

# Exchange of Taxpayer Information And the Protection of Taxpayers in South Africa: Within the Bounds of the Constitution of South Africa?

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## THE CONSTITUTION OF SOUTH AFRICA – THE BILL OF RIGHTS

“Everyone has the right to  
PRIVACY”

“Everyone has the right to  
JUST ADMINISTRATIVE ACTION”

“The rights in the bill of RIGHTS MAY BE LIMITED only in terms of law of general application to the extent that the limitation is REASONABLE AND JUSTIFIABLE”

## CURRENT PROTECTION AFFORDED TO TAXPAYERS IN SOUTH AFRICA

- No notice upon receipt of request
- No representation during investigation or information gathering process
- No notice after the fact

## CORE CONSTITUTIONAL QUESTIONS RAISED IN SOUTH AFRICA

- Is the taxpayer’s right to privacy infringed when information is exchanged cross-border?
- Is there an unjustifiable infringement of a taxpayer’s right to just administrative action when (i) no up-front notice is given of a request and/or (ii) no opportunity is provided to check the accuracy of information and/or (iii) make representations before the information is shared?
- If a taxpayer’s rights are infringed, how to determine if the infringement was ‘reasonable and justifiable’ in a democratic society, and in terms of a law of general application?
- How would the analysis differ between exchange upon request, and the automatic exchange of information?
- The Constitution guarantees the fundamental rights of the taxpayer. Weighed and measured, will the absence of any safeguards in South Africa’s tax legislation to realise taxpayer rights during the exchange of information process be found wanting? Is there a duty to develop domestic tax law to realise Constitutional rights?