# THE TAXATION

Bills of costs are taxed in the High Court subject to the provisions of Rule 70 of Act 59 of 1959, whilst costs are taxed in the Magistrate's Courts (both District and Regional) subject to the provisions of Rule 33 of Act 32 of 1944.

The taxing master must ensure that:

1. The bill sought to be taxed is in due form,

2. Any necessary certificate (High Court Rule in terms of section E at item 3) has been attached,

3. The cost debtor/s have received timeous notice of the taxation,

4. The parties seeking to appear may do so,

At the taxation, the taxing master can call for such books / documents / papers / accounts as in his / her opinion are necessary to enable him / her to properly determine any matter arising from the taxation. The taxing master may demand proof that work claimed for has in fact been done, or services claimed have actually been rendered, and amounts claimed to have been paid have in fact been paid.
The taxing master exercises a discretion to allow, disallow or reduce items contained in the bill of costs. This discretion must be judicially exercised, and be based on legal principles such as precedent (the doctrine of stare decisis) as well as having due regard to the circumstances of the particular case at hand.

The taxing master's duty is to apply the provisions of a court order / settlement and not to vary it. Further, Rules of Practice at a particular court cannot supersede the clear wording of the tariff, ( for example: The Eastern Cape Guidelines) and the taxing master should also not allow same to deprive him / her of his / her duty to exercise a proper discretion.

In the High Court the taxing master's discretion in taxing party and party bills of cost is clearly defined as at Rule 70 (1) (a) the taxing master shall tax "subject to the provisions of sub-rule (5) in accordance with the provisions of the appended tariff". Sub – Rule (5) then states "the taxing master shall be entitled, in his discretion, at any time to depart from any of the provisions of this tariff in extraordinary or exceptional cases, where strict adherence to such provisions would be inequitable"

The position in the Magistrate's Court is less clear, as no similar provisions exist. Presumably, since the Magistrate's Courts are creatures of statute and are consequently bound by the four corners of the act, the taxing master's powers of discretion will be limited to items in the tariff that may be unclear or items not contained in the tariff, or unless directed by a court order not to simply allow an item as per tariff. An example of this might be an order to allow "costs of counsels reasonable fee on brief."

The completion of the allocatur:

See High Court Rule 70. Section E item 3 (b) (ii).

See Supreme Court of Appeal Rules, note VII to section E of Rule 10,

See Magistrate's Court Rule 33 (18),

These provisions contain penalty clauses when calculating the drawing and attending fees on the allocatur.

Also see High Court Rule 70 section E and item 2 which suggests that an attending fee is only payable "if recourse is had to taxation". Thus if the matter was settled, and the taxing master merely had to stamp a settled allocatur, the attending fee might not be payable unless the parties had agreed to pay same.

Regarding VAT see Whittlesea v Clerk of the civil court, Pietermaritzburg 1992 (1) SA 603 (N) – where the cost creditors attorney is a registered VAT vendor, VAT must be added to all fees, drawing fees, and attending fees as per the allocatur. However where the cost creditor is a registered VAT vendor he / she shall not be out of pocket in respect of these charges and hence should not be allowed to recover same from the cost debtor. See Price Waterhouse Meyernel v The Thoroughbred Breeds Association of South Africa 2003 (3) SA 54 (SCA).