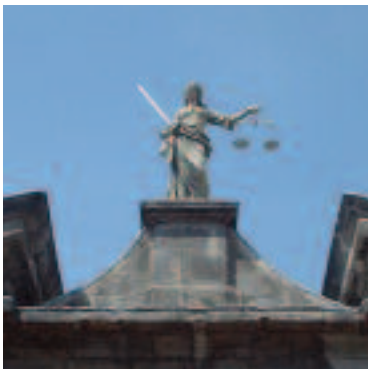


# Taxation of Costs

an  
information  
booklet



THE ROLE OF THE TAXING MASTERS  
OF THE  
SUPREME AND HIGH COURTS



COURTS SERVICE  
*An tSeirbhís Chúirteanna*

## FOREWORD

Costs are a significant aspect of modern day litigation and they are bound up with the fundamental principle that of “access to justice”. The process of taxation of costs plays a significant role in ensuring that this fundamental principle is available to all irrespective of class or creed. This process ensures that only costs which are necessary and proper for the administration of justice are allowable in all cases that come before the Taxing Masters Courts.

The bulk of complaints about law and lawyers down through the ages have been, in essence, complaints over the cost of litigation. Most proverbs that advise the avoidance of the law and lawyers, do so for economic reasons. The English satirist, Samuel Butler, said;

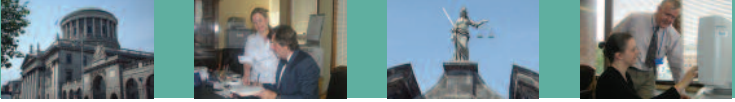
“The Law can like a purse in open Court  
Whiles it condemns a less delinquent for it”.

The satirist still abounds and the legal profession is regularly at the receiving end of criticism from the political analyst for alleged over-charging. Nevertheless, the process of taxation plays a very significant and dominant role in maintaining the status quo and consequent confidence in the legal system. The continuing diligence of the Taxing Masters ensures openness and transparency in the system for the administration and assessment of costs. Furthermore, it ensures, in all cases that come on for hearing, that there are allowable only costs, commensurate with actual work done, which was necessary and proper in the individual case.

The law and rules regulating costs are complex in the extreme. It was in answer to this difficulty that the idea of a further and more detailed information booklet on costs was conceived. This information booklet contains some of the basic principles on the methodology used in assessing costs and it concludes with a series of the most commonly asked questions. It should be noted that the booklet is for information purposes only and it is not intended to take the place of legal advice which should be sought when costs become an issue of argument.

I do hope that in some way this booklet will inform the reader of the basic principles with regard to the taxation of costs and I hope that it is somewhat instructive in this vast, dynamic and ever expanding area of the law.

James Flynn  
Taxing Master



# TAXATION OF COSTS

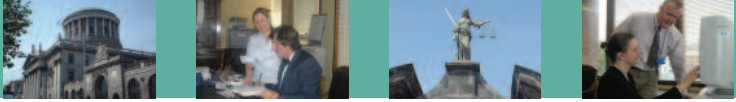
THE ROLE OF THE TAXING MASTERS  
OF THE  
SUPREME AND HIGH COURTS



This booklet is intended to give general information and guidance to members of the public about the taxation of costs. It is not, nor is it intended to be, a complete or authoritative statement of the law and practice of the taxation of costs. The purpose and intention is to present in a clear, simple and understandable language an outline of the process of the taxation of costs.

Further information may be obtained from the Office of the Taxing Master. However, it should be noted that the contents of this booklet or such further information should not be construed as legal advice. In this context, parties are advised to retain the services of a legal advisor or legal costs accountant.

For the sake of simplicity “he” and “him” are used throughout this booklet to denote both male and female.



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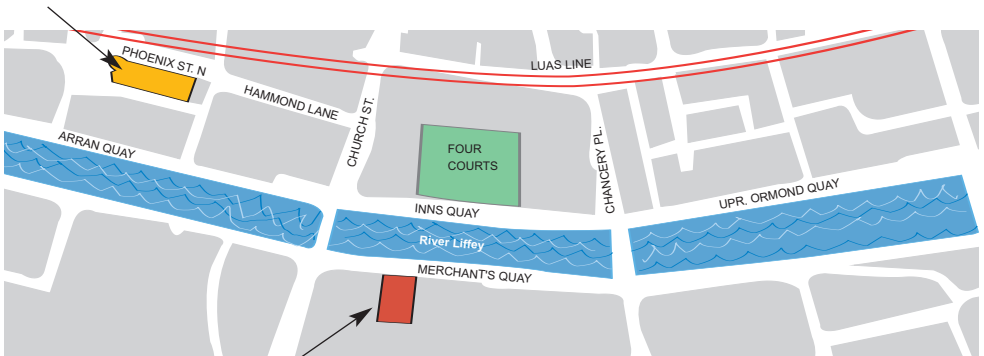
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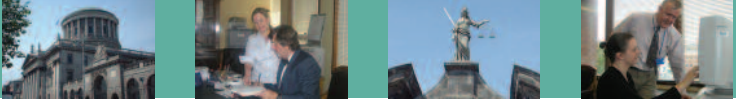
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### Phoenix House



**Taxing Masters Office,  
1st floor, Merchants House, 27/30 Merchants Quay, Dublin 8**



## WHAT IS THE TAXATION OF COSTS?

When a person or a company, otherwise known as a party, incurs costs as a result of legal action they may have those costs taxed. The taxation of costs is the assessment and measurement of legal costs by an officer known as a Taxing Master. A Taxing Master provides an independent and impartial process of assessment of legal costs which endeavours to achieve a balance between the costs involved and the services rendered. The term “*taxation of costs*” may be a little misleading but it is a term coined many decades ago and the process has nothing to do with taxes or the Revenue Commissioners.

## WHO IS THE TAXING MASTER?

A Taxing Master performs a function of a judicial nature in relation to costs. The Court Officers Act, 1926 provides that there should be attached to the High Court the Taxing Masters Office. The position of the Taxing Masters and the Taxing Masters Office is now governed by the Courts (Supplemental Provisions) Act, 1961. The Eighth Schedule thereof provides at Section 19 that “each of the Taxing Masters shall have and exercise the following duties;

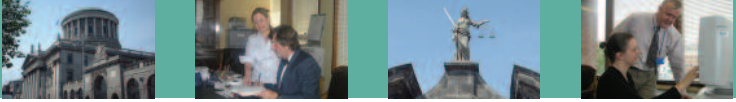
- (a) such powers, authorities, duties and functions as are for the time being conferred on or assigned to them by statute or rule of court;
- (b) unless and until otherwise provided by statute or rule or court - all such powers, authorities, duties and functions in relation to the High Court and the



Supreme Court, as were formerly possessed, and performed by the Taxing Masters of the former Supreme Court of Judicature in the Republic of Ireland in relation to that Court;

- (c) unless and until otherwise provided by statute or rule of court - all such powers, authorities and functions in relation to the Court of Criminal Appeal, the Chief Justice and the President of the High Court, as were immediately before the operative date possessed or exercised by them in relation to the existing Court of Criminal Appeal, the existing Chief Justice and the existing President of the High Court respectively;
- (d) such other powers, authorities, duties and functions as were immediately before the passing of the Act of 1924 vested or imposed by law in or on the several Taxing Masters of the former Supreme Court of Judicature in the Republic of Ireland; and
- (e) the duty of taxing any costs to be received, allowed or paid to a solicitor in respect of business undertaken on or after the first day of October 1957, in relation to the exercise by a local authority of their powers under the Labourers (Ireland) Acts 1883 to 1958.”

His duty is to assess the fair and reasonable remuneration that a party has to pay to the other side. Currently, there are two Taxing Masters and their offices are located at 1st floor, Merchants House, 27/30 Merchants Quay, Dublin 8.



## WHEN ARE COSTS TAXED?

Usually costs are taxed at the conclusion of a case but this is not always so and a Court may award costs in respect of certain applications prior to the actual conclusion of the cause or matter before it.

The party claiming costs, usually the successful Plaintiff or Defendant, must demonstrate to the satisfaction of the Taxing Master that such costs as are incurred were proper and reasonable in all the circumstances. The Taxing Master is guided by wide experience, gained through his professional background as a solicitor and also in taxing costs.

## CATEGORY OF COSTS

For the purposes of this booklet, there are two main categories of costs;

- (a) Party and party costs, and
- (b) Solicitor and own client costs.

## PARTY AND PARTY COSTS:

Party and party costs cover all costs, charges and expenses reasonably incurred by one party for the purposes of the relevant proceedings which the other side is obliged to pay. There may be costs in an action that are not allowable as party and party costs. The party claiming costs must justify why they were incurred and why those costs should



be allowed. The party and party costs may not cover the whole of the costs incurred in an action and the courts have held that:

*“In costs between party and party one does not get full indemnity for costs incurred against the other. The principle to be considered in relation to party and party costs is that you are bound in the conduct of your case to have regard to the fact that your adversary may in the end have to pay your costs. You cannot indulge in a ‘luxury of payment’; ....”*

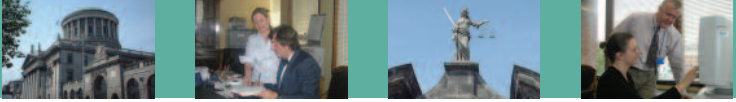
All such costs, charges and expenses which appear to the Taxing Master to be necessary and proper in pursuit of the attainment of justice or for enforcing or defending the rights of a person are essentially allowable costs.

## **SOLICITOR AND CLIENT COSTS:**

Solicitor and client costs are those costs that a client is obliged to pay his solicitor which are not recoverable party and party costs.

The courts have held that the following distinction is made between party and party and solicitor and client costs in an action:

*“The costs of the Plaintiff as against the party do not mean all the costs he has incurred but all the costs he has incurred by the act of the*



*defendant. That is the difference between party and party and solicitor and client costs - e.g. it may be reasonable to have several consultations but it does not follow he is to get them all against the other party.”*

## BILL OF COSTS

Section 68 of the Solicitors (Amendment) Act, 1994 provides for charges to clients. Under these provisions a solicitor should furnish a detailed statement of all the legal costs to his client. This statement of costs should contain:

- (a) a summary of the legal services provided;
- (b) the total amount of damages received or other monies recovered;
- (c) details of all the charges incurred and the nature of same.

Generally, at the conclusion of the business or by arrangement with the client the solicitor will produce a detailed statement of costs and this is known as a **Bill of Costs**.

Generally, before making any payment for costs, the client has a right to have his costs taxed. At the conclusion of the taxation there is a court duty payable upon the amount of costs allowed by the Taxing Master. The current rate is at 6%. There are certain types of proceedings exempt from this duty, for example, family law, criminal matters etc.



However, in solicitor and client taxations, if more than one sixth of the amount claimed is disallowed, the client may not be liable for this duty, otherwise this duty is payable by the solicitor who presents the Bill of Costs.

When a Bill of Costs has been taxed the Bill will show whether particular items have been allowed in part or in full and the amount of any deduction will appear in a separate column in the Bill. The costs of taxation (*Appendix E*) are within the discretion of the Taxing Master.

A Bill of Costs comprises of pages that are split into seven separate columns (*see Appendix D*). The columns will contain information as follows;

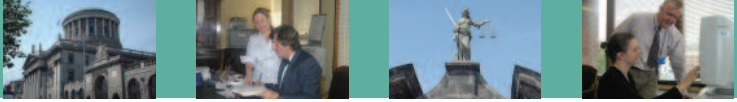
Column 1 - dates

Column 2 - the number of the items of cost. Each item should be given an individual number

Column 3 - the particulars of the services charged for

Column 4 - the amount in respect of disbursements - i.e. the payments made by the solicitor on behalf of the client in relation to the case

Column 5 - deductions for the amounts claimed in respect of disbursements if the Taxing Master considers that the amounts claimed are higher than that which could be considered fair and reasonable



Column 6 - the amounts claimed in respect of professional charges

Column 7 - deductions that the Taxing Master has made, if any, from professional charges

In respect of deductions the amount deducted is placed in the appropriate column next to the item to which it refers and the amount allowed is computed by subtracting the amount deducted from the amount claimed.

## THE STEPS INVOLVED IN TAXING COSTS

A taxation of costs may arise as a result of;

- (a) an order of a court,
- (b) the finding of an arbitration hearing,
- (c) notice of discontinuance,
- (d) a demand by a client to have his costs taxed,
- (e) the cost of registering judgments as mortgages,
- (f) notice of acceptance of lodgment or tender,
- (g) an order of a tribunal.

A client wishing to tax his costs should request his solicitor to forward a **Requisition to Tax** form (*see Appendix B*) to him so that the **Bill of Costs** can be referred to taxation.

On receipt of this Requisition the client should sign and return it to the solicitor who will then set the matter down



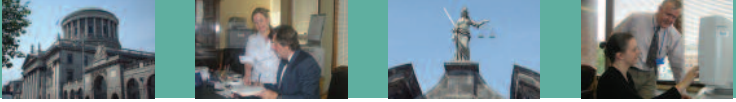
for taxation. The client will be notified by the solicitor of the date of taxation and should attend same. The client has the option of retaining legal representation at the hearing. If the solicitor refuses to set the matter down for taxation the client may do so pursuant to Order 99, Rule 33 of the Rules of the Superior Courts, 1986 (as amended) by:

- (1) completing and lodging the **Requisition to Tax** form or alternatively lodging the **Bill of Costs** (*pursuant to Order 99, Rule 33(1) of the Rules of the Superior Courts, 1986 [as amended]*),
- (2) lodging a **Summons to Tax/Notice to Tax** (in triplicate) and
- (3) lodging the **Bills of Costs**.

The Requisition and the Summons are available from most legal stationers and all should be lodged in the Taxing Masters Office in Merchants House, Merchants Quay, Dublin 8, (*see Appendices A and B*). The client will be informed as to the date of taxation when he should be in attendance.

## WHAT HAPPENS AT THE HEARING?

When the matter is called for hearing, the taxation commences by both parties introducing themselves and indicating who they represent. The party taxing the costs usually opens the case and is generally legally represented at the hearing. Each party to the taxation is entitled to be present and to be heard. Each item in the Bill of Costs is examined.



The amounts in respect of some items are presented in *Appendix W* of the Rules of the Superior Courts, 1986 (as amended). These are termed **Scheduled Items** and usually do not present a problem. The areas that may be problematic are those costs concerning witnesses, solicitors' instruction fees and counsels' fees. Either or both parties to the taxation may make submissions in relation to disputed items.

Following the taxation, the Taxing Master will consider the submissions made, will have regard to any supporting documentation furnished in respect of the taxation and will assess the fees having regard to the nature of the case and the extent of the work as well as factors such as complexity, magnitude, etc.

The Taxing Master, having considered the submissions, the evidence tendered and supporting documentation will either;

- (1) deliver an *ex tempore* ruling (i.e. oral)  
or
- (2) reserve his decision for consideration and deliver a written ruling (usually) at some later date. The interested parties are notified of the proposed date of delivery thereof.

He will then allow what he considers to be fair and reasonable costs. Either party may object to certain allowances and an appeal procedure is initiated whereby the Taxing Master will reconsider the amounts allowed.



The objecting party is required to deliver a list of his specific objections giving his grounds of objection and reasons therefor. The opposite party is given an opportunity to reply.

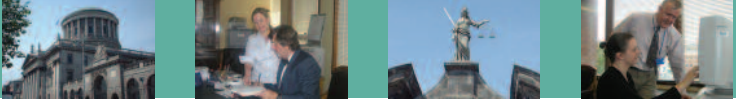
Time limits are applicable. See Order 99, Rule 38(1) Superior Court Rules, 1986 (as amended).

A person dissatisfied with the allowances may, before the Certificate of Taxation is signed **but not later than 14 days** after the taxation, apply to the Taxing Master to review the taxation. The Taxing Master may receive further evidence in respect of the items objected to. A person who is dissatisfied may, after the hearing of the objections by the Taxing Master, apply to the court for an order to review the taxation. As to time limits - see Order 99, Rule 38(3).

## FOLLOWING THE TAXATION PROCESS

The Taxing Master shall note on the original Bill of Costs the amounts allowed, amounts disallowed or the amount of deductions as the case may be.

Having concluded the taxation, the Taxing Master issues a Certificate of Taxation. However, on occasions, an interim certificate may issue, particularly where items and the amounts are not in dispute. Normally, upon the completion of the taxation, the Taxing Master shall issue a **Certificate of Taxation** (*see Appendix C*).



The solicitor or the person so entitled should take possession of the certificate within a period of 21 days or such further period as may be dictated by the court or the Taxing Master. If the solicitor fails to take up the certificate within the period allowed, the client may take up same. The certificate is a very important document and is required to enforce the determination of the Taxing Master.

## TIME LIMITS

A Notice to Tax/Summons to Tax should issue and be served so as to allow 14 clear days to elapse between the day of service and the day mentioned for attendance.

If the interests of justice dictate that the time limits should be extended or limited the Taxing Masters have a discretion to exercise such judgment as the case dictates. Time limits are very important and where there is any doubt, advice should be sought from a member of the legal profession.

## THE ROLE OF THE LAW SOCIETY OF IRELAND

By virtue of the provisions of the Solicitors (Amendment) Act, 1994, the Law Society of Ireland has been given regulatory and investigative powers in relation to allegations of excessive charges by solicitors.

Section 8 of the Act gives power to the Law Society of Ireland to impose sanctions for inadequate services and to



determine whether the solicitor is entitled to any costs in a particular case.

A complaint made within five years of the issue of a Bill of Costs to the Law Society of Ireland in relation to allegations of excessive charging may be investigated pursuant to Section 9 of the Act and may result in the solicitor being directed to refund certain amounts if the Law Society determine that certain charges were excessive.

Where a complaint is made to the Law Society of Ireland, the Society has the power to order production of documents and books that will assist it in its investigation as provided for by Section 10 of the Act.

If the costs which are the subject of a complaint or an investigation are taxed, the Law Society ceases to have any powers to investigate same.

## **TAXATION OF COSTS BY COUNTY REGISTRARS**

As a general principle, costs incurred as a result of an action concluded in the Circuit Court are taxed by the County Registrar of the area in which the action was concluded and the rules and regulations governing such taxations are not covered in this booklet. This booklet deals with costs of the Superior Courts - namely the High Court and the Supreme Court - and such other costs as are applicable.



## GENERAL INFORMATION

**The Taxing Masters Office**

**1st floor Merchants House**

**27/30 Merchants Quay**

**Dublin 8**

**Phone: +353 (0)1 888 6301?**

**Open 10.30 a.m. to 4.30 p.m. Monday to Friday**

**Website: [www.courts.ie](http://www.courts.ie)**

THE LAW SOCIETY OF IRELAND

BLACKHALL PLACE

DUBLIN 7

PHONE: 353 (0)1 6710711

### **Publications referred to:**

- Statutory Instrument No. 70 of 2005 - Supreme Court and High Court (Fees) Order, 2005
- Statutory Instrument No. 15 of 1986 - Rules of the Superior Courts 1989

may be purchased through any bookseller, or directly from the Government Publications Sale Office, Sun Alliance House, Molesworth Street, Dublin 2.

They are also available from

- (i) the reference section of your local public library
- (ii) the Courts Service website at [www.courts.ie](http://www.courts.ie)



## *Frequently Asked Questions*

### **WHO IS THE TAXING MASTER?**

The answers to the following questions or queries are intended to give some general information and where appropriate the relevant statute or case is referred to as a guide to members of the public about taxation of costs. It is not intended to be a definitive statement of the law on the taxation of costs. One should consult a solicitor or legal costs accountant for the appropriate advice.

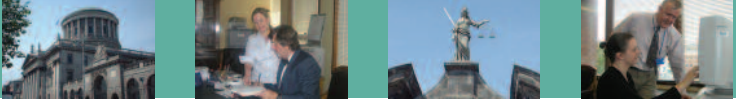
#### **Q What can I do if I have a solicitor's Bill of Costs that I am unhappy with?**

A The answer to this question is confined to the issue of quantum or the amount of the bill.

If a person is unhappy with the *quantum* of a Bill of Costs and an amicable settlement cannot be achieved through discussion there are two avenues open.

- (i) Refer the matter to the Law Society of Ireland. The Solicitors (Amendment) Act of 1994 bestows on the Law Society of Ireland a regulatory function in relation to solicitors' costs. This power was conferred on the Law Society of Ireland pursuant to Part III of the Solicitors (Amendment) Act 1994 and in particular sections 9-13 thereof.

Where a direction of the Society issues to a solicitor it is absolutely binding on the solicitor unless the solicitor



within 21 days of the notification of the direction<sup>1</sup> applies to the High Court for an order directing the Society to rescind or vary the direction and the court may make such order as it thinks fit.<sup>2</sup>

A complaint by an aggrieved party against a solicitor of an excessive charge for the provision of legal services has the following effect in relation to proceedings.

- (1) It prohibits the institution of proceedings in relation to collection of the charge or Bill of Costs.
- (2) It operates to, or has the effect of, putting a stay on any proceedings that have already issued, without obtaining the written consent of the Society.<sup>3</sup>

However, the solicitor who wishes to issue proceedings or continue with the proceedings that have already issued, must, before issuing proceedings, get the consent of the Society in writing or where proceedings have already been instituted, the solicitor may seek leave of the court but the Society must be put on notice of such an application.

It should be noted that the solicitor against whom the complaint is made has a right of appeal to the High Court whereas the client's remedy lies in having the Bill of Costs taxed.

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<sup>1</sup>Either for production of documents or otherwise – s. 11(1) of The Solicitors (Amendment) Act 1994.

<sup>2</sup>If the Society make a direction that a fee is excessive and has directed a refund in whole or in part and the Bill of Costs is subsequently taxed the following applies;  
(a) any direction by the Society shall cease to have effect;  
(b) it is the taxed Bill of Costs that has precedence – Sections 9(4) and 8(5) of the 1994 Act.

<sup>3</sup>Section 9(5)(a) and 9(5)(b) of the Solicitors (Amendment) Act 1994.



Finally, the Society may proceed with the investigation of the complaint provided the complaint is made within a date that is five years from the date of issue of the Bill of Costs. This provision provides a remedy to an aggrieved client for excessive charges for legal services whereas at common law prior to 6 November 1994 a client may not have had or may have been precluded a remedy through effluxion of time.<sup>4</sup>

If the solicitor will not co-operate with the client, the client may set the matter down for taxation under Order 99 Rule 33(1) and (2):

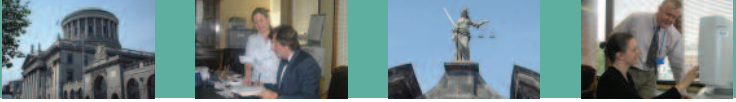
*“(1) If a solicitor following a request by client for the taxation of costs that may be payable by such client, fails to set down the Bill of Costs for taxation, the client may set down such bill for taxation and a notice to tax in accordance with rule 28 shall be served on the solicitor.”*<sup>5</sup>

*(2) The client shall not be required to have the Bill of Costs in the form as provided by rule 27 but shall be at liberty to lodge the Bill of Costs, memorandum of costs or account for*

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<sup>4</sup>Section 9(6) of the Solicitors (Amendment) Act 1994. In this reference ***see State (Gallagher Shatter) v DeValera*** and the dicta of McCarthy J.,... “(2) *the client has a period of twelve months within which to demand and obtain taxation (3) after the expiration of twelve months or after payment of the amount of the bill, then the court may, if special circumstances of the case appear to require the same, refer the bill to taxation, provided the application to the court is made within twelve calendar months after payment (4) after the expiry of the latter period, there is no statutory power to refer for taxation.*”

<sup>5</sup>Emphasis added. Order 99 Rule 33 (1)



*costs, in whatever form it was received from the solicitor, and in default of such the client may set down a written statement of the relevant facts in lieu thereof.”<sup>6</sup>*

- (ii) The Taxation process.

**Q. How does the Taxing Master decide what deductions to make?**

- A. The taxation of costs is a process that is conducted in open court with the proper parties having a right of audience. Oral submissions are made by both parties and in certain circumstances written submissions are made. The nature and extent of the solicitor’s work is examined by the Taxing Master pursuant to Section 27 of the Court and Court Officers Act, 1995. Precedent cases, if any, are researched and submitted and a finding on quantum is made by the Taxing Master.

**Q. What happens if I have already paid my solicitor?**

- A. Payment, in broad terms may denote an agreement or at the very least may be referable to terms of an agreement and under certain circumstances the courts, the Taxing Master and the Law Society may have to uphold the terms of ‘agreement’. Payment of a Bill of Costs to your solicitor does not preclude you from invoking the procedures discussed above and/or seeking the assistance of the Law Society of Ireland

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<sup>6</sup>Emphasis added. Order 99 Rule 33 (2)



under the Solicitors Amendment Act, 1994. In relation to the taxation process payment of a Bill of Costs triggers a new set of rules and to answer this question it is necessary to look at time limits. These rules are confined to the taxation process and are not applicable should you opt to proceed under the Solicitors Amendment Act, 1994.

As regards time limits, **Sections 2, 6 and 9 of the Attorneys and Solicitors (Ireland) Act, 1849 have particular relevance.**

Section 2 provides *inter alia*;

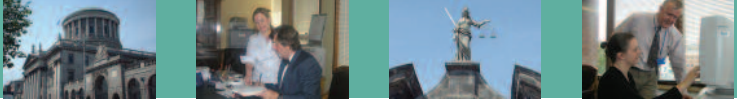
*“...No attorney or solicitor...shall commence or maintain any action for suit for the recovery of any fees, charges or disbursements... **until the expiration of one month** after such attorney...shall have delivered unto the party to be charged therewith...a bill of such fees, charges and disbursements...or **after the expiration of twelve months** after such bill shall have been delivered...except under special circumstances to be proved to the satisfaction of the court...”*

Section 6 provides;

*“And be it enacted that the **payment of any such bill** as aforesaid **shall in no case preclude** the court or judge, to whom application shall be made, **from referring such bill for taxation**”, if the special circumstances of the case*

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<sup>7</sup>Author's emphasis throughout.



*shall, in the opinion of such court or judge appear to require the same, upon such terms and conditions and subject to such directions as to such court or judge shall seem right, provided the application for such reference be made within twelve calendar months after payment.”*

Section 9 provides;

*“And be it enacted, that in the construction of this Act the word ‘month’ shall be taken to mean a calendar month”*

**State (Gallagher Shatter) v. DeValera**<sup>8</sup>, discusses in detail the time limits, where a solicitor and client bill had been paid, and also the jurisdiction of the Taxing Master to tax a Bill of Costs.

The combined effect of sections 2 and 6 of the Attorneys and Solicitors (Ireland) Act, 1849 in respect of a Bill of Costs for solicitor and client charges duly delivered would appear to be that:

- (1) The solicitor cannot lawfully sue for one month after delivery;
- (2) The client has a period of twelve months within which to demand and obtain taxation;
- (3) After the expiry of twelve months or after payment of the amount of the bill, then the court may, if special circumstances of the case appear to require same, refer the bill for taxation,

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<sup>8</sup>[1987] I.R. 55; [1987] I.L.R.M. 555 (H.C.); [1991] 2 I.R. 198; [1986] I.L.R.M. 3 (S.C.)



provided the application to the court is made within twelve calendar months after payment.

- (4) After the expiry of the latter period, there is no statutory power to refer for taxation.

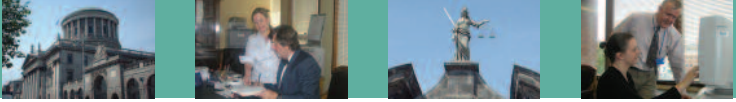
It is well established law that the court has always retained its own jurisdiction to order taxation; it derives from the court's inherent jurisdiction to supervise its officers, including solicitors, all of whom are officers of the court.

**Q. What happens if the solicitor has taken money out of an award that was made in my favour to pay his costs?**

- A. A deduction by a solicitor without the consent of the client does not constitute payment. The normal avenues for assessment of the Bill of Costs are accordingly open to be pursued.

**Q. Is the Taxing Master's order legally binding?**

- A. The Taxing Master's order, which is in effect the Certificate of Taxation, has the same force and effect as a court order for what it seeks to achieve. The receiving party may enforce collection of the amount certified in the Certificate of Taxation in the normal way.



**Q. Is there a time limit from when I receive the Bill within which I must have the Bill set down for taxation?**

A. No. However, time limits apply where the bill is deemed to be paid and these have been discussed above.

**Q. What if my solicitor is uncooperative and refuses to set the Bill of Costs down for taxation?**

A. If a solicitor is refusing to set a Bill of Costs down for taxation a client may avail of the provisions of Order 99 Rule 33(1) & (2) of the Rules of the Superior Courts, 1986. The client may set down a Bill of Costs for taxation under Order 99 Rules 33(1) and (2), which states *inter alia*;

*“(1) If a solicitor following a request by a client for the taxation of costs that may be payable by such client, fails to set down the Bill of Costs for taxation, the client may set down such bill for taxation and a notice to tax in accordance with rule 28 shall be served on the solicitor.*

*(2) the client shall not be required to have the Bill of Costs in the form as provided by rule 27 but shall be at liberty to lodge the Bill of Costs, memorandum of costs or account for costs, in whatever form it was received from the solicitor, and in default of such the client may set down a written statement of the relevant facts in lieu thereof.”*



**Q. What if the solicitor is suing me on foot of a Bill of Costs? Can I still have it set down for taxation?**

A. Yes.

**Q. Can I bring witnesses to the Taxing Masters Court?**

A. Yes.

**Q. Can I represent myself?**

A. Yes.

**Q. What if a solicitor is demanding payment before the action/proceeding has been concluded, do I pay him?**

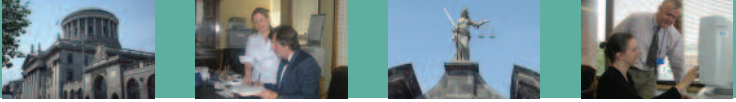
A. The provision of a legal service must be paid for. However, if you are unhappy with the amount of money requested any payment should be made subject to and without prejudice to the payee's right to taxation.

Section 6 of the Attorneys and Solicitors (Ireland) Act, 1849<sup>9</sup> provides:

*“And be it enacted that the payment of any such bill asforesaid shall in no case preclude the court or judge, to whom application shall be made,*

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<sup>9</sup>12 & 13 Vict., C. 53



*from referring such bill for taxation, if the special circumstance of the case shall, in the opinion of such court or judge appear to require the same, upon such terms and conditions and subject to such directions as to such court or judge shall seem right, provided the application for such reference be made within twelve calendar months after payment.”*

Payment referred to in this Section, means actual payment of a delivered Bill of Costs. It has been held that payment before delivery is not a payment to preclude taxation without special circumstances<sup>10</sup>. In the case of *In re Steele* a solicitor had retained the amount of fees he was owed out of money he held on behalf of the client; such retention was deemed not to be payment of his fees.

A payment on account would not preclude taxation after the lapse of twelve months<sup>11</sup>. The first essential criteria is the delivery of a valid bill by the solicitor, payment thereafter is *prima facie* an admission of the correctness of the Bill and the client must prove special circumstances to authorise taxation<sup>12</sup>.

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<sup>10</sup>In *re Street* (1870) 10 Eq 165; 22 L.T. 429. In this case the solicitor paid his fees out of money he held on behalf of the client. The client signed an account and got a receipt of the balance of the money he received. As no bill had been issued there could be no payment of a bill within the meaning of s.6 and the client was entitled to have the Bill of Costs taxed even though the year had expired.

<sup>11</sup>In *re Woodard* (1869) 18 W.R. 37.

<sup>12</sup>In *re Sladden* 10 Beav. 488, Lord Langdale said, “*The reasons commonly acted upon are these; oppression either directly proved or justly to be inferred from the state of the circumstances, under which payment is proved to have been made; and a reasonable belief that if the bill be taxed, the whole of the charges will not be allowed.*”



Payment under protest amounts to nothing except that the person applying gives notice, or makes a statement that he will avail himself of every circumstance in the case to enable him to set aside the transaction.<sup>13</sup> However, where a payment under protest and subject to taxation was made by the client, the client was not obliged to show special circumstances to authorise taxation.<sup>14</sup>

Special circumstances were described by Lord Langdale M.R. as:

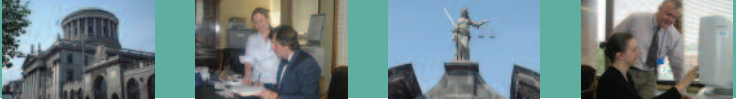
*“such as exist or take place at the time of payment, or such as appear on the face of the bills themselves. Payments may be extorted as to induce that court to say that the bill containing improper charges, even to a small amount, shall not be protected from taxation; and the bill may contain charges so gross, that the insertion of them in the bill is, of itself, evidence of fraud and oppression, from which the client will be relieved.”*<sup>15</sup>

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<sup>13</sup>In **re Harrison** 10 Beav. 59

<sup>14</sup>See **Ex-Parte Love** 65 L.T. 68

<sup>15</sup>Per Lord Langdale M.R. In **re Currie** (1846) 9 Beav. 602. See also **State (Gallagher Shatter & Co) v deValera** [1991] 2 I.R. 198, wherein McCarthy J., stated: “it is well established law that the court has retained inherent jurisdiction to order taxation, it derives from the courts inherent jurisdiction to supervise its officers...” Except for the dicta mentioned above there is no rigid rule as to what amounts to special circumstances. In **re Ward Bowie & Co** (1910) 102 L.T. 881 (C.A.) “special circumstances” were stated to be “those which appear to the judge exercising such discretion as special and exceptional as to justify taxation”, and are not necessarily confined to pressure and overcharges and fraud. See In **re Lacy** (1883) 25 Ch.D. 301.



**Q. What is a Section 68 Letter? What if I did not receive a Section 68 Letter?**

- A. (a) The Section 68 Letter provides details of:
- (i) the solicitor's actual charge for the legal service;  
or
  - (ii) if this is not possible an estimate of the charge;  
or
  - (iii) if this is not possible, the basis upon which the charge is going to made; and
  - (iv) where the legal service involves contentious business, the solicitor providing the legal service must provide "particulars in writing of the circumstances in which the client may be required to pay costs to any other party or parties and the circumstances, if any, in which the client's liability to meet the charges which will be made by the solicitor of the client for these services will not be fully discharged by the amount, if any, of the costs recovered in the contentious business from any other party or parties (or any insurers of such party or parties)<sup>16</sup>.
- (b) Failure to furnish the client with a Section 68 Letter will not preclude the solicitor from having

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<sup>16</sup>Section 68, the Solicitors (Amendment) Act, 1994. S.I.No. 27 of1994.



costs taxed<sup>17</sup>. If requested the Law Society of Ireland may invoke their regulatory function under the Solicitors (Amendment) Act, 1994.

**Q. Does the Taxing Master adjudicate on whether a solicitor has a right to any fee? Or is it solely the amount or level of fees on which he adjudicates?**

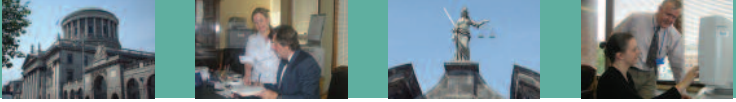
A. The Taxing Master adjudicates on the right and entitlement of solicitors, barristers and other professional witnesses, like medical practitioners, engineers etc. to proper charges and the amount of such charge. The Taxing Master, if the situation arises, may have to adjudicate on whether an agreement exists between the solicitor and client to pay a particular fee.

**Q. What if a High Court order for costs has been made against me and six years have passed, is there a time limit within which I can be pursued for the costs?**

A. The costs order is a direction to the Taxing Master to tax costs. Subject to the rules set out herein for time limits in relation to solicitor and client charges, there is no time limit on taxing a Bill of Costs. There is, however, in general terms a statutory period of six years for permissible collection of the taxed costs. There is little point in taxing costs pursuant to an order for costs that is in excess of six years old.

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<sup>17</sup>See also judgment of Mr Justice Peart of 5th November 2003, H.C., unreported in **A& L Goodbody Solicitors v Colthurst & Anor**



**Q. I received an award from a High Court action and the solicitor deducted his fees from the award. Is this permissible? Can the Bill of Costs still be taxed?**

- A. (a) See payment of Bill of Costs discussed above. It is not permissible for the solicitor to make a deduction without the express authority of the client.
- (b) Yes, the Bill of Costs may be taxed, as a deduction does not amount to payment.

**Q. If I proceed to Taxation what stamp duty is payable?**

A. Summons to Tax	€110.00
Certificate of Taxation	€50.00
Objections	€50.00

Stamp Duty – 6% of the taxed award. In a solicitor and client matter if more than one sixth is deducted from the Bill of Costs by the Taxing Master the stamp duty and the charges for the taxation items are payable by the losing party.



**Q (a) As my solicitor is not in communication with me, how can I have the Bill of Costs set down for taxation?**

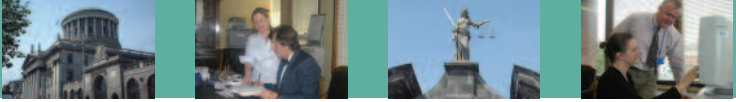
**(b) Can I get another solicitor to set down the Bill of Costs for taxation if my own solicitor refuses to do so?**

A. [a] Yes, see Order 99 Rules 33 (1) and (2)

(1) *“If a solicitor following a request by a client for the taxation of costs that may be payable by such client, fails to set down the Bill of Costs for taxation, the client may set down such bill for taxation and a notice to tax in accordance with rule 28 shall be served on the solicitor.*

(2) *The client shall not be required to have the Bill of Costs in the form as provided by rule 27 but shall be at liberty to lodge the Bill of Costs, memorandum of costs or account for costs, in whatever form it was received from the solicitor, and in default of such the client may set down a written statement of the relevant facts in lieu thereof.”*

[b] Yes, it is always permissible to instruct another solicitor.



**Q My solicitor has not provided me with a detailed Bill of Costs, all I have is a letter giving me details of proposed charges. I have requested a Bill of Costs on several occasions but I have received no response. Can I have this bill set down for taxation?**

A. Yes. Order 99 Rule 33 (1) and (2) permits an aggrieved party to set down whatever bill or invoice he has received from the solicitor.

(1) *“If a solicitor following a request by a client for the taxation of costs that may be payable by such client, fails to set down the Bill of Costs for taxation, the client may set down such bill for taxation and a notice to tax in accordance with rule 28 shall be served on the solicitor.*

(2) *The client shall not be required to have the Bill of Costs in the form as provided by rule 29 but shall be at liberty to lodge the Bill of Costs, memorandum of costs or account for costs, in whatever form it was received from the solicitor, and in default of such the client may set down a written statement of the relevant facts in lieu thereof.”*



## APPENDIX A

### EXAMPLE OF A SUMMONS/NOTICE TO TAX

#### SUMMONS TO TAX

#### **THE HIGH COURT**

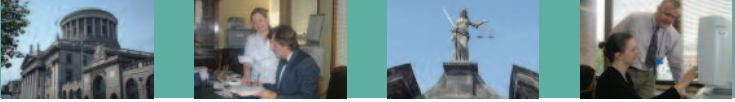
MR. \_\_\_\_\_  
To \_\_\_\_\_  
SOLICITORS  
\_\_\_\_\_

You are hereby required on the application of the Solicitor(s) on their own behalf to attend before me at my Chambers, 1st floor, Merchants House, 27/30 Merchants Quay, Dublin 8 on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ at the hour of 11.00 o'clock in the forenoon to Tax the costs of Solicitor and Own Client costs pursuant to the Requisition to Tax dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ and from thence until the said Taxation shall be disposed of

ENTERED \_\_\_\_\_ Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ .

I/We certify that there has been no previous Taxation of costs in this matter.

\_\_\_\_\_



# APPENDIX B

## EXAMPLE OF A REQUISITION TO TAX

### REQUISITION TO TAX - ORDER 99, RULE 14 (E)

-TO-

**SOLICITORS'  
DR.**

\_\_\_\_\_

And that in pursuance of "The Rules of the Superior courts" Order 99, Rule 14(e), I \_\_\_\_\_ hereby request James Flynn or Charles Moran Esquires, Taxing Masters of the said Court, to Tax the annexed Bill of Costs in the title hereof described as between Solicitor and Client.

Insert Solicitor's name, Firm & Address. If Client personally appearing alter wording to "and I will appear personally on the said Taxation"

And I hereby undertake to pay the balance which the said Taxing Master may certify to be due by me on foot of the said Bill of Solicitor and Own Client Costs after getting all just credits on account thereof.

And I hereby appoint \_\_\_\_\_, Solicitor, of

to attend on my behalf on the said Taxation and I hereby consent that the said Bill of Solicitor and Own Client costs be certified.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20

\_\_\_\_\_

Client's Signature MUST be certified by Solicitor Appointed even if Client attending Taxation in person Client seeking Taxation must date and sign here.

I certify that the name \_\_\_\_\_ signed to the above Requisition is the proper name and handwriting of the said

\_\_\_\_\_

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20

Solicitor's signature must be witnessed here by third party including address & description

Witness:  
Signature: \_\_\_\_\_  
Address:  
Occupation:



# APPENDIX C

## EXAMPLE OF CERTIFICATES OF TAXATION

**CERTIFICATE OF TAXATION  
ORDINARY COSTS OF ACTION**

**THE HIGH COURT  
RECORD NO.**

**BETWEEN:**

**PLAINTIFF**

**-AND-**

**DEFENDANT**

C I CERTIFY that I have been attended by  
O Solicitors for the  
M and by  
P Solicitors for the  
A  
R and that in pursuance of  
E  
D I have taxed the costs of the  
To the sum of

E  
X  
A  
M  
I  
N  
E  
D

Dated this            day of            20

**AMOUNT CLAIMED**            €  
**DEDUCTIONS**                    € \_\_\_\_\_  
**AMOUNT CERTIFIED**        €

\_\_\_\_\_  
**TAXING MASTER**

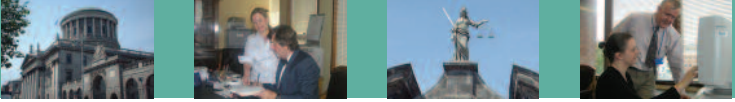




## APPENDIX D

### EXAMPLE OF A BILL OF COSTS

1	2	3	4	5	6	7
<i>Date</i>	<i>Item No</i>	<i>Particulars of the service charged for</i>	<i>Disbursement - payment made by a solicitor on a client's behalf</i>	<i>Taxing Master's deductions</i>	<i>Professional Charges</i>	<i>Taxing Master's Deductions</i>
		<p>The Supreme Court            2000 No. ....P            Between</p> <p style="padding-left: 40px;">A</p> <p style="padding-left: 80px;">Plaintiff</p> <p style="padding-left: 40px;">-and-</p> <p style="padding-left: 40px;">B</p> <p style="padding-left: 80px;">Defendant</p> <p>.....            Costs of the Plaintiff            .....            Taxed pursuant to Order of            the Supreme Court dated            day of 20            .....</p> <p>Instructions to act received            on this day (see general            instruction) fee later            .....</p>	, ^	, ^		, ^



## APPENDIX E

### EXTRACT FROM THE RULES OF THE SUPERIOR COURTS, 1986 (AS AMENDED)

#### “APPENDIX W

.....

#### (5) TAXATION

- |     |   |                       |
|-----|---|-----------------------|
| 30. | Drawing and engrossing bill of costs, including copy for Taxing Master and one copy for service, per folio ...  | €0.17                 |
| 31. | Lodging and serving bill of costs and issuing, serving and filing notice to tax   | €3.40                 |
| 32. | Attending taxation, completing bills, vouching, completing affidavit of tots and certificate and taxation ... ..  | €2.98<br>to<br>€15.35 |
| 33. | Drawing objections to decision of Taxing Master, or answer to objections, including copies for service and filing; delivery to one party of such objections or answers and attending hearing or review by Taxing Master if objections sustained ... | Discretionary         |

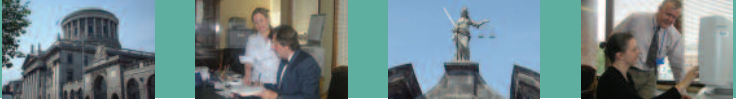
.....”



## APPENDIX F

### Extract from Statutory Instrument No. 70 of 2005

<b>PART 5</b>		
Fees payable in the Taxing Masters Office.		
Item	Fee	Document to be stamped
<p>A Taxing Master may in any case require the bill of costs to be stamped before taxation with the amount of fees which would be payable if the bill were allowed by him at the full amount thereof, including, in cases under the Solicitors Act, 1849, the fee payable in respect of the cash account.</p>		
<p>1. On a notice to tax, except on an ex-parte taxation ... ..</p>	€110.00	The notice.
<p>2. On the taking of a cash account between the Solicitor and his Client on a taxation under the Solicitors Act, 1849, or otherwise--     – for every €100 or fraction of €100 of the amounts found to have been received and paid ... ..</p>	€1.00	The bill.
<p>3. On the taxation of a bill of costs --     – for every full €100 in the amount allowed (including witnesses' expenses) ... ..</p>	€6.00	The bill.
<p>4. On the issue of a certificate of taxation</p>	€50.00	The certificate or court fee card.
<p>5. On carrying in objections to the allowance or disallowance of any item or items in a bill of costs ... ..</p>	€50.00	The objections.
<p>6. On a report of a taxing master as to the grounds of his decision to allow or disallow ... ..</p>	€20.00	The report.
<p>7. On a report of a Taxing Master as to security for costs in a matrimonial case ...</p>	€20.00	The report.



## APPENDIX G

Extract from Courts and Court Officers Act, 1995

### **Additional powers of Taxing Master of High Court.**

27.—(1) On a taxation of costs as between party and party by a Taxing Master of the High Court, or by a County Registrar exercising the powers of a Taxing Master of the High Court, or on a taxation of costs as between solicitor and client by a Taxing Master of the High Court, the Taxing Master (or County Registrar as the case may be) shall have power on such taxation to examine the nature and extent of any work done, or services rendered or provided by counsel (whether senior or junior), or by a solicitor, or by an expert witness appearing in a case or any expert engaged by a party, and may tax, assess and determine the value of such work done or service rendered or provided in connection with the measurement, allowance or disallowance of any costs, charges, fees or expenses included in a bill of costs.

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(2) On a taxation of costs as between party and party by a Taxing Master of the High Court, or by a County Registrar exercising the powers of a Taxing Master of the High Court, or on a taxation of costs as between solicitor and client by a Taxing Master of the High Court, the Taxing Master (or County Registrar as the case may be) shall have power on such taxation to allow in whole or in part, any costs, charges, fees or expenses included in a bill of costs in respect of counsel (whether senior or junior) or in



respect of a solicitor or an expert witness appearing in a case, or any expert engaged by a party as the Taxing Master (or County Registrar as the case may be) considers in his or her discretion to be fair and reasonable in the circumstances of the case, and the Taxing Master shall have power in the exercise of that discretion to disallow any such costs, charges, fees or expenses in whole or in part.

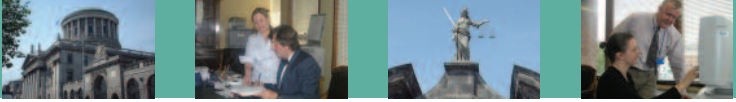
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(3) The High Court may review a decision of a Taxing Master of the High Court and the Circuit Court may review a decision of a County Registrar exercising the powers of a Taxing Master of the High Court made in the exercise of his or her powers under this section, to allow or disallow any costs, charges, fees or expenses provided only that the High Court is satisfied that the Taxing Master, or the Circuit Court is satisfied that the County Registrar, has erred as to the amount of the allowance or disallowance so that the decision of the Taxing Master or the County Registrar is unjust.

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(4) No standby or retainer fee shall be payable to any solicitor, counsel (whether senior or junior) or to any witness whether professional or otherwise, on a taxation of costs as between party and party, nor on a taxation of a solicitor and client bill of costs where the Taxing Master (or County Registrar as the case may be) deems the payment of such fee to be unreasonable in the circumstances of the case.

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(5) On a taxation of costs as between solicitor and client it shall not be necessary to produce vouchers or receipts for the payment of any disbursements (including counsel's fees), but on the completion of the taxation no Certificate of Taxation shall issue until proper vouchers or receipts for disbursements have first been produced and vouched, and accepted by the Taxing Master or unless the parties agree or the Taxing Master decides that proper vouchers or receipts for disbursements need not be provided.

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(6) Without prejudice to the provisions of Order 99, rule 29 (12) and (14) of the Rules of the Superior Courts, 1986, or without prejudice to any enactment regulating the charging of fees payable in the Taxing Master's Office on the taking up of a certificate of taxation, on the taxation of a bill of costs (whether on a solicitor and client or party and party basis) no solicitor or legal cost accountant or other cost drawer shall be entitled to any fees, disbursements, charges or expenses in relation to the taxation of costs as against the opposing party, but save as against the party who incurred such fees, disbursements, charges or expenses.

---

(7) On a review of taxation (whether on a solicitor and client or party and party basis) by the High Court, or the Circuit Court, no solicitor or legal costs accountant or other costs drawer retained to present the bill of costs to the Taxing Master or a County Registrar shall be entitled to be paid any



fees, disbursements, charges or expenses for his or her attendance in court to give evidence in relation to the bill of costs, save as against the party who incurred such fees, disbursements, charges or expenses.

---

(8) The Taxing Master (or County Registrar as the case may be) may, at the request of the parties involved in any taxation of costs, tax part of a bill of costs where that part of the bill of costs only is in dispute including any item or items of cost which are in dispute between the parties.

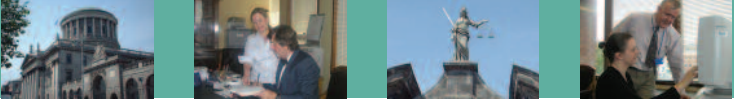
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(9) Where a Taxing Master (or County Registrar as the case may be) undertakes a partial taxation of costs under subsection (8) of this section the Taxing Master (or County Registrar as the case may be) shall be empowered to request any party to the taxation to provide such information or further information as the Taxing Master (or County Registrar as the case may be) may require in connection with the taxation, and to submit any documents or papers relating to the cause or matter that are in the possession of any such party, to him or her for consideration in connection with the taxation.

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(10) Where part of a bill of costs has been taxed, the costs of taxation, including any duty payable, shall be based on such item or items in the bill of costs as were taxed.

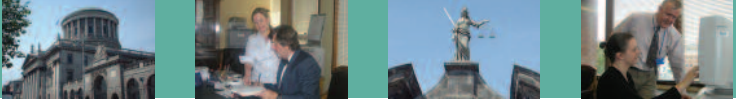
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(11) Legal costs arising from formal investigations under section 466 of the Merchant Shipping Act, 1894, may be taxed by the Taxing Master of the High Court (or County Registrar as the case may be).



## NOTES



## NOTES



## NOTES



**This is an Information Booklet. It is not intended to be a legally binding document nor is it an interpretation of legislation.**

**Contact details:**

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1st floor Merchants House  
27/30 Merchants Quay  
Dublin 8**

**Telephone: 01 888 6301?**

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