



Preliminary Opinion on
the Consolidated Year-End
Government Report
for Fiscal year 2017





FEDERATIVE REPUBLIC OF BRAZIL

FEDERAL COURT OF ACCOUNTS

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PRELIMINARY OPINION ON THE CONSOLIDATED YEAR-END GOVERNMENT REPORT FOR FISCAL YEAR 2017

TO THE NATIONAL CONGRESS

Accounts of the President of the Republic

In compliance with article 71, item 1, of the Federal Constitution of Brazil, the Federal Court of Accounts (TCU) examined the consolidated year-end government report for fiscal year 2017, with the aim of issuing the Court's preliminary opinion on the accounts. In accordance with article 36 of TCU Organic Law – Law 8.443/1992, these accounts are composed of the General Balance of the Union (BGU) - the consolidated financial statements of the federal government - and the Report on the Federal Government's budget execution.

Mandate of the President of the Republic

According to article 84, item 24, of the Federal Constitution, it is the exclusive responsibility of the President of the Republic to render to the National Congress annually the accounts of the prior fiscal year. The deadline for rendering accounts is sixty days after the opening of the legislative session. As stated by item II of the same article, the President is also responsible for the top management of the federal administration with the help of the Cabinet Ministers.

On the other hand, the mandate to produce and consolidate the report on the budget execution of the Federal Government lies with the Ministry of Transparency and Office of the Federal Comptroller General (CGU). This is done through the Federal Internal Control Secretariat, according to article 24, item 10 of Law 10.180/2001, as well as article 67, item 5 of Provisional Measure¹ 782, of May 31, 2017.

As for the mandate to produce and consolidate the General Balance of the Union (BGU), the consolidated financial statement of the federal government, this is the responsibility of the National Treasury Secretariat of the Ministry of Finance, according to article 18, item 6 of Law 10.180/2001, as well as article 7, item 6 of Decree 6.976/2009.

Mandate of the Federal Court of Accounts

To comply with its constitutional and legal mandate and as established in the heading and paragraph 1 of article 228 of the TCU Internal Bylaws, the TCU opinion is conclusive in order to express:

- If the accounts rendered by the President of the Republic represent appropriately the financial, budgetary, accounting and assets position on December 31, 2017;

¹ A provisory measure (in portuguese: medida provisória) is a legal act in Brazil through which the President of Brazil can enact laws without previous approval by the National Congress. There are two requirements for a provisory measure to be used: urgency and relevance of the matter to be regulated.

- If the constitutional and legal principles that govern federal public administration were observed, with emphasis on compliance with the constitutional, legal, and regulatory norms on budget execution by the Federal Government and the other operations carried out with federal public resources, especially regarding what is set forth in the annual budget law.

Furthermore, paragraph 2 of article 228 requires the preparation of a report containing the following information:

- Execution of the programs foreseen in the annual budget law regarding legitimacy, efficiency and economy, as well as achievement of the goals and its consonance with the multi-year plan (*Plano Plurianual* – PPA) and with the budget guidelines law (*Lei de Diretrizes Orçamentárias* – LDO);
- The effect of federal financial and budgetary administration on the economic and social development of the country;
- Compliance with the limits and parameters established in Complementary Law 101/2000 – Fiscal Responsibility Law (LRF).

The audits performed with the purpose of examining the Accounts of the President of the Republic to issue a preliminary opinion, follow the TCU's Auditing Norms (NAT) and the Fundamental Principles of Financial Auditing of the International Organization of Supreme Audit Institutions (INTOSAI). These statutes require that the audit work be planned and executed to obtain reasonable assurance that the Accounts of the President of the Republic are free from errors and irregularities that are materially relevant.

However, it is worth noting that the Accounts of the President represent the consolidation of the individual accounts of the ministries, federal bodies and agencies that depend on the federal budget. Considering that these individual accounts are certified and judged a posteriori, there may be errors and irregularities that are not detected at the consolidated level and that will be detected and judged in the future, in compliance with article 71, item 2 of the Federal Constitution.

Those observations notwithstanding, the Court considers that the evidence obtained is sufficient and adequate to support the audit opinions that make up these Preliminary Opinions.

Mandate of the National Congress

According to article 49, item 9, of the Federal Constitution, it is the exclusive mandate of the National Congress to yearly pass judgment on the accounts rendered by the President of the Republic, covering the previous fiscal year.

To this end, pursuant to article 166, paragraph 1, item 1 of the Federal Constitution, it is the responsibility of the Committee on Planning, Public Budgets and Oversight of the National Congress (CMO) to examine and issue an opinion on the accounts submitted annually by the President of the Republic.

The preliminary opinion issued by the TCU informs both the opinion of the CMO and the judgement by the National Congress.

Preliminary Opinion on the Consolidated year-end Government Report for fiscal year 2017

The opinion of the Federal Court of Accounts is that the Accounts referring to the fiscal year 2017, under the responsibility of His Excellency the President of the Republic, Michel Miguel Elias Temer Lulia, present the conditions to be approved by the National Congress with some restrictions.

1. Opinion on the report of execution of the federal budget

Based on the procedures applied and the scope selected for the analysis on the execution of the federal budget, the conclusion is that, save for the effects of detected exceptions, the relevant constitutional and legal principles that govern public federal administration were followed, as well as the constitutional, legal and regulatory statutes applicable to the execution of the federal budgets and other operations carried out with federal funds, in particular, as pertains to the provisions of the annual budget law.

2. Opinion on the General Balance of the Union (consolidated statement of the federal government)

The consolidated financial statements of the Federal Government, comprised by the Budgetary Balance, Cash Flow Statement, Balance Sheet, and by the Performance Statement, with the exception of the possible effects of the distortions contained in the report, present fairly, in all material respects, the situation on 12/31/2017. They also reflect the budgetary, financial and assets results related to the fiscal year ending on the mentioned date, according to the provisions of Law 4.320/1964, Complementary Law 101/2000 and all other norms applicable to federal accounting.

TCU, Minister Luciano Brandão Alves Sessions Room, on June 13th, 2018

Minister President Raimundo Carreiro

Minister Rapporteur Vital do Rêgo

Minister Walton Alencar Rodrigues

Minister Benjamin Zymler

Minister Augusto Nardes

Minister Aroldo Cedraz

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Minister Ana Arraes

Minister Bruno Dantas

Basis for the Preliminary Opinion on the Consolidated year-end Government Report

1. Basis for the opinion on the report regarding the execution of the Union budgets

A complete description of the basis for issuing the opinion on the report regarding execution of the Union budgets can be found in chapters 3 and 4 of the Report on the Accounts of the President of the Republic.

Based on report analysis, the following occurrences mentioned in the document should be emphasized:

1. Taking into consideration expenses with the complementation of the Federal Government's Fund for Maintenance and Development of Basic Education and Enhancement of Teaching Professionals (Fundeb) in an amount higher than the maximum 30% threshold authorized by item VIII of article 60 of the Transitory Constitutional Provisions Act (ADCT) of the Federal Constitution in the Summary Report on Budgetary Execution (RREO), compromising the effective monitoring of these expenditures, as provided in article 212 of the Federal Constitution, which is not in line with the principles of publicity (article 37 of the Federal Constitution) and transparency (article 1, paragraph 1 of the Fiscal Responsibility Law - FRL);
2. Failure to comply with the minimum application of resources for irrigation in the Center-West, as required by item I of **article 42 of the ADCT**, which stipulates that the Federal Government should apply for 20% of the irrigation resources in the Center-West Region for a period of 40 years;
3. Lack of proof in the Consolidated year-end Government Report that the application of resources intended for irrigation in the Northeast Region occurred preferentially in the semiarid region, as determined in item II of article 42 of the ADCT;
4. Lack of proof in the Consolidated year-end Government Report regarding the application of at least 50% of the percentages provided in items I and II of ADCT in irrigation projects that benefit family farmers that meet the requirements of the specific legislation, as determined in the said constitutional rule;
5. Divergences in the disclosure of information relating to the tax benefits instituted in 2017 by the Ministry of Finance, compromising the transparency regarding the tax benefits to society, which is not in accordance with the principles of publicity (article 37 of the Federal Constitution), transparency (article 1, paragraph 1 of the FRL), and access to information (article 7 of Law 12.527/2011);
6. Absence of the legal requirements defined by article 14 of FRL, as well as by articles 117 and 118 of Law 13.408/2016, for concession or enhancement of tax benefits. These requirements are: projection of the budgetary-financial impact, accompanied by the corresponding proof of compliance with the provisions of the budget guidelines law; proof that the tax expenditure was considered in the revenue estimative contained in the budget law and would not affect the fiscal goals or, alternatively, an indication of measures to compensate the lost of revenue; establishment of a maximum validity period of five years, at the time of enactment of Provisional Measures 778, 783, 793, and 795, of 2017, as well as the sanction of Law 13.485/2017, 13.496/2017, and 13.586/2017;
7. Flaws in the reliability and quality of a significant part of the information on public policies performance presented in the Consolidated year-end Government Report for the fiscal year 2017 related to the goals foreseen in the 2016-2019 Pluriannual Plan;

8. Lack of disclosure of the annual parameters used by the bodies in charge to monitor and report on the progress of the four-year target defined in the 2016-2019 Pluriannual Plan, which is not in accordance with the principles of publicity (article 37 of the Federal Constitution) and transparency (article 1, §1, of the FRL).

2. Basis for opinion on the General Balance of the Union (consolidated financial statement of Brazil's federal government)

The complete description of the basis for issuing a modified opinion on the General Balance of the Union can be found in Chapter 5 of the Report. Listed below are the main distortions found when examining the consolidated statements:

1. Abstention of an opinion on the tax credit registered at the Federal Revenue Service;
2. Overvaluation of the assets, estimated at R\$3.2 billion, due to the absence of the write-off of records related to the christmas bonus salary anticipation;
3. Distortions in assets, estimated at R\$226 million, due to the following inconsistencies in receivables accounts:
 - a) Overvaluation, estimated at R\$214 million, in reason of the registration in advance of interest receivable;
 - b) Undervaluation, in non-estimated value, due to non-registration of credits receivables relating to land regularization under the Legal Amazon Program;
 - c) Undervaluation, estimated at R\$7.2 million, in reason of the non-update of rights recoverable from amounts honored by the Federal Government against subnational entities;
 - d) Overvaluation, of R\$ 6.55 million, resulting from the maintenance of rights that fail to meet the criteria for recognition as assets.
4. Distortions in assets, estimated at R\$890 million, and liabilities, estimated at R\$445 million, due to inconsistencies in the calculation of the balance equity participation of the Federal Government in companies:
 - a) Undervaluation of the assets, estimated at R\$473 million, due to inconsistencies in the calculation of investments accounted for using the equity method;
 - b) Undervaluation of the assets, in the net amount of R\$417 million, due to errors in the calculation of investments accounted for using the equity method or calculation based on deferred statements;
 - c) Overvaluation of the liabilities, in the amount of R\$445 million, due to errors in the calculation of investments accounted for using the equity method or calculation based on deferred statements.
5. Undervaluation of property, plant and equipment, in an estimated amount of R\$150 billion, resulting from the non-accounting of properties for agrarian reform or their accounting to below-market values;
6. Overestimation of the current liabilities, estimated at R\$1.8 billion, due to recognition of christmas bonus salary obligations that fail to meet the recognition criteria;
7. Undervaluation of liabilities, by at least R\$13.85 billion, for the non-provisioning of an obligation arising from sureties granted by the Federal Government to the state of Rio de Janeiro;

8. Undervaluation of the liabilities, in an estimated amount of R\$101.7 billion, in view of the lower record provision for tax risks due to undue classification of lawsuits and lapses in value estimates;
9. Overvaluation of the net equity, by at least R\$17.9 billion, due to the lack of adequate registration of the Christmas bonus salary variation;
10. Undue classification of property, plant and equipment, in the amount of R\$30.7 billion;
11. Undue classification and registration of the vacation payment obligation;
12. Error in the classification of the rights recoverable from amounts honored by the Federal Government in the consolidation accounts, in the amount of R\$1.7 billion;
13. Overvaluation of contingent assets derived from divergences in the amounts of credit operations of subnational entities guaranteed by the Federal Government;
14. Absence of a uniform criterion for the appropriation and accounting of interest receivable.

Recommendations and alerts by the Federal Court of Accounts to the Federal Executive Branch

1. Recommendations

- 1.1. To the Ministry of Finance, in the preparation of the Summary Report on Budgetary Execution (RREO), not to consider the amount in excess of 30% of the total complementation grants the Federal Government transfers to Fundeb in the calculation of whether the Federal Government meets the minimum requirement to apply 18% of its expenditures yearly in the maintenance and development of education;
- 1.2. To the Federal Executive Branch, to adopt measures to ensure that the Federal Government applies 20% of the resources appropriated yearly to irrigation in the Center-West Region, in accordance with item I of article 42 of the Transitory Constitutional Provisions Act of the Federal Constitution;
- 1.3. To the Federal Executive Branch, to include in the Consolidated year-end Government Report evidence that the application of resources pertaining to irrigation in the Northeast Region occurred preferentially in the semiarid region, as established in item II of article 42 of the Transitory Constitutional Provisions Act of the Federal Constitution; and that the application of at least 50% of the expenditure was directed to irrigation projects that benefit family farmers meeting the requirements of the specific legislation, as determined in the sole paragraph of said constitutional rule;
- 1.4. To the Ministry of Planning, Development and Management, as the central body of the Federal Planning and Budget System, to refer to the TCU, within sixty days, estimates of the budgetary and financial impacts accumulated up to the fiscal year 2019, arising from salary increases granted in 2016 to members of the various agencies of the Legislative and Judicial Branches, as well as the Public Prosecutor's Office;
- 1.5. To the Secretariat of the Federal Revenue Service of Brazil, to maintain updated the information published regarding the establishment of tax benefits per fiscal year, complying with the principles of publicity (article 37 of the Federal Constitution), of transparency (article 1, paragraph 1 of the FRL) and of access to information (article 7 of Law 12.527/2011).;
- 1.6. To the Ministry of Planning, Development and Management, to create a field in the Integrated Planning and Budget System (SIOP) so that the agencies responsible for the goals of the 2016-

2019 Multi-Year Plan (PPA) report the expected progress towards the targets for the fiscal year, in order to provide transparency to the criteria used to yearly monitor the progress of each goal;

- 1.7. To the Chief of Staff of the President of the Republic, alongside the National Treasury Secretariat, to provide the reconciliation and the inventory of amount “Advance Christmas Bonus Salary”, so that the amount recorded in the Balance Sheet represents solely the advance made and not yet deducted from the official/employee, for reasons of competency or other duly justified reasons, presenting the result of the work to TCU within 180 days;
- 1.8. To the Chief of Staff of the President of the Republic, alongside the National Treasury Secretariat, to inform the Court, within 180 days, of the procedures adopted in order to enable the Coordinators-General of the National Treasury Secretariat to carry out the accounting of the interest receivable according to item 9.3.3 of the Accounting Manual Applied to the Public Sector (MCASP);
- 1.9. To the Chief of Staff of the President of the Republic, to take procedures to ensure that the Special Secretariat for Family Farming and Agrarian Development performs the registration of credits receivable under the Legal Amazon Program;
- 1.10. To the Chief of Staff of the President of the Republic, alongside the National Treasury Secretariat, to perform the relevant accounting adjustments, so that credits to be recovered from amounts honored by the Federal Government reflect the due updating provided in the contracts;
- 1.11. To the Chief of Staff of the President of the Republic, alongside the Chamber of Deputies and the National Treasury Secretariat, to analyze the nature of the items recorded in the accounts 1.2.1.1.1.03.01 – Loans Granted Receivable and 1.2.1.1 .1.03.08 – Financing Granted Receivable and adopt the necessary procedures for its adequate recording, in accordance with the accounting standards provided in the Accounting Manual Applied to the Public Sector (MCASP);
- 1.12. To the Chief of Staff of the President of the Republic, alongside the National Treasury Secretariat, to improve the work processes and internal controls related to the calculation and register of the investments accounted for using the equity method, in order to comply with the provisions of item 3.2.4 of the Accounting Manual Applied to the Public Sector and to remedy the distortions detected in the auditing of the General Balance of the Federal Government of 2017;
- 1.13. To the Chief of Staff of the President of the Republic, alongside the National Institute of Colonization and Agrarian Reform and the respective Regional Superintendents, to carry out the relevant updating of reference price lists of rural properties intended for the implementation of agrarian reform settlements, as established by Article 115, item I, letter “c,” of the INCRA/P Ordinance 49/2017 (INCRA Internal Regulations), so that these assets can be reliably represented in the General Balance of the Federal Government;
- 1.14. To the Chief of Staff of the President of the Republic, alongside the National Treasury Secretariat, to provide for the reconciliation and inventory of the balance recorded in the account 2.1.1.1.1.01.02 – Christmas Bonus Salary, presenting the result of the work to TCU within 180 days;
- 1.15. To the Chief of Staff of the President of the Republic, alongside the National Treasury Secretariat, to analyze the obligations assumed by the Federal Government arising from sureties and guarantees granted to subnational entities, in order to evidence and record the probable amount to be disbursed;

- 1.16. To the Chief of Staff of the President of the Republic, alongside the Attorney-General of the Federal Government, to promote:
 - a) the annual updating of the estimated fiscal impact of lawsuits that have a probable and possible risk classification, according to AGU Ordinance 40/2015;
 - b) inclusion of the lawsuit number in the note forwarded for the purpose of updating the Fiscal Risks Annex of the Budget Guideline Law, in compliance with the principle of transparency.
- 1.17. To the Chief of Staff of the President of the Republic, alongside the National Treasury Secretariat, to adopt the necessary measures to establish effective and adequate controls in order to ensure that the recognition of the diminutive equity variation arising from the christmas bonus salary is made at the time of occurrence of the event generating the grant, regardless of the issue of commitment and payment of the expense;
- 1.18. To the Chief of Staff of the President of the Republic, alongside the National Treasury Secretariat, to adopt the necessary measures to correct the systematic appropriation of expenses and property registration of vacations salary; and to institute effective and adequate controls with a view to guaranteeing the correction of such records;
- 1.19. To the Chief of Staff of the President of the Republic, alongside the National Treasury Secretariat, to improve the accounting routines of the surety, in order to allow the correct control and accounting of these credits;
- 1.20. To the Chief of Staff of the President of the Republic and to the Ministry of Defense, with a view to guaranteeing transparency and the necessary predictability of expenditures, included, in the explanatory notes of the Union General Balance, budget expenditures with the inactive military personnel, annually, for next 75 years, considering calculation criteria related to eligibility rules and financial and economic hypotheses, unless, within a maximum period of 180 days, a study is completed with the participation of representatives of the Ministry of Defense, the Ministry of Planning, Development, and Management, the Ministry of Finance, and the Chief of Staff, to present, based on technical criteria and considering the specificities of the military career, a more adequate projection horizon for calculating future expenses with inactive military personnel, maintaining the calculations related thereto, among others;
- 1.21. To the Chief of Staff of the President of the Republic, alongside the National Treasury Secretariat, to make adjustments in its routines for reconciling the balances of credit operations of the subnational entities guaranteed by the Federal Government, in order to show and give transparency of the correct amount guaranteed by the Federal Government;
- 1.22. To the Ministry of Transparency and Comptroller-General of the Federal Government, alongside the Ministry of Finance and the National Education Development Fund, to report in the Consolidated year-end Government Report the values of all items (amortization, interest, fines, and others) related to the restitution to the National Treasury of the resources regarding funds or programs related to student loans granted with resources from the fiscal budget, considering the provisions of article 49 of the FRL;
- 1.23. To the Ministry of Planning, Development and Management, when conducting the work to formulate the 2020-2023 Pluriannual Plan (PPA), to improve the planning methodology so as to consider the recommendations already issued by the TCU;
- 1.24. The Ministry of Planning, Development and Management, alongside the Ministry of Finance and the Chief of Staff of the President of the Republic, to set up a working group to formulate a cost-effectiveness analysis methodology for tax benefits in order to verify that such benefits

meet the purposes for which they are proposed, considering the assessment of the efficiency, efficacy and effectiveness of programs or projects that use resources that have been waived as a result of fiscal benefits vis-à-vis the costs they generate to society.

2. Alerts

- 2.1 Based on article 59, paragraph 1, item V, of Complementary Law 101/2000 (FRL), to alert the Executive Power of the lack of compliance with the legal requirements of article 14 of the FRL and of articles 117 and 118 of Law 13.408/2017, when proposing a statute or sanctioning draft bill originating in the Legislative Power, purporting to grant or enhance tax benefits that result in loss of revenue, as found in the acts that sanctioned Laws 13.586/2017, 13.485/2017, and 13.496/2017, and publication of Provisional Measures 778, 783, 793, 795, of 2017. These requirements are: projection of the budgetary-financial impact, accompanied by the corresponding proof of compliance with the provisions of the budget guidelines law; proof that the tax benefit was considered in the revenue estimative contained in the budget law and would not affect the fiscal goals or, alternatively, an indication of measures to compensate the loss of revenue; and establishment of a maximum validity period of five years.
- 2.2 Based on article 59, paragraph 1, item V, of Complementary Law 101/2000, to alert the Federal Executive Branch that in an environment of successive primary deficits, and considering the need to maintain functioning public services to citizens, there is a risk of performing credit operations in an amount higher than capital expenses, which may lead to failure to comply with the provisions of article 167, item III, of the Federal Constitution;
- 2.3 Based on article 59, paragraph 1, item V, of Complementary Law 101/2000, to alert the Executive Branch that maintaining the current dynamics of expansion of mandatory expenses, in particularly regarding expenses with social security and personnel, entails imminent and significant violations of the limits established by Constitutional Amendment 95/2016 and/or serious impairment of the operational capacity of federal agencies to render essential public services to citizens;
- 2.4 Based on articles 14 and 15 of Law 10.180/2001, to alert the Ministry of Finance that the obstruction of the TCU's financial audit work, which is carried out with the aim of providing subsidies to the analysis of the accounts of the President of the Republic, may compromise the issuance of the opinion by this Court of Accounts.

TCU, Session Room, Minister Luciano Brandão Alves de Souza, on June 13th, 2018.

Minister VITAL DO RÊGO

Rapporteur

(Signed electronically)
RAIMUNDO CARREIRO
President

(Signed electronically)
WALTON ALENCAR RODRIGUES
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Mission

Improving the Public Administration for the benefit of society through external oversight

Vision

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