



Tax Newsletter

Timely news and information on national tax issues

Substantive effect on the Income Tax due to formal non-compliance in the issuance of Credit Notes

The issuance of documents for keeping control over the Tax on the Transfer of Movable Goods and the Rendering of Services (VAT) constitutes one of the most relevant formal tax obligations, since in the event of non-compliance in the issuance of such documents, taxpayers are not only exposed to the various penalties contained in Art. 239 of the Tax Code (TC), *“Non-compliance with the Obligation to Issue and Deliver Documents,”* but it also could result in non-compliance with the substantive tax obligation when the payment of taxes resulting from the issuance of these documents is not made for the corresponding amount.

With respect to this matter, on June 24, 2022 the Court of Appeals for Internal Revenue and Customs (TAIIA per its Spanish acronym) gave a Webinar on the topic *“Credit Notes and their impact on the determination of supplementary internal taxes.”* This document presents the most relevant aspects

highlighted by the TAIIA in its presentation related to the main substantive effect on the Income Tax in cases of non-compliance with the formal obligations in the issuance of Credit Notes (CNs).

General aspects

The CN is a document for keeping control over VAT in transactions between payers of the cited tax, whose use and formal requirements for its issuance are mainly regulated in Article 110 of the TC, *“Replacement of Tax Credit Receipts. Debit and Credit Notes.”* Such article establishes that **when after the issuance of Tax Credit Receipts (CCF per their Spanish acronym)** – for sales transactions – adjustments or differences in the prices, discounts, or other modifications to the transaction occur, or when cash is refunded, goods are returned, or the transactions made are voided or cancelled, or the Tax Debit for the VAT was wrongly calculated, **those who transfer goods**

and provide services should issue new Tax Credit Receipts or Debit or Credit Notes, accordingly, that modify the previously issued documents.

In the specific case of CNs, these are documents that **are issued with the purpose of decreasing or voiding**, both the amounts and the tax in a sales transaction (revenue) that had been previously documented with a CCF. The last section of Article 110 cited above stipulates the following as the main formal obligations that must be kept in mind when issuing CNs:

1. CNs **must make reference to the number of the CCF that is being modified.**
2. CNs must comply with the same requirements established by Article 114 of the TC for Tax Credit Receipts.

Main formal requirements flagged by the Tax Administration (TA)

Following are the main formal requirements in the issuance of CNs whose violation are often flagged (observed) by the TA in its taxpayer oversight procedures:

- **CNs that do not make reference to the CCF being modified.**
- Failure to comply with all or some of the information required by Article 114 of the TC.
- Failure to effectively delivery the CNs to the parties they being issued to.
- Failure to describe the goods being adjusted.

Substantive implications for the income tax

Main instances of formal non-compliance subject to adjustments by the TA	Substantive implication determined by the TA
CNs that do not make reference to the CCF being modified or adjusted.	Determination of omitted income due to inapplicable adjustments as a result of this non-compliance.

The main arguments that the TA uses as a basis for the determination of supplementary tax adjustments to the income tax due to formal non-compliance in the issuance of Credit Notes presented in the table above, are the following:¹

- The obligation to make reference to the CCF that is being modified is considered formal due to the following aspects:
 - ✓ Its origin is expressly in the Law.
 - ✓ It is linked to a substantive modification (decrease in income obtained).
 - ✓ Complying with the formal obligation to make reference to the CCF being modified is required due to the legal certainty and order that must prevail in tax matters.
- Although CNs are documents for keeping control over VAT, these documents also support the modifications made to those transactions that constitute a source of income (revenue), which are supported by the CCF.
- Due to the function of CNs, it is necessary to clearly specify the transaction being modified. Thus, the legislator established that it is mandatory to make reference in the CN to the CCF that is being modified, in order to ensure tax interests.
- Notwithstanding the above, the tax laws do not expressly establish that when a CN does not comply with all the requirements indicated by the tax laws that such CN will be invalid, or that if the adjustment made is invalid, the absence of the formal requirements, **such as not making**

¹ Criteria taken as a reference in the Ruling by the Administrative Law Chamber of Santa Tecla, ref. 00008-18-ST.COPC-CAM 8H 3M dated 17/12/18 and Ruling of the Administrative Law Court, made at 12H 30M on 11/12/2019, ref. 15-19-RA-SCA, included in the Webinar "Credit Notes and their impact on

the determination of supplementary internal taxes" given by the Court of Appeals for Internal Revenue and Customs on June 24, 2022.

reference to the CCF being modified, makes them subject to questioning because it is not possible for it by itself to demonstrate the causality between the supporting documentation CCF-CN.

- When the legal requirement of correlating the CCF that is being modified is met, it allows for crosschecking the necessary information for verifying compliance with the substantive tax obligation. Thus, the failure to correlate the number of the CCF being modified implies an abstract adjustment to the income obtained, which according to article 110 of the TC is inadmissible because the nature and function of CNs, as already mentioned, is to modify previously issued documents.
- In order to ratify an adjustment to the income obtained through the issuance of CNs, it is not enough to verify the existence of a decrease in the income obtained, since such circumstance *per se* implies assuming that the decrease was made in accordance with the law. Instead, in order for it to be admissible, it is necessary to have the supporting documentation that provides the certainty that such decrease was performed under the conditions and assumptions provided for in the applicable laws.

Given all of the above, we must caution that in accordance with the current tax legislation and the criteria of the TA (previously confirmed by the Administrative Law Court), in oversight actions performed by the tax authorities, such authorities will verify that a reduction to the income obtained (revenue), performed through a CN, can first be demonstrated based on the connection or link that should exist between the CNs and the CCF that are being modified, and not the autonomous value that the taxpayer seeks to attribute to the CNs by the mere fact of issuing them. So, when the TA determines in its review process that the CNs issued by a taxpayer are insufficient to demonstrate that the decrease in taxable income has been made under the conditions and assumptions provided for in the tax laws, such

modification would be inadmissible, and so in this case, the TA would require reflecting as income obtained the income originally recorded in the CCF.

Therefore, based on the information presented in this document, we encourage taxpayers to perform a detailed analysis of their tax situation with respect to the process for issuing CNs, including with the support of their external advisors, with the purpose of verifying their proper compliance with the formal obligations in the issuance of such documents and thus mitigate any risk of supplementary taxes in the event of any oversight actions by the TA.



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Tax Calendar

August 2022

The updated 2022 tax calendar is now available on the Tax Administration's website, which includes public holidays and deadlines for all tax obligations.

D	L	M	M	J	V	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			



Descargar Calendario de Obligaciones 2022

August 19

VAT

Declaration and payment of the Tax on the Transfer of Movable Goods and the Rendering of Services (F-07).

Financial Income and Transactions

Monthly declaration of Payment on Account, and Tax Withheld on Income, Financial Transactions, and the Special Contribution for Citizen Security and Coexistence (F-14).

Specific and Ad Valorem Taxes

Declaration and payment of Specific Taxes, Ad Valorem Taxes and Special Contribution (F-06).

Other Obligations

- Report on donations (F-960).
- Report on Specific and Ad Valorem Taxes on Producers and Importers of Alcoholic Beverages, Potable Ethyl Alcohol and Beer, Carbonated Beverages, Isotonic Beverages, Fortified Beverages or Energy Drinks, Juices, Nectars,

Soft Drinks and Concentrated or Powder Mixtures for the Preparation of Drinks (F-955).

- Report on Specific and Ad Valorem Taxes on Producers and Importers of Firearms, Ammunitions, Explosives and Similar Items, Producers of Tobacco and Producers, Importers and those that clear fuels through customs (F-988).
- Monthly Report of Sales to Producers, Distributors or Retailers of Tobacco and Tobacco Products (F-956).

August 26

VAT

- Monthly Report on Withholdings, Collections, or Payments on Account of VAT (F-930).
- Monthly Report on Documents Printed for Taxpayers Registered under the VAT (F-945).

August 8

Other Obligations

- Summary of the Report on Suppliers, Customers, Creditors and Debtors (F-987).
- Report on Performance of Surgeries, Operations and Medical Treatments (F-958).

August 1, 2, 3, 4, 5 and 6

Public holiday due to celebrations of the Feast of San Salvador

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Descarga la APP



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