



THE NORMATIVE ASPECTS OF THE BRAZILIAN PUBLIC DEBT

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ABSTRACT

The purpose of this paper is to present the normative acts about the public debt, specifically the Brazil Public Responsibility Law that was issued as an enforcement mechanism, as well as to discipline public planning and expenditure, providing tools to penalize public managers. The study aims to interpret the current legislation about governmental budget by analyzing regulations. We pointed that Brazil ended 2015 with a debt comprising 66.23% of its GDP. Thus, it requires attention of public managers, once there are legal limits for public indebtedness for Municipalities and States, but not for the Federal Government. The methodology known as indirect documentation was applied as a theoretical foundation i.e. bibliographic research. For the general review were used secondary data available in books, specialized websites and laws and regulations. In Romania, the indebtedness level represented 39.6% of the GDP in 2014, in Brazil 57.19%.



The Treaty of Maastricht in 1992, stipulated the limit of 60% of the GDP for the Euro Zone countries. Nevertheless, the debt represented 91.9% of the GDP, especially due to Greece, Italy, Portugal, Spain and France. The Brazilian Fiscal Responsibility Law has been developed from the experience of the tax laws of the United States and New Zealand. It is a reinterpretation of the applicable rules the Brazilian public debt compared with the limits set for the countries of the eurozone. Debt control is essential to maintain the level of investment in a country. A sharp increase harm its credibility in the market.

Keywords: Public debt; Public indebtedness; Public responsibility legal act; Fiscal responsibility law; Gross domestic product; Brazilian finance

1. INTRODUCTION

Brazil has dealt with high level of public indebtedness since 1965 and it was aggravated in 1993 due to the economic plans “Plano de Ação Econômica do Governo – PAEG” and the “Plano Real”, that aimed to reduce the inflationary process. The Complementary Law No. 101, issued in May 3, 2000, known as “Lei de Responsabilidade Fiscal – LRF” (Fiscal Responsibility Law), came to provide efficiency to several constitutional provisions about the balance of the public accounts of the Federal Constitution issued in 1988, especially the articles No. 163 and 169.

The LRF, as a complementary law, is a special modality of legal act introduced in the Brazilian legislation since the Federal Constitution issued in 1967 that aims to affirm similar rights originally outlined in the Magna Carta. The Brazilian fiscal responsibility law has been developed from the experience of the tax laws of the United States (Tax Equity and Fiscal Responsibility Act of 1982) and New Zealand (The Fiscal Responsibility Act of 1994).

With the enactment of the Federal Constitution 1988 and more recently with the enactment of the Fiscal Responsibility Law, the Audit Courts started to inspect not only the legality, but the economy, effectiveness, efficiency, and now, due to the responsiveness, effectiveness (the result). The Audit Courts are aware of the demands of society, so much so that are implementing new verification methods such as performance audits, management and program, not to the detriment of aspects relating to compliance (MORAES, 2005). The Audit Courts judges the public



account managers and others responsible for money, goods and public values , as well as the accounts of any person who has caused the loss, misplacement or other irregularity resulting in losses to the public exchequer.

It is remarkable that the LRF does not permit new expenditures to be financed by inflation, increase in taxes, increase in debts, future taxes receipts, amount owed and taxes break. Moreover, it does not allow the creation of new expenses without an adequate forecasting for the budget.

This law also emphasizes that the public resources do not belong to the State, and especially to the public managers, but to the society that delegates the prerogative to the public managers to administer it. As a consequence, it is necessary to detach the public resources to the private, and then the public manager has the obligation to account the expenditures.

Therefore, to receive the seal of legitimacy, plans, budgets, laws of budgetary guidelines, benefits accounts, containing the previous opinion, the summarized report on budget implementation and reporting of fiscal management, including simplified versions should be widely reported by official media and other information vehicles, encouraging the popular action through the holding of public hearings, especially in the phases of preparation and discussion of the plans, the LDO and budgets (TOLOSA FILHO, 2000).

In several basic aspects, the Brazilian Fiscal Responsibility Law – LRF is a code of best fiscal practices and it is applicable to every level of public administration: Federal, States, Federal District and Municipalities. It is worth noting that all employees in any level of the public hierarch must comply with it. The basic principles that guided the LRF creation establish that the public manager must keep the balance between the society needs and the available resources.

Based on the previous comments, the article aims to respond the following question:

Which legal mechanisms were established by the Fiscal Responsibility Law to cease the public indebtedness?

The article aims to identify the mechanisms created by the LRF to reduce the public indebtedness, comprehending Federal, States, Federal District and



Municipalities. We also aim to study the Brazilian public debt and Fiscal Responsibility Law as well to identify the limits to the public debt.

2. LITERATURE REVIEW

The Brazilian Federal Congress sets the limits to the public debt due to a presidential proposition. Thus, based on the publication issued in December 21, 2001 and issued in April 10, 2002 and its alterations provided by Resolution No. 5, issued in 2002, according to the article 3, it establishes the issuing of the Resolution No. 40, 2001, providing a consolidate text.

This resolution discusses about the global limits of the total public debt and security debt of the States and Municipalities, according to article 52, VI and IX of the Federal Constitution. These limits are also defined as a percentage of the public current revenue – RCL of Federal, State, Federal District and Municipalities governments. The public managers must follow the ratio between debt and payment capability. And, they must not increase the debt to cover ordinary expenses.

It is important to point that if the public managers overpass the limits of the public debt, they must pay it in twelve months, decreasing at least 25% of the debt in the next four months, as quoted by Barros (2001), having amortization of the minimum established, the rest, i.e. 75% must be paid in eight months following.

But, if the public managers overpass the public debt limits the public administration will not be able to contract new credit operations.

2.1. The legal aspects of the public debt

The Fiscal Responsibility Law establishes rigid standards to control the debt and indebtedness of the public entities. It presents basic concepts, limits and conditions to restore the debt to the permissible level, new conditions to contract credit operations. It also highlights the future tax receipt and the granting of guarantees. It tends to change the behavior of public managers revealing the public financial accounting.

It creates periodical reports, (bi monthly, quarterly, annual) and quarterly public audiences focusing on the fiscal target as well as the transparency of the information.

2.2. The floating public debt



In a budget outlook, the items in the Law No. 4,320/1964 are considered as current liabilities or short term liabilities. Table 1 shows the composition of the floating public debt:

Table 1: Legal ratings for Floating Debt

Law No. 4,320/1964, Art. 92	Decree No. 93,872/1986, Art. 115, § 1º
I – the amount owed, excluding the debt services;	a) the amount owed, excluding the debt services;
II – the services of the debt to be paid;	b) the services of the debt;
III – the deposits;	c) the deposits, including payment deducting loan;
IV – the debts.	d) the credit operations due to future taxes receipt;
	e) the currency or fiat money.

The currency is not a current liability, even its production.

2.3. The amount owed

The amount owed is, according to the definition in the article 36 of the Law No. 4,320/1964, the committed debts not paid until December 31st. Thus, they are the governmental financial commitments.

The public managers are not allowed to commit debts in the last quarterly of their terms, according to the article 42 and 20 of the LRF, as follow:

- The debt is not payable during their terms;
- There are installments to be paid in the next year and there is no income to pay it;

The result is that cannot be done last minute agreements that encumber the next term, or leave outstanding commitments that cannot be paid with term resources. This is one of the major constraints of the Fiscal Responsibility Law, creating limitations to the efforts of mayors in the last year in office. It will allow the new administration to start a management running the new government plan and not waiting one to two years to do so, according to the severity of the financial legacy left (KHAIR, 2000).

The taxes and committed debts to be paid until the end of the accounting period are considered in the determination of fiscal liquidity.

2.4. Credit operation anticipating the budget income



The credit operation for each accounting period is limited to the total of expenses. It means that the loans must only be consumed by investments.

The Future Taxes Receipt due to credit operation – ARO aims to provide budget to the fiscal year and it must follow the regulations, according to the article 38 of the LRF. A few regulations are described as follow:

- It must be anticipated only after the 10th day of the fiscal year;
- It must be refunded including interest rates until December 10th.

Admits to carrying out a credit transaction by way of budgetary revenue anticipation, nicknamed ARO, as a measure adopted to allow the prior raising money to momentarily supply the cash, binding a budget forecast, as a guarantee liquidity, making it worth recalling the prohibition contained in art. 37, paragraph I, preventing, therefore, occur with tax revenues or contributions in taxable event not occurred, but overall, it resembles as if the operation assimilates the discounting of bills, common in industry and commerce (BARROS, 2001).

The credit operations using ARO must not be permitted if different financial burdens other than operation interest rates are applied. They are also not allowed if there is any similar operation not paid back during the last year term of President, Governor or Major.

2.5. Established public debt

The established public debt comprehends, according to the Law No. 4,320/1964, the debts eligible over a period of twelve months, issued to balance the public budget for public services and construction.

Nevertheless, the Decree No. 93,872/1986, according to article 115 § 2º, defines the established public debt as a commitment due to twelve months callable bonds or contracts to balance the public budget or to finance construction and public services, and they are dependent of legislative authorization to be repaid.

Regardless, the LRF states that the established public debt is integrated, besides the others financial commitments of the entities, and it is assumed due to law, contracts, treaties or conventions, and it is amortized over twelve months due to credit operation less than twelve months which revenues feature the budget (article

29, § 3º), by the judicial claims not paid during the budget execution in which they were included are part of established debt.

From an accounting point of view and composition of the balance sheet, Appendix 14 of the Federal Law No. 4,320/1964, term credit operations less than twelve months are considered floating debt and should be included in financial liabilities. Also, based on art. 98 of Law No. 4,320, one can deduce that the period of enforceability of financing is decisive for classification. In public accounting, however, when there is conflict between two laws usually prevail the higher hierarchy. In this regard, the Fiscal Responsibility Law supersedes Federal Law No. 4,320/1964. So if the credit operation is a liability of less than twelve months and the municipality or other entity put in the official budget this kind of revenue it should be placed in the Permanent passive, as Founded debt (CRUZ, 2011) note worth's § 3º in the article 29.

Regarding the limits of the Public Debt and the Credit Operations, the article 30 states the period of 90 days after the publication of the LRF that the President shall submit to:

I – Federal Senate: proposition to the global limits of the overall debt of the established public debt of federal, states and municipalities.

II – National Congress: law project that sets the limit for the overall of the mobility federal debts, according to section XIV, article 48 of the Federal Constitution.

The article 31 describes about the reappointment of the debt to its limits, stating that the consolidated debit of an entity must not exceed the final limit of the quarterly debt, and it must be refunded within three subsequent months, reducing it in at least 25% in the first four months.

Table 2: Limits of the established debt for entity

Entity	Percentage	Adjustment	Sanction
Federal	Not defined	Not defined	Not defined
States	200% of RCL	Excess until 2016	To receive voluntary transferences from 2016, while the excess remains
Municipalities	120% of RCL	Excess until 2016	To receive voluntary transferences from 2016, while the excess remains

As showed in Table 2, the federal government does not have limits for public indebtedness and then it is not affected by penalties. However, the States, the

Federal District and the Municipalities must respect the limits established according to the deadline set by the Federal Senate, i.e. 2016, otherwise they are subjected to the legal penalties regarding voluntary resource transference. As a consequence, they will only receive constitutional transference.

2.6. Credit Operations

The credit operation must not be superior to the capital expenditures during the budget elaboration budget bill.

The 1988 Federal Constitution introduced the “golden rule”, that does not permit the credit operations (loans) that are superior to the capital expenditures, except for the one authorized by supplementary credit, or precise usage, of which both must be approved by the legislature.

The Accounting Ministry is responsible to audit the accordance to the established limits and credit operation for all the entities, including public companies, controlled direct or indirect by the government.

The article 33 states that the financial institution that acquires a credit operation from any federal entity, except for mobility or external debt, must attest that the operation is according to the permitted limits. The financial institution to hire credit operation with the municipality, except when relating to the securities or foreign debt, should require proof that the transaction complies with the Fiscal Responsibility Law, being void with the return of principal, prohibited the payment of interest and other financial charges, if this does not happen (KHAIR, 2000).

In any case, the legislator, as a precaution, understand required the insertion of the featured article. Thus, the financial institution will have more interest in controlling certain provisions of the Fiscal Responsibility Law; otherwise interest and other financial charges will not be applied on a null transaction. So is because if canceled the operation, the municipality will return the principal amount; only him, no other. In appropriate circumstances, the non-cancellation implies sanctions for the municipality; such as prevented from receiving access to voluntary transfers from the Union and the state, obtain guarantees and contract loans. The Tax Crimes Act qualifies as the Mayor responsible for the crime failure to cancel credit operation regarded as irregular (TOLEDO JÚNIOR, 2002).



According to the article 34 and 37 the credit operations are not allowed between public entities, including the entities administered indirectly by the government.

2.7. The Guarantee and Counter Guarantee

The article 40 of LRF states that the public entities might concede guarantee for the either internal or external credit operations, observing this article, the credit operation regulation.

Barros (2001) describes about the guarantee for credit operations, such a requirement also reflects the legal entities of public law and all other, covered by the law focused, where the borrowing of a loan must provide a guarantee for obtaining the same, forced to such a charge as a result of the immunity from seizure of public property as with the family assets.

Tolosa Filho (2000) describes about Federal and State guarantees, when the entity debt Federation, because of the guarantee provided, is honored by the Union and the States, can these condition constitutional transfers to the reimbursement of that payment, and there will be a suspension of access to new credit or financing until full settlement of that debt.

The guarantee is conditioned to an equal or a superior value guarantee to be conceded by the entity that demands the ARO.

2.8. Limits to personnel expenditures

The limits of debts to personnel expenditures is a subject that have contributed to the balance of the public accounting, and it increases the manager's responsibility, which is responsible to follow the regulations to administer with transparence the public budget.

An important aspect that generates discussion among the experts regards the established limits to personnel expenditures, since it is one of the aspects related to LRF, that aims to demonstrate the expenditures to the current employees, retirement and pensioner.

The LRF established the regulation to the public accounting and it also contains the legal penalties as an attempt to avoid exaggerated expenses, as



overestimate personnel expenditures, that represent one of the main expenses on the public entities, compromising a significant part of the budget.

The Fiscal Responsibility Law has come to light as one of the instruments to minimize the effects of the moral crisis that befell the public administration in general, due to the immense financial resources of waste brutally taken from the private sector. We aimed at the implementation of a responsible fiscal management policy promoting the strengthening of channels through which the financial resources customarily were consumed with greed and in a disorderly fashion: Personnel sheet and debt service (HARADA, 2010).

The personnel expenses are a subject that has been covered by regulation since 1995 by the Complementary Law No. 82 and edited by the Complementary Law No. 96, rescinded by the article 75 of the LRF.

The article 18 of the LRF establishes that the amount of personnel expenses is represented by any expenditure covering the current employees, retirement and pensioners.

The LRF defines that the personnel expenditures as a percentage of the current revenue, for the three branches of government, as 50% for Federal Government, 60% for States and 60% for the Municipalities.

Table 3: Personnel expenditure limits to the LRF

Entity	Percentage	Federative entity
Federal	0.6	The Public Ministry;
	2.5	Legislature, including the Accounting Ministry;
	3.0	Federal District;
	6.0	Judiciary;
	37.9	Executive.
State	2.0	The Public Ministry in State;
	3.0	Legislature, including the Accounting Ministry;
	6.0	Judiciary;
	49.0	Executive.
Municipalities	6.0	Legislature, including the Accounting Ministry (only the municipalities of São Paulo and Rio de Janeiro);
	54.0	Executive.

Source: Complementary Law No. 101/2000 and Federal Constitution from 1988

It is worth mentioning, even to meet the desideratum objectified with the enactment of this Act that, within the limit are all public expenditure on personnel, it including, of course, the expense of the chief executive, the first, second and third levels and other liens involving the payment of duties, positions and jobs. It is time to

stop the laudatory appointments, taking place at the beginning of a public management, given the commitments made during the election campaign without the downsizing of administrative jammed machine (BARROS, 2001).

The Federal Government is also responsible for the Federal District expenditures, but it has to follow the same limits established to a State.

2.9. Debt in eurozone

No European nation escapes the problem of public debt, despite the severity of the crisis differ from one country to another. On one side are the “good students” as Bulgaria, Romania, Czech Republic, Poland, Slovakia, followed by the Baltic and Scandinavian countries with a lower debt to 60% of GDP. On the other hand, the four “bad students” are, whose public debt exceeds 100% of GDP: Ireland (108%), Portugal (108%), Italy (120%) and Greece (180%). Between these two extremes lie the other European Union countries such as France (86%), whose debt is between 60% and 100% of GDP.

However, Dumitrescu (2014) is concerned with the change in the behavior of the public debt of Romania in recent years.

3. RESEARCH METHOD

They were compared in this study countries with similar growing public debt. A methodology known as indirect documentation was applied for theoretical foundation i.e. – bibliographic research (documental and bibliography research). This kind of research is divided between documental and bibliographic research (MARCONI and LAKATOS, 2005).

For the general review secondary data available in books, specialized websites and laws and regulations were utilized. We investigated the Brazilian current legislation as well as similar studies in the field.

In addition, comparative analysis was conducted using data from the debt ratio and GDP, of Brazil and other European countries.

It is perceived to research the complexity of the subject public finances when you have relatively healthy economies with the public sector debt currently. What leads us to believe that the state's size, given the philosophy of the Welfare State, is more vulnerable than other countries.



4. RESULTS AND DISCUSSION

In Romania, the indebtedness level represented 39.6% of the GDP in 2014, according to the Trading Economics.

However, it is considered low compared to Brazil, where it represented 57.19% in 2014 and 66.23% in 2015, an increase of 15.81% in just one year. But Dumitrescu (2014) notices that in Romania, there are at least two reasons for which the Romanian' economy present significant vulnerabilities compared to the indebtedness level.

The first reason is the limited access to the international capital markets, where loan is charged with high interest rates compared to developing countries, and the undeveloped domestic financial market. The second one the deterioration of the public budget due to the economic and financial crisis and the promotion of unsustainable fiscal policies in the years before the crisis that increased almost three time the public debt in the country between 2008 and 2011.

The Treaty of Maastricht in 1992, stipulated the limit of 60% of the GDP for the Euro Zone countries. Nevertheless, the debt represented 91.9% of the GDP, especially due to Greece, Italy, Portugal, Spain and France. Figure 1 shows an overview of the evolution of public debt to GDP of Brazil, Romania and euro zone countries.

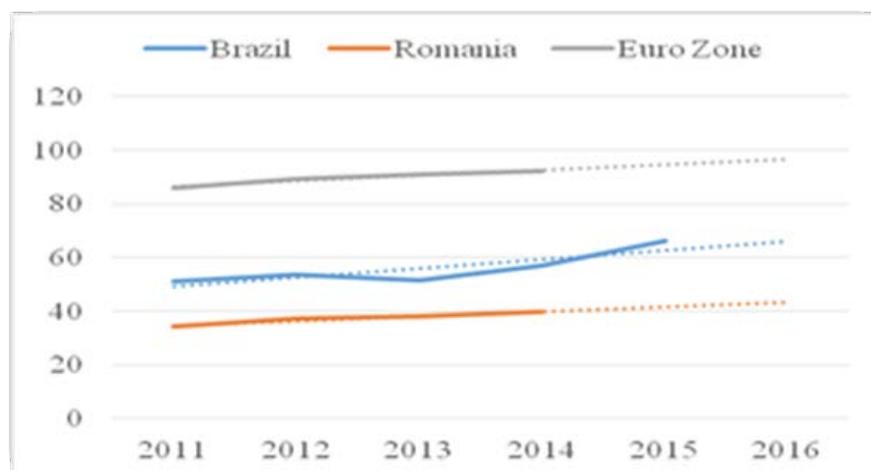


Figure 1: Comparable Public debt and % GDP
Source: Trading Economics

Mendonça and Pessanha (2014) conducted empirical research about Brazilian fiscal indicator between 2007 and 2012. It concluded that the debt management had a low impact on the Brazilian budget, justified by the low volatility in structural terms and the inefficient interest rates to prolong the debt payment.

For Fraglia et al. (2008), the reason for the low impact of the public debt on the public accounts remains on the managers that are concerned about costs reduction despite the risks of the debt to the country.

The Federal Government announced a blocking of R\$ 69.9 billions on the 2015 budget, as well as it predicted a retraction of 1.2% of the GDP until December, according to Martello (2015), Portal of the Economy G1.

Brazil has been affected by excessive expenditures and lack of confidence by the international investors due to several corruption scandals. The National Monetary Council has gradually increased the national basic interest rates, Selic, that is the reference to government bonds. It will contribute to increase the public debt in the long term, but the payback may overpass 10 year for some bonds.

5. FINAL CONSIDERATIONS

The fiscal responsibility law has contributed to control the irresponsible expenses of public managers, meeting the society necessities once it is biased toward the public welfare, due to both efficacy and efficiency, transparency in public accounting, focusing on a high performance of public budget control.

The LRF also reacts to electoral periods, as it defines rules disciplining the public manager expenses during this period and it not allows the candidate to create future unpayable debts.

Therefore, the main limitations to the LFR are: limiting the personnel expenses (one of the biggest expenditures on the public budget) and the limitation for public debts (conditioning the federal entities maintain the debt based on the net current revenue). It demands a fiscal effort to generate primary surplus, i.e. the positive value between debt and not financial income to pay the public debt.

However, we highlight that there is a limit to Federal public indebtedness. It undermines either federation or equality principles, because all the public entities must have the same legal treatment on several aspects, as public indebtedness.



It is noticed that there is an increase of public indebtedness in some counties, including Brazil, due to lack of regulations to set the limits. In the Euro Zone there is a regulation (Treaty of Maastricht), but it is not being fulfilled by various members.

We suggest that future studies address the relationship of public debt variation using qualitative inference, by region and application of public policies for current and new governments.

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