Instruction

INCOME-TAX ACT

Guidelines regarding revision of Schedule of fees payable to Standing Counsels for the Income-tax Department before various High Courts - Appointment of Counsels

INSTRUCTION NO. 8/2007, DATED 30-8-2007

1. The President is pleased to sanction revised rate of fees and allowances (along with terms and conditions) payable to the Senior Standing Counsel/Standing Counsel/Junior Standing Counsel of the Income-tax Department which is annexed as Annexure-I. The revised Schedule of the fee and allowances will come into effect from 30-8-2007.

2. The procedure for appointment of counsels and renewal of their terms has also been prescribed by specifying the requisite qualification and terms and conditions of their engagement which is annexed as Annexure-II.

3. This issues with the concurrence of Ministry of Law and Justice *vide* their Disp. No. 1344/2007, dated 19-07-2007 and the Department of Expenditure I.D. No. 9(11)/99-E-II(B), dated 23-08-2007 in supersession of Instruction No. 1986, dated 3-7-2000 and may be brought to the notice of all officers in your charge.

ANNEXURE-I

SCHEDULE OF FEES AND ALLOWANCES

The fees and allowances payable to Senior Standing Counsels are given hereunder: The Standing Counsels and Junior Standing Counsels shall be entitled to only 1/3rd of the amount specified against each item of work (except item No. 7). The Junior Standing Counsel shall not be entitled to retainership payable to Sr. Standing Counsel and Standing Counsel mentioned at S. No. 7 below.

1. For appearance (on disposal) in the High Court	
Appeals under section 260A of the Income-tax Act or reference including application under section 256(2) of the Income-tax Act or Civil or Criminal Writ Petition under Articles 226 and 227 of the Constitution, orders made in such petition, including appearance at admission stage.	Rs. 4500
However, for each substantial and effective hearing, following the first hearing, an additional fees of Rs. 2,000 per substantial and effective hearing may be paid as refresher fees.	
2. Certificate of fitness	Rs. 1,500 (for each application)
3. For Civil Miscellaneous application	Rs. 1,500 (per case)
4. For Civil or Criminal revision petition	Rs. 2,100 (per case)
5. For drafting pleadings, written statements in suits, counter affidavits/returns/answers pleading to the writ petition, grounds of appeal, etc., application for leave to appeal to Supreme Court :	Rs. 1,500 (per case)

If substantially identical affidavits, written statements, etc., are drafted in connected cases, only one drafting fee will be payable in the main case and no separate drafting fee will be payable in connected cases.

6. Written opinion :

Other than what is referred in Para 7(*iii*) of Annexure II	Rs. 900 (per case)

7. Retainership

The Senior Standing Counsel and Standing Counsel will be entitled to a retainership of Rs. 6,000 per month (which includes charges for staff, office rent, postage and all other establishment charges).

Clerkage

8. Clerkage at the rate of 10 per cent of the hearing fee subject to a maximum of Rs. 3,600 in a case or batch of cases before the High Court.

Out of pocket expense

9. The amount required for Court fees at the time of filing a case and other miscellaneous expenses should be paid to the Counsel in advance by the Chief Commissioner. An account of the expenses incurred should be rendered to the Chief Commissioner while presenting the final bill.

Perquisite

10. The reimbursement of telephone expenditure, subject to a maximum of Rs. 1,000 per month, shall be made by the Chief Commissioner to the Counsel for calls that have been made in connection with departmental litigation matters only.

11. For appearance before any other Courts, ITAT, other Tribunals/statutory bodies, etc. :

(*a*) at headquarters : same as payable for appearance before the High Court.

(*b*) out of headquarters : when the Counsel is required to go out of headquarters in connection with any litigation matter, *e.g.,* for conference with a Senior Counsel, Special Counsel or with the Law Office or for appearance in any Court/Tribunal/Statutory Bodies, etc., outside the headquarters, he will be entitled to a daily fee of Rs. 3,600 per day for the days of his absence from the headquarters including the days of departure from, intervening holidays and arrival back at 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.

(*c*) travel/hotel expenses : in addition to the daily fee, the Counsel will be entitled to travel expenses for travel by air (economy class) or first class AC by train. Road mileage for the journey from his headquarters to the airport/railway station and *vice versa* and from the airport/railway station to the place of his stay out of headquarters and *vice versa* will be paid at the rates admissible to Class I officers of the Central Government (having basic + NPA + SI in the pay range Rs. 8,000 to Rs. 16,399). He will also be paid a lump sum amount of Rs. 600 as

conveyance charges for performing local journey while outside the headquarters. He will also be entitled to actual expenses for stay in hotel, subject to a maximum for Rs. 1,200 per day.

12.1 *General* - The rates specified above are primarily applicable to income-tax cases but will apply *mutatis mutandis* to cases relating to other direct taxes and any other matters assigned by the department. In all cases effective appearance is necessary for the Counsel to claim fee.

12.2 No fee will be payable in cases where no legal work is required to be done. For example, cases in, which the interest of the department is to be watched pending instructions, the cases involving transmission of records to the Supreme Court, inspection of the Court record for ascertaining the position of the case or other information needed.

12.3 If the Counsel appears at the instance of the Union of India or for parties other than the Union of India whose scales of fee are not inconsistent with that of the Union of India, he will be entitled to only one set of fees.

12.4 Appeals, revision or petitions arising from one common judgment or order will be considered together as one case if they are heard together.

12.5 *Uncontested matters* - In uncontested cases, the fee shall be 1/3rd of the fees otherwise payable but if such a case is later on restored and decided in contest, the remaining 2/3rd of the fee will be payable. A case shall be regarded as contested when a decision is given after hearing arguments on both sides. The case shall also be deemed to be uncontested if the Court decides that the case is a covered one. For example if the Court follows its own judgment or judgment of the Supreme Court, the case is considered to be a covered one. In case of any dispute, the Chief Commissioner/Director General/Commissioner/Director shall decide whether the case is uncontested or not.

12.6 *No fees for adjournment* - No fee will be payable to the Counsel if an advance notice about the adjournment has been issued or the case has been adjourned at his request due to the reasons personal to him.

12.7 *Late submission of certified copies of the judgment* - 30 per cent of the fees payable to the Counsel shall be deducted if certified copy of the judgment is not handed over to the Commissioner/Director of the Income-tax within ten days (excluding the time taken by the Court) from the date of judgment.

12.8 Where there are two or more cases (but not more than 10 cases) involving substantially identical questions of law or facts, one such case will be treated as the main case and the others as connected cases. The fees in such cases will be regulated as provided in succeeding paras, irrespective of the fact whether or not such cases are ‘heard together.

12.8-1 When the Counsel files separate and materially different affidavits, applications or grounds of appeal, etc., in more than one case but the argument is heard in the main case and the other cases are decided accordingly, the Counsel shall be paid the full fees in the main case and Rs. 200 for each of the connected cases.

12.8-2 When the main case has been heard as in para 12.8-1, but in the connected cases either affidavit or grounds of appeal or petition similar to the one in the main case has been drafted, the Counsel shall be paid the full fees in the main case and Rs. 150 only in each of the connected cases.

12.8-3 When substantially different affidavits are drafted in connected but uncontested cases, the Counsel shall get 1/3rd fees in the main case and Rs. 300 in each of the connected cases.

12.8-4 When the Counsel has drafted the affidavit, petition or ground of appeal in the main uncontested case and has not drafted them in the connected but uncontested cases or the drafts in the connected but uncontested cases are substantially similar to the one in the main case, the Counsel shall get 1/3rd fees in the main case, and Rs. 150 in each of the connected cases.

12.9 The fees to the Counsel will be paid on presentation of a stamped receipt, and on submission of a copy of the document drafted, if it is a drafting fee and submission of minutes or gist of proceedings, or a copy of order/judgment where it is necessary in case the claim is for appearance fee. The Counsel shall submit his bills within three months from the date on which the fees have accrued.

12.10 The fees will be payable in two stages, 1/3rd fees after substantial work has been carried out and the remaining 2/3rd fees after the case has been decided. If the High Court decides that no question of law is involved, only 1/3rd of the fees shall be payable to the Counsel.

12.11 Where during the pendency of a proceeding, there is a change of Counsel, a fee commensurate to the work carried out by the outgoing Counsel, not exceeding 1/3rd of the total fee admissible for the case, may be paid to him. In such an event, only the balance of fee payable in the case will be paid to the new Counsel after completion of the case.

12.12 When the Counsel does not argue the case himself but only assists the Law Officer or any other special Counsel, he will be entitled to the same fee as is payable to him as if the case has been argued by him.

12.13 No fee will be admissible for preparation of cases but the Government may consider payment of separate fee for preparation in special cases involving arduous work.

12.14 When cases argued before a Single Judge are referred to a Division Bench or to a Full Bench, separate fee at the prescribed rates will be paid for appearance before each Bench.

13. The various terms used in these guidelines will have the following meaning:

13.1 *Substantial and Effective hearing* - 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 judgment is delivered by the Court, it would not constitute a substantial and effective hearing.

13.2 *Uncontested case* - Cases shall be deemed to be uncontested if these are withdrawn by the plaintiff/appellant or are dismissed *in limine* or are otherwise decided by the Court *ex parte.* Covered cases shall also be deemed to be uncontested cases.

13.3 *Covered cases* - Where an identical issue stands decided by the same High Court or by the Supreme Court and the judgment in the relevant case is squarely based on

such earlier decision of the same High Court or by the Supreme Court, the case shall be deemed to be a covered case.

13.4 *Substantial work* - Hearing of applications under section 256(2) and admission matters under section 260A(3) of the Income-tax Act shall be treated as substantial work. Where a case has been admitted by the Court after hearing of preliminary objections or filing of affidavits/counter-affidavits etc. by the Counsel, substantial work will be deemed to have been carried out.

Deputy Secretary

CBDT

ANNEXURE-II

1. Category and Qualification of Counsels

Counsels are engaged by the department for representing the department before different High Courts/other judicial bodies in cases relating to the Direct Taxes. The counsels engaged by the department will fall into three categories, *viz.*—

(*a*) Junior Standing Counsels

(*b*) Senior Standing Counsels

(*c*) Standing Counsels

Qualifications of each category of counsel will be as under :

A. Junior Standing Counsels : In order to be eligible for appointment as Junior Standing Counsel a person should

(*i*) be enrolled/registered as an advocate with the High Court

(*ii*) have a minimum experience of three years of handling preferably direct tax matters before High Courts or Tribunals.

OR

Have been an officer of the Income-tax Department who retired/resigned from the post of Additional CIT or below and is enrolled/registered as an advocate in the High Court. Provided that he has not been removed/dismissed or compulsorily retired from service on account of disciplinary action against him and no disciplinary proceeding under service rules or pension rules is pending against him.

B. Senior Standing Counsels: In order to be eligible for appointment as Senior Standing Counsel a person should

(*i*) be enrolled/registered as an advocate with the High Court

(*ii*) have a minimum experience of five years of handling direct tax matters before High Courts or Tribunals.

OR

Have been a junior standing counsel of the Department for three years

OR

Have been an officer of the Income-tax Department who retired/resigned from the post of Commissioner of Income-tax or above or retired/resigned as Member/Chairman of ITAT/Settlement Commission and is enrolled/registered as an advocate in the High Court. Provided that he has not been removed/dismissed or compulsorily retired from service on account of disciplinary action against him and no disciplinary proceeding under service rules or pension rules is pending against him.

C. Standing Counsels : In a station where counsels do not have sufficient experience to be appointed as Senior Standing Counsels, the senior most among the panel of Junior Standing Counsels of the Department at that station may be designated by the CCIT as the Standing Counsel while other Counsels should be categorized as Junior Standing Counsels. 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. Appointment of Counsels

2.1 For the purpose of appointment, the Chief Commissioner of income-tax will call for applications in proforma-A & A-1 (as applicable), either by advertisement in local newspapers, or from Bar Council of High Court or otherwise. Terms and conditions of appointment should be in accordance with the revised terms and conditions applicable to them with effect from 30-8-2007.

2.2 Particulars of the applicants' expertise in handling direct tax matters by the applicant will be examined by the Chief Commissioner of Income-tax and an evaluation report along with recommendation of the CCIT will be sent to the Board in proforma-B.

2.3 The First appointment of each Counsel shall normally be for a period of three years.

2.4 The requirement of seeking recommendation of the Chief Justice as dispensed with by the Instruction No. 1986, dated 3-7-2000 shall continue to remain dispensed with.

Performance review

3. The following procedure shall be adopted for reviewing performance of the counsels appointed by the department :

(*a*) The CIT having jurisdiction over a case shall submit a monthly report to the CIT(Judicial)/CCIT in proforma-C in respect of the cases represented by the Counsels.

(*b*) On the basis of the reports received from the IT, the CIT(Judicial)/CCIT will review the performance of the appointed counsels every year before 30th June of each year and send an annual report to the Board in proforma-D.

4. Renewal of appointment

4.1 Proposals for renewal of Counsels should be submitted to the Board at least 3 months before the expiry of the existing term.

4.2 The renewal of a term of a Counsel can be made for a period of three years if his performance is found to be satisfactory. Before making recommendation for renewal of appointment of the Counsel, the Chief Commissioner should necessarily 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.

Allocation of cases to Counsel

5. The Chief Commissioner of Income-tax will be 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 assigned in DGIT (Inv.)'s region, the DGIT concerned will be the in-charge. Allocation of cases to the Counsel may be made by the Chief Commissioner/Director General or by a Commissioner/Director authorized by them or by the Senior Standing Counsel, if so authorized.

Termination of appointment/resignation

6. The appointment/empanelment of the Counsel would be terminable on one month's notice in writing by either side without assigning any reason.

Duties of the Counsel

7. The Counsel shall:

(*i*) appear in the High Court in the cases assigned to him and also appear, if so required on behalf of the Department, before the Supreme Court, other High Courts, Tribunals, Settlement Commission, Commissioner of Income-tax (Appeals) and other statutory bodies;

(*ii*) 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 officers of 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.

(*iii*) when any case attended to by him is decided against the Department, give his opinion regarding the advisability of filing an appeal against such a decision;

(*iv*) 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 High Courts, Tribunal, etc.;

(*v*) keep the Department informed of the important developments in the case from time to time particularly with regard to drafting, filing of papers, dates of hearing of the case, supplying copies of judgment etc.;

(*vi*) furnish to the Department monthly statement about the cases represented by him before High Court or any other authority;

(*vii*) perform such other duties of legal nature, which may be assigned to him by the Income-tax Department.

Right to private practice

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

If the Counsel happens to be a partner of the firm of lawyers or solicitors, it will be incumbent on the firm not to take up any case against the Department in the same High Court, before any authority, Tribunal or any case arising in other Courts out of those cases, *e.g.,* appeals and revision in the High Court or the Supreme Court.

Discontinuation of practice of appointment of Solicitor

9. To bring uniformity, the practice of appointing the Solicitor is hereby discontinued. The term of any solicitor shall not be renewed after the present term expires. The field officers should be encouraged to interact with Standing Counsels who actually defend the cases of the Department before the High Court.

Deputy Secretary

CBDT

Proforma - A

Particulars to be furnished by an advocate/other eligible person applying for appointment as Jr./Sr. Standing Counsel

1. Name of the person
2. PAN - Permanent Account Number
3. Father's Name
4. Date of Birth
5. Address for correspondence
6. Permanent address

7.* Educational Qualification

8. Category of counsel for which applied (Jr. Standing Counsel/Sr. Standing Counsel)

9.* Date of enrolment in High Court as counsel.

10.* Date of empanelment as member of Bar Council of High Court.

11. If a partner in a firm, name/names of the firm and other partners.

12.* Number of cases relating to Direct Taxes dealt with during last 3 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

Dated :

Place :

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

Proforma 'A-I'

Proforma for application by officers who have retired/resigned from the Income-tax Department or retired/resigned as Member/Chairman of ITAT/Settlement Commission

1. Name of the person
2. PAN - Permanent Account Number
3. Father's Name
4. Date of Birth
5. Address for correspondence
6. Permanent address
7.* Educational Qualification
8. Date of joining Government Service/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 in High Court as Counsel
12.* Date of empanelment as member of Bar Council of High Court.
13. If a partner in a firm, name/names of the firm 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.**

Proforma-'B'

Particulars/evaluation report of a person applying for appointment as Jr./Sr. Standing Counsel

1. Name :
2. Date of enrolment in High Court as Advocate :
3. Date of empanelment as member of Bar Council of High Court :
4. Number of cases relating to Direct Taxes dealt with during last 3 years as an Advocate :
5. Number of cases published in Journals/Newspapers etc. :
6. Income from Professional practice :
7. CCIT's recommendations based on the cases :

dealt by the applicant with regard to the flair relating to Direct Tax knowledge emanating from the presentation by the Counsel and other factors.

(Chief Commissioner of Income-tax)

Proforma-C

Proforma reports to be sent by jurisdictional CIT to CIT (Judl.)/CCIT for cases represented by a Counsel

1.	Name of the case	
2.	A. Y.	
3.	Court/Tribunal before which proceedings are pending	
4.	Particulars of CIT/Addl.CIT/Assessing Officer	
5.	Issues involved	
6.	Tax Effect	
7.	Name of Sr. Standing Counsel representing the case	
8.	Name of Jr. Standing Counsel representing the case	
9.	(*a*) Whether proceedings are pending/case has been decided, if yes the outcome, in brief (*b*) Number of adjournments taken	
10.	Comments of CIT (if any), about quality of drafting, interest taken by the Counsel(s) (at columns 7 & 8)/time devoted in interaction with the Assessing Officer/JCIT/CIT, overall representation of the case.	

(Chief Commissioner of Income-tax)

Proforma-D

Annual performance report of the appointed Counsels

1.	Name of the Region/Charge	
2.	Name of the Counsel	
3.	Category	
4.	Date of birth	
5.	Date of 1st appointment	
6.	Date of expiry of tenure	
7.	Ref. No. of CBDT's sanction letter *vide* which last renewal was granted.	
8.	Number of references handled during the period under report	
9.	Number of references decided by the High Court (*a*) in favour of the Department (*b*) against the Department	
10.	Number of Writ Petitions handled during the period under report	
11.	Number of Writ Petitions decided by the High Court	

	(*a*) in favour of the Department (*b*) against the Department	
12.	Number of cases/appeals handled before the ITAT/other Courts	
13.	Number of cases out of those in col. 12 above, decided (*a*) in favour of the Department (*b*) against the Department	
14.	General assessment of overall performance	

(Chief Commissioner of Income-tax)

Proforma-E

Report on the performance of the Counsel for the period .....to.....

PART-I

1.	Name of the Region/Charge	
2.	Name of the Counsel	
3.	Category	
4.	Date of birth	
5.	Date of 1st appointment	
6.	Date of expiry of tenure	
7.	Ref. No. of CBDT's sanction letter *vide* which last renewal was granted	

PART-II

8.	Number of references handled during the period under report	
9.	Number of references decided by the High Court (*a*) in favour of the Department (*b*) against the Department	
10.	Number of Writ Petitions handled during the period under report	
11.	Number of Writ Petitions decided by the High Court (*a*) in favour of the Department (*b*) against the Department	
12.	Number of cases/appeals handled before the ITAT/other Courts	
13.	Number of cases out of those in col. 12 above, decided (*a*) in favour of the Department (*b*) against the Department	

PART-III

(To be filled by the CCIT)

14.	Are you satisfied with the performance of the Counsel	

15.	Does he take keen interest in his work and is generally alert and responsive to the Department's interest in litigation entrusted to him. Specific comments should be given about his promptness in, (*a*) Informing the department from time-to-time regarding hearing of cases, supply of copies of judgment etc. (*b*) Taking steps for vacation of stay	
16.	Would you recommend his continuance	
17.	Any other remarks regarding performance of the Counsel	

(Chief Commissioner of Income-tax)

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