating to Direct Taxes dealt with during last 3/5(Jr./Sr.)years as an Advocate\*
13. Number of cases published in Journals/Newspapers, etc.
14. Income from Professional Practice (copy of the latest I.T. return to be attached)

### **Verification**

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

Signature

Date:

Place:

### **Pro forma 'A2' of Annexure 1**

#### **Pro forma for application by an officer who has retired/resigned from the Income-tax Department or has been a member of ITAT**

1. Name of the person
2. Permanent Account Number
3. Father's Name
4. Date of Birth
5. Address for correspondence including e-mail, Telephone/Mobile No.
6. Permanent address



7. \*Educational Qualification
8. Date of joining Government Service in Income-tax Department
9. Designation and office address of the last post held
10. Date of retirement/resignation from the service
11. \* Date of enrolment as an advocate in the State Bar Council and Registration No.
13. If a partner in a firm, name(s) of the firm(s) and other partners
14. Category of counsel for which applied (Jr. Standing Counsel/Sr. Standing Counsel)

### **Verification**

I..... S/o ....., do hereby declare that whatever has been stated in the above application is true to the best of my knowledge and belief. I further declare that I have not been removed from the service due to any disciplinary proceeding and no disciplinary proceedings under service rules or Pension Rules are pending against me as on date.

Signature

Dated:

Place:

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

### **Undertaking**

II..... S//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:



Overall Remarks for the quarter (satisfactory/unsatisfactory)

Commissioner of Income-tax

\*Remarks on quality of drafting, initiatives taken by the counsel, time devoted in interaction with the assessing officers etc. should be given

**Pro forma- 'D' of Annexure I**  
**Annual performance report of the counsel for the Fin. Yr. \_\_\_\_\_**

1	Name of the Region		
2	Name of the Counsel		
3	Category (Sr./Jr.)		
4	Date of birth		
5	Date of 1 <sup>st</sup> engagement		
6	Date of expiry of tenure		
7	Ref. No. of CBDT's sanction letter vide which last engagement / renewal was granted		
8	Number of cases handled during the period under report	Appeals	Writs
9	Number of cases decided by the High court in favour of the Department / against the Department		
10	Number of cases / appeals handled before the ITAT/other courts		
11	Number of cases out of those in col.10 above, decided (a) in favour of the Department (b) against the department		
12	Whether prompt in applying for certified copy and furnishing the same to the Department		
13	Quality of written opinion		
14	Does the counsel take keen interest in his work and is generally alert and responsive to the Department's interest in litigation entrusted to him? Comments should also be made on the quality of drafting/opinion etc. Specific comments should be given about his promptness in, <i>a)</i> Informing the department from time-to-time regarding hearing of cases, supply of copies of judgments etc <i>(b)</i> Taking steps for vacation of stay		
15	General assessment on overall performance		

Chief Commissioner of Income-tax

**Pro forma- 'E' of Annexure I**  
**Report on the performance of the Counsel for the period**  
**\_\_\_\_\_ to \_\_\_\_\_, for renewal of the term**  
**PART – I**

1	Name of the Region	
2	Name of the Counsel	
3	Category (Sr./Jr.)	
4	Date of birth	
5	High Court and Bench	
6	Date of 1 <sup>st</sup> engagement	
7	Date of expiry of tenure	
8	Ref. No. of CBDT's sanction letter vide which last engagement / renewal was accorded	

**PART II**

9	Number of cases handled during the period under report	Appeals	Writs
10	Number of cases decided by the High court in favour of the Department against the Department		
11	Number of cases / appeals handled before the ITAT/other courts		
12	Number of cases out of those in col.10 above, decided (a) in favour of the Department (b) against the department		

**PART III**

Comments of the CCIT on overall performance of the Counsel	
13	Does the counsel take keen interest in his work and is generally alert and responsive to the Department's interest in litigation entrusted to him? Comments should also be made on the

	<p>quality of drafting/opinion etc. Specific comments should be given about his promptness in,</p> <p>(a) Informing the department from time-to-time regarding hearing of cases, supply of copies of judgments etc.</p> <p>(b) Taking steps for vacation of stay</p>	
14	Any other remarks regarding performance of the Counsel including the comments on overall performance	
15	15. Specific recommendation (whether term should be renewed or not)	

Chief Commissioner of Income-tax

Note: The evaluation should be based on performance report in pro forma D for the period covered.