

FOSSIL FUELS SUBSIDIES IN BRAZIL

KNOW, ASSESS AND REFORM.

BRASÍLIA, NOVEMBER, 2021

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EXECUTIVE SUMMARY

Brazil has established itself among the ten major producers of fossil fuels in the world, and its relevance in the petroleum geopolitics is undeniable, just as, directly and indirectly, in the global emissions by fossil sources.

In a direct way, due to the fact that emissions by burning fossil fuels represent 19% of emissions in the country. In an indirect fashion, because the fossil fuels distributed by Brazil to the world via exportations constitute energy sources for the most diverse sectors and are a part of global emissions. The scenario has already been mapped by an Intergovernmental Panel on Climate Change's (IPCC) report, which should "sound like a death sentence to fossil fuels before they destroy the planet".

Incentives and subsidies given for fossil fuels are intrinsically linked to countries, industries, and investors' global resistance to restrict the growth of production and emissions, which has delayed the unavoidable energetic transition.

Following up on the monitoring of incentives and subsidies given to fossil fuels in Brazil, the Institute of Socioeconomic Studies (Inesc) launched the fourth edition of the study "Know, Assess and Reform".

In 2020, \$24.05 billions were given in incentives and subsidies to fossil fuels, which represents 2% of the country's GDP for the year. These figures are divided into categories (direct expenditures, indirect expenditures, and other waivers) and by modalities (consumption and production).

By categories:

Direct expenditures represented \$370 millions (8% of the total amount), the majority of which is not composed by sources from the public budget. This is the case, for instance, of the Fuel Consumption Account (CCC) and the Energy Development Account (CDE-Coal).

Tax expenditures represented \$640 millions (3% of the total amount). It is the smallest fraction of the sums, given that the RFB utilizes an interpretation of tax expenditure based on taxation systems of reference that are not very specific. Thus, it does not take into account dozens of billions that benefit fossils producers and consumers as tax expenditures. It also does not have a commitment to transparency and subsidies reform.

The **other waivers** correspond to \$21.46 billions, 89% of the total amount. Such waivers are currently not categorized as tax expenditures by the Brazilian IRS (Receita Federal).

By modalities:

Subsidies of \$11.76 billions were given to production, mainly through various special taxation regimes for the oil and gas sector, the most important one being Repetro, which corresponds to 49% of the total amount on this modality.

Subsidies of \$12.29 billions were destined to consumption in 2020, which corresponds to 51% of the total amount. Figures calculated by Inesc for waivers involving PIS/Cofins and the Cide-Fuels applied to gasoline and diesel are part of this amount. All of the budget for the Fuel Consumption Account (CCC) and the Energy Development Account (CDE-Coal) is also placed under this modality.

Conclusions:

The numbers represent a huge waiver on revenue by the State, once it generates the reduction of potential tax collection. By doing so, not only does it increase the economic availability of the taxpayer, but it also reduces the States's ability to implement political actions aiming at the social or economic development

promotion via public funds. The scenario should gain special attention in the context of the intense economic crisis and increase of social inequalities in the country due to the Covid-19 pandemic, which resulted in a drop of 4.1% of the country's GDP in 2020.

The objective presenting these numbers is to call attention to the importance of a technical and political debate on these figures, their potential meanings and effects, be it for the global and domestic emissions, be it through the loss of tax collection capability.

This 2020 edition highlights the even more expressive growth of "other waivers" linked to the production of oil and gas, whose total amount reached \$11.25 billions. These waivers express the growth of exemptions in the oil and gas production chain since 2018, with the renewal and transformation of the sector's taxation regime, Repetro, and with the approval of the Law No. 13.586/2017. Besides renewing and amplifying the scope of the regime, the law benefited the sector with the possibility of decreasing the Social Contribution on Liquid Income (CSLL).

It is urgent that such waivers be subjected to public debate and that the Brazilian government commit to a process of transparency and assessment.

Recommendations:

- 1) The Congress must approve the [Bill 162/2019](#), which establishes the mandatory disclosure of companies receiving tax incentives in Brazil.
- 2) The Congress should demand the Federal Court of Accounts (TCU) to give continuity to Repetro's and the Law No. 13.586/2017's assessment work in order to increase the transparency, assessment, and effectiveness of these benefits under the light of the reform challenges taken up by Brazil in the G20.
- 3) The Brazilian IRS (RFB) must offer alternatives for the disclosure of Repetro's and the Law No. 13.586/2017's data, such as the publication of the operations volume, tax collection, or the **oil and gas sector tax burden**, as the institution suggested to the TCU (TC 020.313/2018-7, p. 13). Furthermore, a norm regulating the elaboration and transparency of these demonstratives should be created (TC 020.313/2018-7, p. 12).

- 4) The Public Policy Monitoring and Evaluation Committee of Federal Subsidies — CMAP, linked to the Ministry of the Economy, should include Repetro and the Law No. 13.586/2017 in its assessment cycle for 2022.
- 5) The tax reform must include the conversion of Cide-Fuels into a Cide-Carbon with broader application and incidence, following the tax neutrality or the current tax burden.

PRESENTATION

Technical responsibility for the study: Alessandra Cardoso

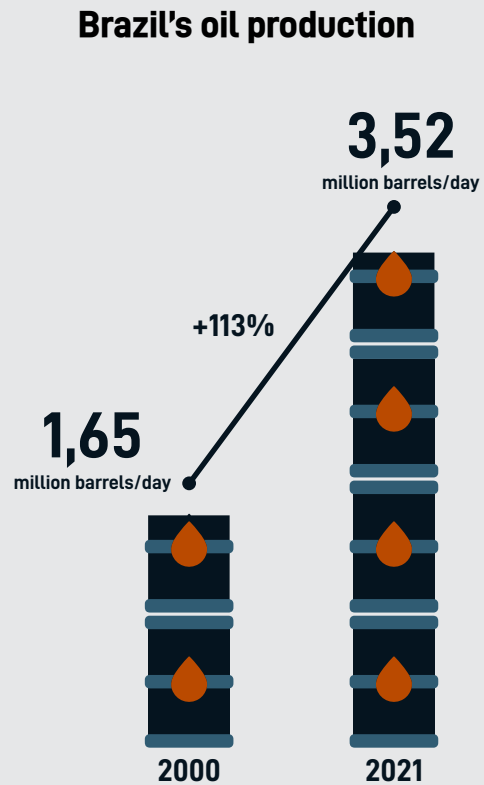
The sixth report by the Intergovernmental Panel on Climate Change (IPCC, 2021) shows that the world's temperature will probably increase 1,5°C or more in the next two decades. In other words, sooner than previous predictions. The scenario presented by scientists reinforces the urgency for bold cuts in the short term emissions, condition for the maintenance of the global temperature growth in 1,5°C. Above this limit, climate impacts will be even more extreme and severe.

According to the United Nations General Secretary, António Guterres, the IPCC report "should sound like a death sentence to fossil fuels before they destroy the planet".

The global scale challenge is directly linked to the publication of the fourth edition of monitoring the "Incentives and Subsidies for Fossil Fuels in Brazil: knowing, assessing, and reforming".

Subsidies and Incentives reduce fossil's cost of production and consumption, and make it even harder for a structural change in the production and consumption global matrix that has such fuels in its foundation.

Brazil is an important player in the oil geopolitics today. The country is among the top ten major global oil producers. In 20 years, the equivalent production of oil in the country has gone from 1.65 million barrels/day in the end of 2000 to 3.52 million barrels/day in the end of 2021. According to the [Brazilian National Agency for Petroleum](#), these figures represent a 113% growth. Exportations have also been on the rise and reached a new record in 2020, with an average of [1.4 million barrels/day during the year](#). Brazil's contribution for an increase of global emissions from fossil fuels is, then, more than self-evident.



From a domestic standpoint, the burning of fossil fuels represents the third largest source of emissions. According to the Observatory of Climate and the System of Estimates of Greenhouse Gas Emissions (SEEG), in 2019, Brazil emitted 2.1 gross tones of greenhouse gases, an increase of nearly 10% in relation to the previous year. In a sectorial perspective, 44% of the 2019 emissions stemmed from changes in the use of the land, 28% from cattle farming, and 19% from energy, including activities that use fossil fuels, besides 4% coming from waste and 5% from industrial processes.

The key question, as it has been demonstrated by Inesc in the previous editions of this study, is that the issue of subsidies for fossils in Brazil, though largely linked to the taxation system as well as tax, credit, and financial incentives has reached a global scale. This is because the oil and gas sector is highly internationalized, and the national production cannot be separated from trading flows, financial transactions, and the final demand in global scale.

Building a public vision on the subject in Brazil, considering its broad connections to political, economic, social, environmental, and climate issues that affect the whole society is fundamental in order to walk towards the elimination of so many subsidies and incentives for fossils.

The present study gathers a host of data, some of which are public and others unpublished yet, on the main categories of such incentives for 2020. As in the previous editions, Inesc recognizes that the theme involves various challenges: methodological difficulties, lack of transparency, and governmental resistance to acknowledge the problem, as well as a considerable pressure from certain interest groups that benefit from subsidies and incentives.

With this publication, we follow up on the work initiated in 2018 and continue to defend the urgency to **know, assess, and reform the incentives and subsidies for fossil fuels in Brazil.**

In this edition, besides the methodology and presentation of 2020 numbers by category of analysis (tax expenditures, other waivers, and direct expenditures) and modality (subsidies for consumption and subsidies for production), the study highlights three issues that, given their complexity, relevance and weight in the general numbers, demand specific analysis, namely:

- 1) Subsidies for production via Repetro and the Law No. 13.586/2017, which alone represented, in 2020, \$11.25 billions altogether, resulted from the amplification of waivers in the oil and gas production chain since 2018, with the renewal and transformation of Repetro and the approval of the aforementioned bill.
- 2) Subsidies linked to the generation of energy based on fossil fuels (CCC and CDE-Coal), which represented the total of **BRL8.15 billions** in 2020. **It is also important to underscore** the movement for the expansion of gas thermoelectric plants and their relationship to subsidies for the oil and gas production.
- 3) Subsidies for the consumption via exemption of fuels. In this case, the study emphasizes the methodological choice to take into account the loss of tax collection from Cide, PIS and Cofins on gasoline and diesel due to successive changes in the aliquots. In the estimates done by Inesc, subsidies reached **\$10.20 billions** in 2020.

Finally, the study reinforces recommendations to the Brazilian government, the National Congress, and the Federal Court of Accounts that are aligned with the challenge of "assessing, revising, and eliminating the subsidies".

Inesc thanks the Mott Foundation and the Institute of Climate and Society (ICS) for supporting this initiative.

METHODOLOGY

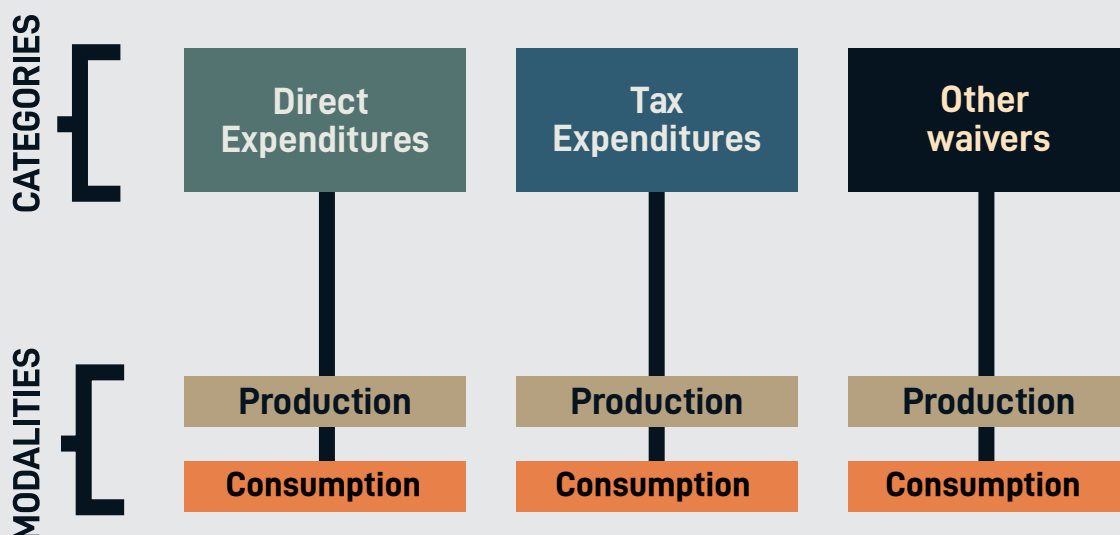
Similar to the previous editions, Inesc has kept the methodology used in the previous years, using the categories of direct expenditures and tax expenditures according to the OECD concepts also used by ODI/OCI¹, adapting, however, characterizations to the Brazilian context.

Following the commitment to a continuous improvement of monitoring subsidies, incentives, and waivers linked to fossils, in this study, Inesc points some of the main conceptual and methodological options to measure subsidies and specifies the choices of categories and modalities in the analysis.

With the support from concepts used by international institutions, as well as it was done in the previous edition (data from 2019), the methodological option to separate tax expenditures from other waivers was adopted. This is justified, in Brazil, because various special regimes and other waivers do not fit into the concept of tax expenditures used by the Brazilian IRS (Receita Federal do Brasil - RFB).

Inesc's methodology uses three categories and two modalities of analysis regarding the oil and gas (O&G) sector, according to the following chart and characterizations:

¹ Regarding the subject, please see: <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9989.pdf>



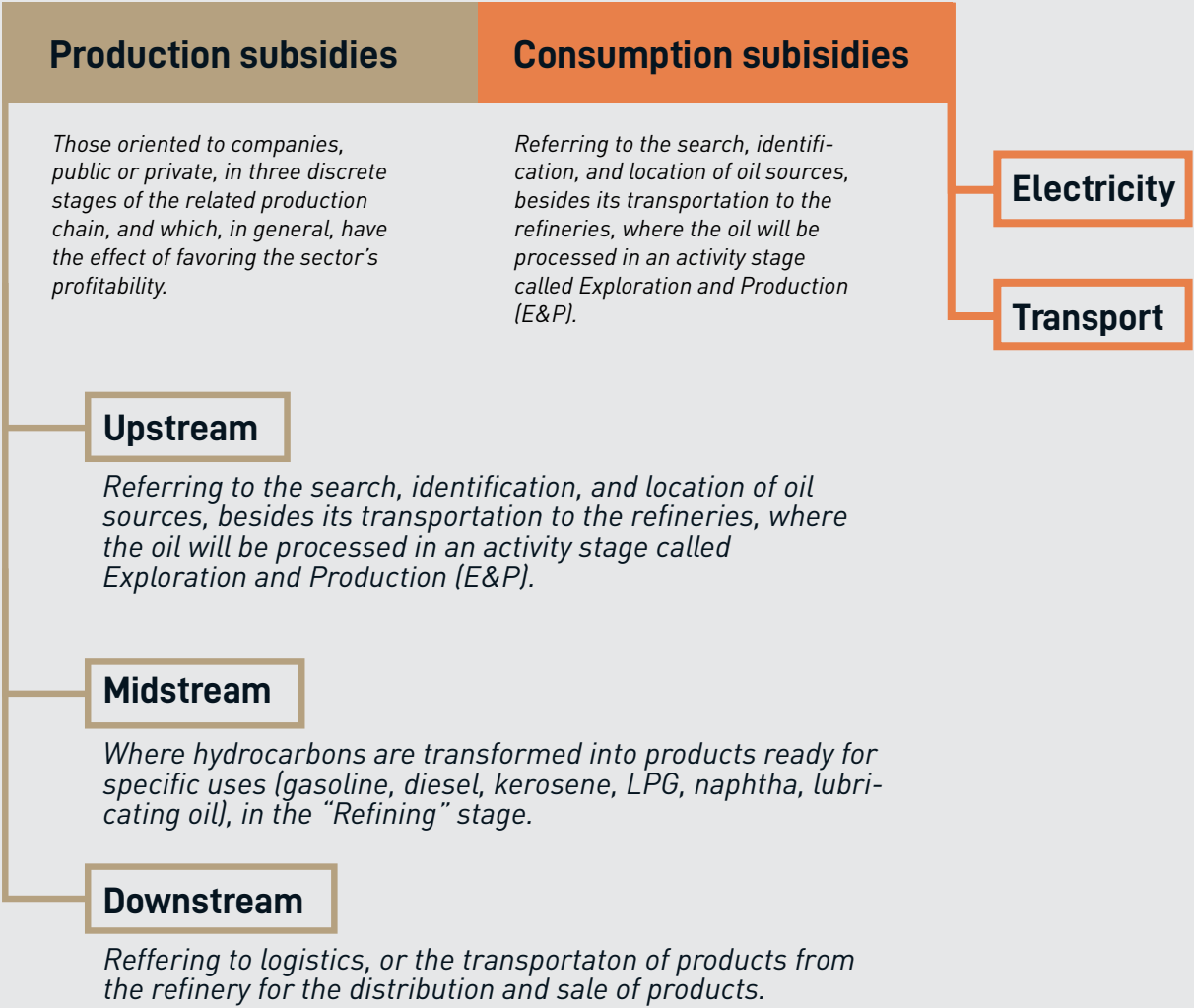
Direct Expenditures	Tax Expenditures	Other waivers
<i>Transfers of public resources to benefit the production sector, for example, public spending on Research and Development of technologies, exploratory drilling or investments in infrastructure that directly benefit the sector. Subsidies aimed at reducing the price of fuels are also classified as direct expenditures, such as subsidies to reduce the price of diesel oil.</i>	<i>Indirect government expenditures made through the tax system, aiming to meet economic and social objectives and constitute an exception to the reference tax system, reducing the potential tax collection and, consequently, increasing the availability of the taxpayer," according to the concept adopted by the Brazilian Federal Internal Revenue Service (RFB).</i>	<i>Exemptions of general nature, introduced by reducing the tax burden on a sector/segment/economic activity. They are calculated according to the previous tax regulation (before the waiver is set) and use the first year of the presidential term as its reference.</i>

To gather **direct expenditures**, we conducted an assessment of programs, budget actions and plans that qualify as support, by definition and form of implementation, be it for production, as in the case of public funds destined to Research and Development (P&D), be it for consumption, as in the case of grants and subsidies. The source of research is Siga Brasil/Federal Senate.

To gather **tax expenditures**, the pathway followed was the assessment of charts on tax expenditures, effective bases, from the Brazilian IRS (RFB). Research on GTs regarding fossil fuels took into consideration the classification by budget function (energy function), besides the detailing of GTs linked to special incentive and/or taxation regimes.

As for calculating estimates for **other waivers**, the research was based on information obtained through the Access to Information Law (LAI) and the chart for instituted waivers, both from the RFB. To calculate waivers linked to the consumption of fuels, Inesc has adopted its own methodology, according to the details presented in previous editions and the current one.

Modalities



Timeframe and Currency – the numbers will be presented in Brazilian Reais (BRL - current values). In the English version, the figures are presented in US dollars, based on the average annual rates from the US Internal Revenue Service (IRS)².

² The average exchange rate for 2020 is \$1 for BRL5.151. Informational available at: <https://www.irs.gov/individuals/international-taxpayers/yearly-average-currency-exchange-rates>

Subsidies for Fossil Fuels By Category, Modality, and Data Sources

■ Production ■ Consumption

Subsidies and Incentives	Category	Source		
Repetro	Other Waivers	Access to Information Law (LAI)		
Law No. 13.586/2017				
Cide diesel		Historical series of the volume (in m3) of ethanol and petroleum derivatives sales from the National Agency of Oil, Natural Gas, and Biofuels (ANP)		
Cide gasoline				
PIS/Cofins for Diesel				
PIS/Cofins for Gasoline				
Repenec: Special Regime of Incentives for Infrastructure Development in the Oil Industry in the Northern, Northeastern, and Mid-Western regions	Tax Expenditures	Estimates of Tax Expenditures (GT), 2017 effective base (2015 to 2020 series), published by the Brazilian Internal Revenue Service (RFB).		
Reidi: Special Regime of Incentives for Infrastructure Development (Reidi Energy)				
Reporto: Taxation Regime for the Incentive of Ports's Structure Modernization and Amplification (Reporto Transport)				
Thermoelectricity				
Liquefied Natural Gas				
Investments in Infrastructure (Energy)				
Petrochemical Industry				
CCC - Fuel Consumption Account			Direct Expenditures	Aneel
CDE - Energy Development Account				
CT-Petro				Taken from the Siga Brasil Portal, considering the financial execution updated by the IPCA.
Geology and Geophysics Services applied to the Prospection of Oil and Natural Gas				
Economic subsidy for the trading of diesel in the national territory				

Designed by Inesc.

WHAT THE NUMBERS SUGGEST FOR 2020

Subsidies amounted \$24.05 billions in 2020, which corresponds to 2% of the country's GDP for the year.

In comparative terms, such figure represents 72% of the federal expenses in healthcare in 2020, \$33.35 billions. It is also 10% higher than the total amount spent by the government with Education in the year, BRL113.23 billions.

The data by category are presented in the Table 1.

Table 1 - Subsidies for fossil fuels in Brazil by Modalities and Categories | 2019 and 2020
current values in US\$

	2019	2020	Variation 2019-2020
Subsidies and Incentives			
Other Waivers			
Repetro	7.100.697.290	9.709.232.050	37%
Law N 13.586/2017	1.608.971.110	1.553.290.623	-3%
Cide-Fuels – diesel	4.587.070.359	3.836.636.302	-16%
Cide-Fuels – gasoline	7.350.589.951	5.285.565.282	-28%
PIS/Cofins for diesel	1.437.543.417	1.082.128.188	-25%
Total:	22.084.872.127	21.466.852.445	-3%
Tax Expenditures			
Reidi (Budget Function – FO: Energy)	127.242.060	96.784.144	-24%
Reporto (FO Transport)	47.006.067	36.514.667	-22%
Thermoelectricity	123.796.724	130.595.234	5%
Liquified Natural Gas	51.120.748	89.679.104	75%
Investments in infrastructure (FO Energy)	64.576.625	65.277.773	1%
Petrochemical (FO Industry)	66.634.908	222.062.145	233%
Total:	480.377.133	640.913.066	33%

Direct Expenditures			
CCC - Fuel Consumption Account	1.663.676.157	1.453.949.005	-13%
Economic Subsidy for the trading of diesel in the national territory (action 00QU)	522.564.785	0,00	-100%
CDE - Energy Development Account	183.032.815	129.262.003	-29%
00NY - transference of funds to the Energy Development Account (Law N 10.438, April 26th 2002)	252.162.761	373.710.606	48%
Geology and Geophysics services applied to the prospection of oil (action 2050)	850.445	180.681	-79%
Sponsorship to institutional research projects in the Oil and Natural Gas sector (CT-Petro) (action 4156)	1.791.332	15.782	-99%
Total:	2.624.078.294	1.957.118.078	-25%
Total:	25.189.327.554	24.064.883.589	-4%

Source: see methodology.
Designed by Inesc.

Other Waivers represented \$21.46 billions, which corresponds to 89% of the total. These waivers, which are not currently understood as tax expenditures by the Brazilian Internal Revenue Service (RFB), will be approached in this publication's highlights 1 and 3.

Direct Expenditures amounted \$1.95 billions (8% of the total), out of which most of them is not composed of funds from the public budget. It is the case, for instance, of the Fuels Consumption Account (CCC) and the Energy Development Account (CDE-Coal).

Tax expenditures corresponded to \$640 millions (3% of the total). It is the smallest fraction of the collected figures, once the RFB uses an interpretation of tax expenditure based on taxation systems that are not very specific. Thus, it does not take into account dozens of billions that benefit fossils producers and consumers as tax expenditures. It is also not committed to transparency or the unavoidable subsidies reform.

Subsidies amounting \$11.76 billions were allocated towards production in 2020, mainly through the various special taxation regimes to the Oil and Gas sector, the major one being Repetro. They correspond to 49% of the total.

As for consumption, \$12.29 billions were given in subsidies in 2020, which corresponds 51% of the total. Calculations conducted by Inesc regarding waivers for PIS/Cofins and Cide-Fuels applied to gasoline and diesel were considered part of this group. In this modality, the CCC and CDE-coal budgets are also taken into consideration.

These figures, which in fact represent an revenue waiver from the State, are impressive for their scale, especially within the context of a deep economic crisis experienced by the country in the first year of the Covid-19 pandemic, resulting in a GDP drop of 4.1%.

By presenting these numbers, the objective is to call attention to the importance of a technical and political debate on these figures, their potential meanings and effects, be it in terms of tax collection losses and their subsequent erosion of funds for social policies, be it in terms of their climate effects.

The greatest 2020 highlight goes to the even more expressive growth in "other waivers", numbers that have little to no transparency.

It is also worth mentioning that these waivers are not considered tax expenditures by the Internal Revenue Service due to the consolidation of reference taxation systems for the various forms of waivers hereby approached.

In general lines, reference taxation systems enable the calculation and measurement of deviations regarding what should be "standard" taxes and, consequently, what should be considered as "tax expenditure". The subject will be further explored in the following sections.

Thus, this publication points the aim of **knowing, assessing, and reforming these financing modalities of fossils consumption and production in Brazil** as a major challenge. These waivers need to be subjected to public debate and the Brazilian government needs to be committed to a process of detailing and evaluating them.

SUBSIDIES FOR PRODUCTION THROUGH REPETRO AND THE LAW NO. 13.586/2017

The Brazilian Oil and Gas sector benefits from a complex special taxation system called Repetro — Special Customs Regime for Exports and Imports of Goods Intended for Exploration and Production of Petroleum and Natural Gas.

In 2020, the regime resulted in a \$9.7 billion waiver, compared to the \$5.43 billions reached in 2019, which represents a 78% growth over the course of one year. This is by far the most important subsidy for the production of fossil fuels in Brazil.

It is worth remembering, as demonstrated in the 2019 edition, that, up until 2017, the regime was exclusively customs related, in the fictitious export³, temporary admissions⁴, and drawback⁵ modalities. With the approval of the Law No. 13.586/2017, not only was it extended until 2040, but it also went through a process of expansion and transformation, from a special customs regime to a special taxation regime called Repetro-Sped. Therefore, the main assets or admitted accessories before 12/31/2018, within Repetro, which did not migrate to Repetro-Sped until 06/30/2019 could choose the change until 12/31/2020, a measure that greatly influenced the 2020 numbers as this publication will show.

The regime includes three waiver modalities:

³ Fictitious export is when the product is sold to a company based abroad or to a foreign governmental entity, in freely convertible foreign currency, without leaving the national territory, following the art. 458, of Decree No. 6.759/2009.

⁴ Temporary admission for economic use, within the scope of the special customs regime for export and import of goods intended for research and exploration activities in oil and natural gas deposits – Repetro. It allows the importation of goods intended for economic use in the country, with the total suspension of tax payments for a fixed timeframe (art. 458, caput and §3rd, of Decree No. 6.759/2009).

⁵ Suspension or elimination of taxes levied on imported raw materials for use in exported products. The mechanism works as an incentive to exportations, as it reduces the production costs of exportable products, making them more competitive in the international market (art. 2, III, of Decree No. 3.161/1999, and art. 458, II, of Decree No. 6.759/2009).

- The suspension of federal tax payments levied on the importation of goods for definitive permanence in the country **(Modality A)**.

- The suspension of federal tax payments from the PIS/Pasep-Importation and Cofins-Importation contribution, in proportion to their permanence time in the customs territory for: 1) goods destined to the exploration, development, and production of Oil and Natural Gas, with temporary permanence in the country; 2) goods destined to the transportation, movement, transference, and storage or regasification of liquified natural gas **(Modality B)**.

- Repetro-Industrialization, which suspends contributions for PIS/Pasep, Cofins, and IPI for the acquisition of raw materials and other goods for the domestic market. The suspension is also given to the importation of these materials, in this case exempted from PIS/Pasep-Importation, Cofins-Importation, and IPI-importation **(Modality C)**.

According to Petrobras,

“ this benefit allowed the migration of the acquired goods in the former Repetro to Repetro-Sped. In 2018, we began to transfer the ownership of oil and gas assets under this regime from our foreign subsidiaries to our holding company and joint ventures in Brazil. The transparency was finalized in 2020. Besides, the legislation prescribes Repetro-Industrialization, special taxation regime, regulated in 2019, which exempts acquisitions from the Oil and Gas supply chain established in Brazil. After the creation of Repetro-Sped and Repetro-Industrialization, some Brazilian states, following the National Council for Finance Policy (Confaz), agreed on fiscal incentives related to the Tax on Goods and Services (ICMS) on transactions provided for in these regimes, as long as each state decrees its own specific regulations, including the reduction of taxes for the Oil and Gas industry. ”

(Report 20 F 2020)

In the federal case, the waiver figures linked to this regime do not appear in any public document from the Brazilian Internal Revenue Service, available only through the Access to Information Law (LAI).

The data presented in Table 2 show that waivers have skyrocketed, particularly since the regime's change.

Table 2 - Waivers linked to Repetro through taxation | 2013 to 2020

current values in US\$ billions

Year	Waiver II with AC REAL IMP	Waiver IPI REAL IMP	PIS waiver with AC REAL IMP	Cofins waiver with AC REAL IMP	REPETRO TOTAL
2013	2,76	0,202	0,377	1,95	5,29
2014	1,96	0,161	0,229	1,18	3,53
2015	1,70	0,165	0,236	1,18	3,29
2016	1,82	0,151	0,269	1,34	3,59
2017	0,911	0,121	0,137	0,665	1,83
2018	0,828	0,110	0,124	0,605	1,66
2019	3,66	0,352	0,545	2,53	7,10
2020	5,086	0,345	0,758	3,51	9,70

*Source: Access to Information Law (LAI).
Designed by Inesc.*

The expressive growth in 2020 can be in part explained by the transition from the Regime, being the end of 2020 the final deadline for the migration from Repetro to Repetro-Sped. In fact, the data presented by the Brazilian IRS (RFB) show that the waiver figures for Modality B went from \$2.79 billions in 2019 to \$4.95 billions in 2020. However, the growth was also expressive in Modality A, in which the waivers went from \$2.64 billions to \$4.75 billions between 2019 and 2020. Finally, inferior sums were registered for Modality C, which only indicates \$29.31 millions in 2020.

According to the Brazilian Internal Revenue Service, waivers regarding Repetro should not be considered tax expenditures. Consequently, the tax expenditure and regionalized charts do not include them as income or expenses derived from waivers, amnesties, remissions, subsidies and financial, tax, and credit benefits.

This alarming gap of transparency occurs, according to the RFB, because the waivers involving the regime do not represent deviation from the reference taxation system. To sum up, due to this interpretation, waivers of \$9.9 billions are placed outside the tax expenditure estimates, and even “instituted exemption” estimates.

Alongside the host of waivers established by the new Repetro, the Oil and Gas sector benefitted from the exemption of taxes regarding depletion expenses and machinery depreciation. These modalities are present in the art. 1 of Law No. 13.586/2017, the same one that expanded Repetro’s deadline and scope.

Through such legal apparatus, businessmen can deduct the applied sums from the calculus basis of the Social Contribution on Net Profit (CSLL), in each period of calculation, in the activities of exploration and production of oil and natural gas deposits, defined by the law, the **depletion expense**, as well as the machinery and tools depreciation used in the production development.

These tax waiver values are presented by the Brazilian Internal Revenue Service under “instituted exemptions”, but are estimated only from the three years since the approval of the law that instituted them (from 2018 to 2020), following the Fiscal Responsibility Law (LRF).

As shown in **Table 1**, with subsidies figures for 2020, the waiver estimate according to art. 1 of Law No. 13.586/2017 reached \$1.55 billions. It is important to highlight that, due to the limitation of the presented numbers in three years, such waivers will disappear from the Brazilian IRS records.

If Repetro’s and art. 1 of Law No. 13.586/2017’s waivers were added, they would reach **BRL11.25 billions** of lost tax collection in 2020 in order to stimulate fossil fuels production in Brazil.

Such waivers, as well as the aforementioned’s regime’s, are not, however, recorded as tax expenditures, and their values are, despite being expressive, disregarded in the government’s Demonstrative of Tax Expenditures (DGTs), being completely ignored in the debate on the size of tax waivers in Brazil. Thus, the possibility that they be evaluated under the potential economic, social, climate, and environmental effects is also disregarded.

This is a major issue that must be at the core of the debate on how Brazil should face the subject of fossil fuels subsidies in the future.

From an environmental and climate standpoint, such subsidies go against the polluter pays principle, internationally consolidated as key for the solution to the greenhouse gases emissions and loss of the planet's biodiversity. Thus, the subject has been brought to the Organization for Economic Cooperation Development's⁶ attention and is mentioned in the July 2021 report in which the organization assesses Brazil's progress in the implementation of the Environmental Performance Review recommendations, as well as in the promotion of its alignment with OECD core legal instruments on the environment.

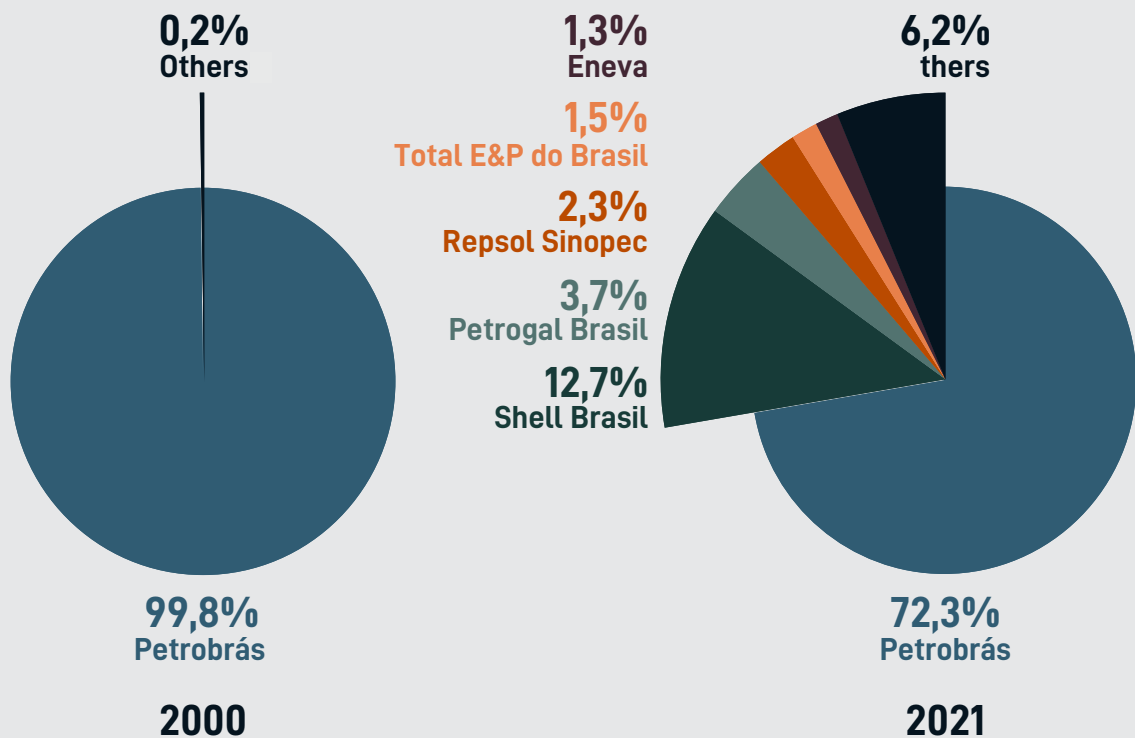
Repetro is considered by the OECD as a subsidy for fossil fuels, even if it does not account for tax expenditure estimates. The problem was specifically pinpointed in the aforementioned report, which concludes by recommending that Brazil develop a long term strategy to identify, reduce, and eventually eliminate public subsidies for the production of fossil fuels (OECD: 2021, p. 13).

It is inevitable that the subject acquire international relevance. As stated before, the equivalent production of oil in Brazil went from 1.65 million barrels/day by the end of 2000 to 3.52 million barrels/day by the end of 2021, which represents a 113% growth according to [the Brazilian National Agency for Petroleum, Natural Gas, and Biofuels data](#).

In parallel fashion, exploration fields have been increasingly opened to the participation of transnational oil companies that operate globally to control reservoirs and obtain better returns for their shareholders. **The following images highlight the change in the scenario over 20 years:**

⁶ Assessment of Brazil's progress in implementing the Environmental Performance Review recommendations and in promoting their alignment with the OECD's core legal instruments on the environment - July 2021. OECD report available at: <https://www.oecd.org/environment/country-reviews/Brazils-progress-in-implementing-Environmental-Performance-Review-recommendations-and-alignment-with-OECD-environment-acquis.pdf>

Equivalent Oil by Dealer and Field | 2000 and 2021



Brazilian National Agency for Petroleum, Natural Gas, and Biofuels (ANP).
Designed by Inesc.

From a *stricto sensu* economic standpoint, the need for subsidies to attract investors is questionable, both for Petrobras and international companies. According to the 2018 edition of the study, a research from the Federal University of Rio de Janeiro (Coppe/UFRJ) showed that the projects, particularly in the pre-salt fields, do not need fiscal incentives to be profitable, and that the existence of Repetro results in extraordinary profits for the exploration companies and in the reduction of governmental participation in the oil revenue.

The degree of subsidies involved in Brazil's notable performance as a worldwide oil producer is, therefore, decisive for an alignment of the country in the agenda of transparency and subsidy reforms for production in global scale.

REPETRO AND THE LAW NO. 13.586/2017 ACCORDING TO THE FEDERAL COURT OF ACCOUNTS (TCU)

In 2014, in the context of the struggles involving Petrobras and the Operation Carwash, the Federal Senate asked for the Federal Court of Accounts to conduct an audit in the Oil company, focusing on Repetro. The involvement of the Court with the subject originated three reports and rulings. Audits are key to understand how, in Brazil, \$11.25 billions a year in waivers to the Oil sector are not legally considered "tax expenditures" and how most of these waivers are not even registered as "other instituted exemptions".

Given their relevance, it is worth summarizing these auditing processes.

The first audit resulted in the [Ruling 366/2016](#), which evaluated the waivers regarding Repetro between 2011 and 2015, estimated by the Brazilian IRS in \$9.99 billions. The report concluded that the fictitious operation of exporting platforms (Repetro) was not illegal.

However, the report recommended, given the peculiarity of customs in the scope of the special regime, that the General-Secretariat of External Control (Segecex) should include, in the following inspection plans, the control action in the proceedings regarding Repetro (item 9.5 of the Ruling).

Then, a new audit was carried out, deepening the analysis of Repetro with the following question: **Is Repetro a tax benefit?** The [second report](#) brought new findings to light that are of high relevance to the discussion on the transparency of subsidies for the production of Oil and Gas.

In general lines, the Federal Court of Accounts followed a broader interpretation, supported by the Fiscal Responsibility Law, in which, in the art. 14 § 1 "waiver encompasses amnesty, remission, subsidy, presumed credit, granting of exemption of non-general character, change of rate or modification of the calculation basis that implies a detailed reduction of taxes or contributions and other benefits that correspond to differentiated treatment".

The TCU also sought support in the definition of taxation in the art. 3 of the National Taxation Code, reaching a broad notion of tax benefit associated to the idea of reduction of tax charge. The Court understood as tax benefit “the reduction of payment due as tax whatever the means and conditions that authorize and effect this reduction, and whatever the purposes that support the granting of the benefit” (TC 031.800/2016-5, page 11).

To sum up, the entity's analysis considered that the occurrence of tax exemptions benefitting oil companies is damaging to society due to the lack of tax collection. Besides, it concluded that the non detailing of the regime, lack of aftermost analysis of their impacts, and the non calculation of tax credits result in the lack of Repetro's transparency as a whole.

The report points out, thus, that it is possible and desirable to classify Repetro as tax expenditure, which would lead to the inclusion of the waivers in the tax expenditure charts. **The excerpt from the vote that follows the report underscores this understanding:**

“ 57. In this context, and given the relevance of the revenue waivers transparency, article 4, § 2, item V, of the Fiscal Responsibility Law (LRF), requires that the Budget Guidelines Law (LDO) contain an annex showing evidence of the estimate and compensation of the revenue waiver. Thus, as Repetro is regulated by decree (Customs Regulation), its creation was not subject to wide discussion in the Legislative Houses. In this regard, the auditors present an argument with which I agree, that, in the absence of a broad debate on the matter, it is imperative that there be transparency about the effects of tax benefits relating to this special regime in the statements attached to the Annual Budget Law (LOA) and Budget Guidelines Law (LDO). ”

(TC 031.800/2016-5, page 7).

However, the Ruling 1.042/2018, which judged the report, suggested a deeper investigation on whether to include Repetro in the tax expenditure charts, as well as in the regionalized ones on revenues and expenses of tax benefit nature. In addition, it demanded that the Segecex investigate if the extension of Repetro should follow art. 14 of the LRF (Item 9.3 of the Ruling).

A new audit was then conducted, this time including Repetro and the Law No. 13.586/2017, once it promoted significant changes in the regime, with the insertion of new apparatuses that could result in revenue exemptions, not only for

these taxes, but also for IRPJ, IRRF, and CSLL. (See Box 1).

The Brazilian IRS (RFB) itself, by including some specific apparatuses from the Law No. 13.586/2017 in the “other instituted exemptions” chart of tax expenditures (DGT 2018 — data that compose the subsidies table designed by Inesc), recognizes part of the values as waivers, though not considered tax expenditures.

Thus, the TCU asked for a new analysis by the Brazilian IRS (RFB) regarding Repetro’s classification, or part of it, as tax expenditure after the Law No. 13.586/2017.

Repetro’s changes based on the Law No. 13.586/2017:

<p>Before the extension, Repetro was composed of a single special customs regime of temporary admission for economic use, with waiver from federal tax payments proportional to the assets’ time of permanence in the customs’s territory. The Law No. 13.586/2017 introduced two new special taxation regimes.</p>
<p>1) A special taxation regime on definitive imports with total waiver, based on art. 5 of Law No. 13.586/2017, which comprehends the total waiver of the following taxes: Import Taxes (II), Tax on Industrialized Products (IPI), PIS/Pasep-Importation and Cofins-Importation contributions.</p>
<p>2) A special taxation regime on industrialization, legally supported by art. 60 of the Law No. 13.586/2017, with waiver of the following taxes: Import Taxes (II), Tax on Industrialized Products (IPI), PIS/Pasep-Importation and Cofins-Importation contributions, as well as PIS/Pasep and Cofins contributions.</p>

The Repetro-Sped was also established with four modalities:	
i)	Special customs regime of temporary admission for economic use with waiver of proportional payment, which had been the original Repetro;
ii)	Special customs regime of temporary admission for economic use with proportional payment;
iii)	Special taxation regime on definitive importation with total waiver of the assets' federal taxes for goods that remain definitively in the territory;
iv)	Special taxation regime on industrialization, with waiver of federal taxes for importation or acquisition of raw materials in the domestic market, intermediary products, packaging materials aimed at oil, gas, and other fluid hydrocarbons' exploration and development.

TCU's third report was ruled on July 27, 2021. In this last report, the Brazilian IRS arguments to justify the non-classification of Repetro and the Law No. 13.586/2017 in the tax expenditure charts were accepted by the court.

Summing up, for the RFB, Repetro could not constitute a tax expenditure because there would not be collection loss throughout the period for the IPI, PIS/Pasep and Cofins taxes, and also because the Import Taxes was a regulatory tax. Furthermore, as for the Law No. 13.586/2017, which allowed — for the determination of profits and the CSLL calculation basis — the whole deduction of expenses for the production and exploration of Natural Gas and Oil deposits (art. 10), the RFB interpretation was also accepted by the Federal Court of Accounts.

The Brazilian IRS's argument regarding the Social Contribution on Net Profit (CSLL) supports that this contribution is based on the same calculation basis as IRPJ's. Additionally, it understands that the depreciation expenses, which stem from the formed asset on the applied expenses in the development activities to make the production of oil or natural gas viable, are also deductible in the calculation of net profits and can be considered the **accelerated deprecia-**

tion of the asset. According to TCU:

80. Thus, exhaustion consists of recognizing as a cost or charge, in each calculation period, the corresponding sums to the decrease in the value of forest, mineral, and other natural resources that are exhaustible, or of determined depreciation resulting from their exploitation. And the pre-operational costs necessary to make the activity viable could be deducted within the exploration period. What the Law No. 13,586/2017 allowed is that all companies, in addition to Petrobras, fully deduct these expenses in a shorter period. Thus, considering the long-term focus of the Supreme Court adopted by the Internal Revenue Service, such benefit does not qualify as a tax expense.

(TC 020.313/2018-7, p.15).

This is an extremely relevant point for the debate on the reach and complexity of subsidies for fossil fuels. In sum, it can be understood from the RFB argumentation, supported by the Federal Court of Accounts, that, among other benefits, the sector is favored by an interpretation in which, by exploring finite resources, thus exhaustible over time, it can use the accelerated depreciation apparatus for the reduction of the CSLL calculation.

However, though the TCU has agreed in general terms with the explanations and arguments by the RFB, both the theme and the report need to be looked at under broader lenses.

The very difference of interpretation between TCU and the RFB on the nature of Repetro, consubstantiated in the second report (Ruling 1.042/2018), despite the focus not being strictly on the taxation perspective, demonstrates that the topic and its interpretation are open to different readings and changes.

That is also what the RFB understands when it states what may or may not be classified as taxation expenses to the TCU. In its own terms, "the classification of a waiver as Taxation Expense is a task that involves certain degree of subjectivity, especially during the definition of Reference Taxation Systems" (TC 020.313/2018-7, p.13).

For the court, the statement is aligned with the international literature, for which the definition of a reference system involves a judgement element, varying between different countries and **within the same country throughout time.**

The issue, therefore, is far from being solved with the current interpretation offered by the RFB not to classify Repetro and the Law No. 13.586/2017 as taxation expenses, let alone to justify the absence of waiver estimates in the “other instituted exemptions” charts after 2020.

This is because, as stated before, the RFB records in the “other instituted exemptions” charts, as it is for the aforementioned law, until 2020, three years after the beginning of its effects. In other words, they will no longer be estimated or made public from 2021 onwards, which, evidently, does not mean they ceased to exist.

According to the information gathered by Inesc via the Access to Information Law:

“ In response to the request, it is informed that the continuous follow-up with estimates reviews typically only occurs in the case of waivers classified as tax expenses, as they are measures of exception to the current taxation system. However, this is not the case for the exemptions of the Law No. 13,586/2017 and, therefore, for the estimates aimed at measuring the budget impact in the fiscal year and in the two subsequent years, according to art. 14 of the Fiscal Responsibility Law. ”

(SIC CETAD/COPAN Note No. 106/2021, July 21, 2021).

The process of the TCU's Repetro assessment demonstrates, in summary, that there is a long pathway for a broad debate on how Brazil needs to seek knowing, assessing, and reforming subsidies for oil production.

What is evident is the existence of an enormous interpretative gap in the tax dimension of the Gas and Oil sector. An interpretation which takes into account its specificities, complexities, and economic and climate relevance. What has been done until now, with the visible influence of interested economic parties, is the expansion of tax incentives and their reach. Thus, Brazil is going against an inevitable process of transparency and revision of the subsidies.

It is worth noting, at last, that the RFB acknowledges, for the TCU, that the lack of transparency exists and could be reduced through the assessment of the sector's tax burden:

72. The fiscal agency affirms (part 29, p. 4) that the primary commitment is always transparency, so, even if not all items are evident, registration should be prioritized. However, it is a necessary condition for classification as a tax expense that the loss of revenue is undoubted and reasonably measurable. When a comparison parameter is not evident, it would not be possible to calculate a value consistent with reality. In these cases, the SRFB understands that it is better to offer alternatives for publicizing the data, such as the publication of the volume of operations, tax collection or the tax burden of a given sector.

(TC 020.313/2018-7, p.13)

A specific RFB work on the estimates and publicizing of Oil and Gas tax burden in Brazil would be, thus, an important step towards building more solid references for the future debate on production subsidies.

Moreover, as acknowledged by the RFB, there is no normative that regulates the elaboration and transparency of these charts. (TC 020.313/2018-7, p.12).

The existence of such normative constitutes, then, another important and urgent step.

SUBSIDIES LINKED TO ENERGY GENERATION BASED ON FOSSIL FUELS

Fossil fuels subsidies share an important interface with the subject of subsidies for the electricity sector linked to the use of fossils (coal, diesel, and gas).

For the **generation of gas electricity**, it is worth highlighting that, in 2020, it represented 8.6% of the total generated electricity, behind wind energy which, at the same year, was responsible for 9.2% of the country's generation. Regarding emissions, in 2020, gas generation represented 65% of Greenhouse gases in the National Interconnected System. Despite the relatively reduced burden on the electric matrix, the connection between this form of energy to the production of oil and gas has acquired a particularly relevant aspect.

The strong lobby influence of Gas in the National Congress, aligned with the government, has brought to light how the State's intervention shapes and structures the demand and supply in this market, and how the regulation can function as a form of market reserve. In June 2021, Eletrobras's privatization was approved and an important step towards structuring the gas market in Brazil was taken, safeguarding mandatory contracts for gas thermoelectric plants.

In the approved bill, the mandatory contract of eight thousand megawatts generated by gas were guaranteed, operating with the minimum capacity of 70% for at least 15 years. A market reserve was then established, even in areas that do not produce gas, despite their conditions to generate renewable sources (solar, wind, and hydro).

The articulation of interests between the gas production and infrastructure sectors alongside the energy one is evident in the speech delivered by the executive president of the Brazilian Association of Piped Gas Distributor Companies (ABEGÁS), Augusto Salomon:

“(...) thermal plants work as an economic sign of firm consumption for infrastructure investors (...). The transportation fee is what will guarantee the investor's profits (...). The thermal plants will provide security so that the producer can offer this gas, which is currently reintroduced in the market.”

(Isto é Dinheiro, June, 14 2021)

Although natural gas is sometimes considered a transitional fuel between coal and renewable energy as it emits about half of the coal's carbon dioxide, the investments being made now in natural gas infrastructure will boost its use in the next decades, delaying the transition to low-carbon sources.

In other words, despite the expressive and competitive growth of renewable energies, particularly solar, wind, and biomass, and the negative effects that the generation of gas represents in terms of emissions, there is a strong economic and political movement to guarantee its “viability” in the energetic matrix, being characterized as a “transition fuel”.

According to the Institute of Energy and the Environment (Iema):

|| Considering a capacity factor of 70% for the installed plants, annual emissions would represent an increase of 17.5 MtCO₂e or an increase of 32.7% in relation to the emissions from the electricity sector recorded in 2019, and 60% in relation to emissions of the natural gas thermoelectric plants in the same year. The accumulated emissions referring to the 15 years of operation of this installed capacity would amount to 260.3 MtCO₂e, more than the emissions of the entire transport sector in 2019. ||

(Iema, 2021)

From the subsidies standpoint, the economic and political movement to make gas electricity viable demands a great deal of efforts connecting both subsidies involved in the extraction of gas and the infrastructure linked to its outflow.

In this study, it is understood that Repetro and expanded effects from the approval of the Law No. 13.586/2017 reach both the gas production and its outflow infrastructure. Advancing in the transparency of both incentives becomes, then, fundamental to surface the links between production subsidies and subsidies for the electricity sector.

The **coal thermoelectric generation** was responsible for 1.9% of the generated electricity in 2020, and by 34% of the greenhouse gases emissions in the National Interconnected System (SIN)⁷. The subsidy for this activity is limited to 100% of the main fuel value (mineral coal), including the secondary fuel needed to guarantee the thermoelectric power plant operations. The granting of the subsidy takes place via the Energy Development Account (CDE) in order to maintain the production of coal power plants in the south of the country. The budget for the CDE-Mineral Coal in 2020 was \$116.48 millions.

The annual subsidies started in 1973 and were incorporated to the CDE in 2002. The Law No. 10.438/2002, art. 13 § 7, with text provided by the Law No. 12.783/2013 provides for the costs of this expense via CDE until 2027.

The country's Public Policy Monitoring and Evaluation Committee — CMAP (2019) conducted an assessment of the Energy Development Account and reinforced the recommendation for the extinction of the subsidy in 2027. **According to the report:**

⁷ Statistical Yearbook of Electric Energy 2021 – Base Year 2020. Available at: <https://www.epe.gov.br/pt/publicacoes-dados-abertos/publicacoes/anuario-estatistico-de-energia-eletrica>

It must be taken into account that the use of coal for energy generation is a harmful process to the environment regarding the emission of greenhouse gases when compared to other technologies used for generation, such as, for example, hydro and wind sources, and even the burning of natural gas, despite the lack of these options in the places where the thermoelectric plants operate. Furthermore, from an economic theory viewpoint, the generation of negative externalities, in particular the impacts of gas emissions on atmospheric pollution, compared to other means of generation, would justify a higher taxation of the coal thermoelectric sector compared to the aforementioned sources.

(CMAP: 2019; p. 77)

The challenge is to guarantee that the deadline be followed and that the regions producing coal to fuel thermoelectric power plants can make a transition to overcome the economic dependence associated to the coal economy.

Given the increasingly close-to-the-end horizon of Brazilian subsidies (via the Energy Development Account - CDE) for energy production from coal, whose date is set to 2027, it is necessary that the Brazilian regions based on this fossil economy start, as soon as possible, to assess future scenarios, learn about similar experiences, and develop joint efforts towards this transition, involving companies, governments, and workers in the sector.

(Dieese/WWF, 2021)

On the transition challenges, it must be considered that approximately 36 thousand people are directly employed by the coal industry in the country today, out of which around 11 thousand work at the lignite mines and 25 thousand at the electric power plants (IDEC, 2021). The economic and social dependence produced by mining coal, as well as other mines and regions, underscores that closing the mines and the construction of a fair transition require time and management.

Against this transition, and despite the low efficiency of power plants and the environmental problems caused by them, the coal lobby seeks to postpone the end of subsidies. An example of that is the filing, in 2021, of the Eletrobras provisional measure (MP) in the Federal Senate, presenting an amendment to hire 2 GW of national mineral coal power plants to be delivered between 2028 and 2032, and to direct \$485 millions to the carboniferous regions of Rio Grande do Sul, Paraná, and Santa Catarina.

Even though the amendment has not been approved, the movement continues to be present in the National Congress, as, for instance, in the Provisional Measure No. 1055, which deals with the energy crisis and presents an amendment aiming at extending coal power plants subsidies sponsored by the CDE until 2035.

Ways to guarantee a transition towards the decommissioning of coal power plants are possible and necessary. The so-called coal **phase-out** has been planned in many countries, with lessons that could be useful and adapted to the Brazilian context.

Among the solutions suggested by social entities, such as the Climate and Society Institute, are:

1. Using CDE resources for the decommissioning of coal power plants until 2027.
2. Using CDE resources for the social and environmental development of the regions.
3. Enforcing mining obligations and regulating the decommissioning of the mines.
4. Developing trustworthy energy sources to supply the region

Diesel generation was responsible for 1.4% of the electricity produced in 2020, and by 1.4% of the greenhouse gases emissions in the National Interconnected System (SIN), but for 97.7% of the emissions in the Isolated Systems (Sisol)⁸. In this case, the subsidy takes place via the Fuel Consumption Account (CCC). This account's budget was \$1.45 billions in 2020.

The CCC subsidizes the costs of generation in the Isolated Systems, which respond to 0.6% (Energy Yearbook, 2021) of the energy consumption used in the country and are composed by electrical centers that are not part of the National Interconnected System yet. The states that are part of the Sisol are: Acre, Amazonas, Mato Grosso, Pará, Rondônia, and Roraima. Besides these states, the Fernando de Noronha island is also part of the system.

⁸ Statistical Yearbook of Electric Energy 2021 – Base Year 2020. Available at: <https://www.epe.gov.br/pt/publicacoes-dados-abertos/publicacoes/anuario-estatistico-de-energia-eletrica>

The cost of generating energy in the isolated regional systems is higher due to their dependence on diesel, whose cost is higher because of transportation. When it was created in 1973, the CCC initially aimed at subsidizing the purchase of fossil fuels for energy generation. From 2009 onwards, the CCC began to subsidize not only fuel, but also all of the costs in the Sisol energy generation, including renewable sources. The CCC subsidies are paid, for the most part, by consumers.

In general terms, the Energy Development Account (CDE), of which the CCC is part of, is notably evaluated as being a complex account, with low transparency and that should be subjected to a process of assessment and revision. The CDE was analyzed by the Federal Court of Accounts (TCU), which identified, among various problems, that the account subsidizes public policies that are not part of the electricity sector, such as the "rural", "irrigation and aquaculture", and "water, sewage, and sanitation". According to the TCU, this characterizes a "parallel budget", once it is passed on without processes of discussion, authorization, and transparency (IDEC, 2021).

Furthermore, it is important to highlight that these subsidies overcharge the consumers' pockets:

“ The 2020 CDE budget resulted in a total of BRL21.912 billions in expenditures, the main source of revenue being the annual fees paid by electricity consumers, through a charge included in the fees for the use of the distribution and transmission systems, in the amount of BRL 20.105 billions. ”

(ANEEL, CDE budget, 2020)

In December, 2020, the Ministry of the Economy released an assessment report of the Energy Development Account conducted by the Public Policies Monitoring and Evaluation Committee⁹:

⁹ The CMAP aims to annually evaluate a list of previously selected public policies, financed by direct expenditures or subsidies from the federal government, being composed of the Executive Secretariat of the Civil House (CC), the Brazilian Office of the Comptroller General (CGU), and the Ministry of the Economy (ME), the latter being responsible for its coordination.

“ A set of findings related to the governance of the account as a whole is presented: fragmentation in the institution of subsidies funded by the CDE; high risk of lack of transparency, as most subsidies do not go through the OGU; lack of predictability of expenses; inexistent impact studies on granted discounts that enable decision-making regarding the maintenance or extinction of subsidies; absence of goals and results to be achieved; uncertainty regarding those responsible for managing the policies subsidized by the CDE. ”

(Press release issued by the Public Policy Monitoring and Evaluation Committee - CMAP)

Based on the assessment, the CMAP recommended the structuring of a governance model that allows the full monitoring of all the policies subsidized by the CDE, considering the transversal nature of these policies, and that enables the supervision and evaluation of the impacts resulting from changes in the CDE, both from the perspective of the nature of the resources as well as their application. The theme was also taken into account in the recent OECD evaluation:

“ For mineral coal, the collected information presents that the region supplied by this source is widely served by the National Interconnected System and that the thermoelectric plant causes negative externalities associated with pollution. ”

(CDE Recommendations Report)

Given the presented information in this section of the study, Inesc believes that the necessary steps for the revision of fossil subsidies, which are part of the DCE, have already been established in general lines.

Finally, the coal generation lobby and the forced growth of coal power plant generation reveal how, in Brazil, it is difficult to dismantle the past and look towards the future, which is usually seen as dangerous and risky.

SUBSIDIES FOR CONSUMPTION THROUGH THE EXEMPTION OF FUELS

The waiver on revenue from **Cide-Fuels and PIS/Confins** which are levied on fossil fuels represent the second major source of subsidies to fossil fuels consumption in Brazil.

According to Inesc's estimates, following its own methodology, figures reach **\$10.20 billions** in 2020, being \$3.83 billions for Cide-diesel, \$5.28 billions for Cide-Gasoline, and \$1.08 billions for PIS/Cofins-diesel (see 2020 summary chart in section 3).

To get to these numbers, Inesc calculates the loss of tax collection based on the "limits of the law", which establish Cide, PIS and Cofins charging fees for fuels.

The procedure may be summarized in the following steps:

- 1) Applying the volumes of diesel and gasoline trades in the year (ANP), considering the proper discount on diesel mixed with biodiesel, to the fees established by the limits of the law (current values).
- 2) Using this number as "tax collection ceiling", or the one that would be reached if the originally approved bill had been enforced.
- 3) Verifying the collected values in the year, using, in a similar fashion, the data on the volumes of traded diesel and gasoline in the year (ANP), considering the proper discount on biodiesel, and subtracting them from the "tax collection ceiling."

The Cide, PIS, and Cofins waiver figures are far from being acknowledged, or even calculated by the Brazilian IRS (RFB). For the RFB, the waiver should be based on the last aliquot change. This means that that RFB does not take into consideration the existence of successive changes in the aliquot that have corroded the Union's tax collection potential. Besides that, just as for the Law No. 13.586/2017, the RFB presents waiver estimates, under the Fiscal Responsibility Law (LRF), only from three years following the change of the law.

The Decree No. 9.391/2018, which led the government to commit to the reduction of diesel prices, zeroed the Cide, and decreased PIS and Cofins on the fuel. Due to the decree, the RFB presented, in its "instituted exemptions" chart, an estimate of \$778 millions, \$1.55 billions, and \$1.6 billions for 2018, 2019, and 2020 respectively.

In other words, for diesel, the waiver taken up by the government and which is not registered as a "tax expenditure," under the same justification used for Repetro's case (in which there is no reference taxation system) amounts to \$1.6 billions only in 2020.

In order to highlight the dimension of the problem, Inesc has decided to present the waiver numbers based on what would have been collected according to the limits established by the law. The difference in values is explicitly evident in light of the different methodologies. The intention is to incite a public debate on the loss of collection, the enormous challenges involving the calculation, and the necessary subsidies review.

Fossil fuels prices is, obviously, a very sensitive subject. The recurrent pressure from truckers due to the successive fuel rises should place, at the core of the debate, the very formation of the commodity price, which besides being based on international rates and driven by a dividend generating logic, is also financialized and subject to speculation processes. What the governments have done in response to the cargo transportation demands is to maintain the prices by altering the Cide, PIS, and Cofins aliquots. However, not only does this process result in loss of collection in the present, but it also makes it harder to review fossil subsidies.

This brief analysis of the issue demonstrates the huge challenge towards a taxation policy of fossil fuels based on the polluter pays principle as well as on emissions levels in Brazil. The subject was dealt with in an OECD's recent report (2021), which recommended the alignment of environmental legislation, policies and practices in Brazil based on the organization's legal instruments.

On the polluter pays the price principle, the report recommends that Brazil develop a long term strategy to identify, reduce, and eventually eliminate the public financing for fossil fuels production.

On the use of economic instruments to support environmental goals, the recommendation to Brazil is to establish positive aliquots for Cide, for all sources of energy, and to expand the taxation basis to include energy use in the indus-

trial, comercial, and domestic sectors, tying the tax to carbon levels.

Fossil fuels taxation is intertwined with the tax reform subject. There are proposals from civil society entities for a green tax reform which is articulated with the challenges hereby described, notably, the conversion of Cide-Fuels into a Cide-Carbon, with broader application and leverage, respecting fiscal neutrality or the current tax burden. It is important to highlight that the proposal includes that the Code aliquot be differentiated by product or use in terms of its Greenhouse gases (GEE) emissions, and that the collected resources be partially allocated towards the payment of subsidies related to fuels that decrease GEE emissions in the transportation sector.

In conclusion, under the fuels taxation subject, as well as for Repetro and the Law No. 13.586/2017, it is fundamental that the Brazilian Internal Revenue Service establish a commitment to improve its methodology to estimate waivers, and that it keep track of the numbers throughout time.

RECOMMENDATIONS: KNOW, ASSESS AND REFORM

As previously mentioned in the present and previous editions of this study, measuring subsidies for fossil fuels in Brazil is a task of elevated technical and political complexity. The objective of these publications has been to call attention to the size, need, and urgency of the challenge.

Alternative methodologies can be built and figures may vary in billions depending on the methodological choices. As for subsidies involving diesel and gasoline, for instance, the high numbers express the methodological option to demonstrate how much would have been collected if the government has not successively reduced the established aliquots for PIS/Cofins and Cide. It is also a political choice to present the numbers with the purpose of bringing about a public debate on what subsidies to consumption are and what they represent in numbers.

The challenge and complexity take up an even greater scale for **other waivers**. Once they are not considered tax expenditures by the RFB, and the publication of their numbers is limited, they are placed in a limbo of public funds after three years of the legal apparatus establishment instituting the exemptions.

The RFB's justification not to classify "other waivers" as tax expenditures linked to production (Repetro and Law No. 13.586/2017) and to consumption (changes in the Cide, PIS/Cofins for fuels) cannot be accepted facing the challenge to **know, assess, and reform** subsidies for fossil fuels.

As stated and understood by the RFB, "the classification of a waiver as Tax Expenditure is a task that involves certain degree of subjectivity, especially when it comes to the definition of a Taxation Reference System (TC 020.313/2018-7, p. 13).

For the Federal Court of Accounts (TCU), the statement is aligned with the International literature, for which the definition of a reference system involves an element of judgement, varying between different countries and **within the same country throughout time**.

We are living in a moment in which the official measuring of fossil subsidies becomes unavoidable and urgent. Because of that, and the size of the “other waivers” hereby identified, an effort to better assess these is recommended, with methodologies that are capable of identifying its effects on subsidies.

As discussed here, these **other waivers** have been completely ignored in the debate on the size of tax exemptions in Brazil today. Thus, the possibility of assessing them in terms of their economic, social, and environmental effects has not been fully taken into account.

Main recommendations:

- 1) That the National Congress approves the Complementary Bill 162/2019, which establishes the mandatory publication of which companies are benefited with tax incentives in Brazil, as well as their specific values.
- 2) That the National Congress demands the Federal Court of Accounts to continue the assessment of Repetro and the Law No. 13.586/2017 to expand the transparency and evaluation of these benefits's efficiency and effectiveness in light of the reform challenged taken up by Brazil in the G20.
- 3) That the Brazilian Internal Revenue Service (RFB) offers alternatives to make Repetro's and the Law No. 13.586/2017's numbers public, such as the volume of operations, tax collection, or **the oil and gas sector tax burden**, as the institution suggested to the TCU (020.313/2018-7, p. 13). Furthermore, that a normative to regulate the elaboration and transparency of these charts be built.
- 4) That the Union's Public Policy Monitoring and Evaluation Committee includes Repetro and the Law No. 13.586/2017 in its 2022 evaluation cycle.
- 5) That the tax reform includes the conversion of Cide-Fuels into a Cide-Carbon with broader application and incidence, following fiscal neutrality or the current tax burden.



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Data sources

By Category and Modality

■ Production ■ Consumption

Subsidies and Incentives	Category	Source		
Repetro	Other Waivers	Access to Information Law (LAI)		
Law No. 13.586/2017				
Cide diesel		Historical series of the volume (in m3) of ethanol and petroleum derivatives sales from the National Agency of Oil, Natural Gas, and Biofuels (ANP)		
Cide gasoline				
PIS/Cofins for Diesel				
PIS/Cofins for Gasoline				
Repenec: Special Regime of Incentives for Infrastructure Development in the Oil Industry in the Northern, Northeastern, and Mid-Western regions	Tax Expenditures	Estimates of Tax Expenditures (GT), 2017 effective base (2015 to 2020 series), published by the Brazilian Internal Revenue Service (RFB).		
Reidi: Special Regime of Incentives for Infrastructure Development (Reidi Energy)				
Reporto: Taxation Regime for the Incentive of Ports's Structure Modernization and Amplification (Reporto Transport)				
Thermoelectricity				
Liquefied Natural Gas				
Investments in Infrastructure (Energy)				
Petrochemical Industry				
CCC - Fuel Consumption Account			Direct Expenditures	Aneel
CDE - Energy Development Account				
CT-Petro			Direct Expenditures	Taken from the Siga Brasil Portal, considering the financial execution updated by the IPCA.
Geology and Geophysics Services applied to the Prospection of Oil and Natural Gas				
Economic subsidy for the trading of diesel in the national territory				

Designed by Inesc.

LIST OF ACRONYMS

IEA – International Energy Agency
ANEEL – National Agency of Electric Energy
ANP – Brazilian National Agency for Petroleum, Natural Gas and Biofuels
BNDES – Brazilian Development Bank
CCC – Fuel Consumption Account
CCE – Energy Consumption Account
CDE – Energy Development Account
CIDE – Contributions for Intervention in the Economic Domain
CMAP – Public Policy Monitoring and Evaluation Committee
CNODC – China National Oil and Gas Exploration and Development Company Ltd
CNOOC – China National Offshore Oil Corporation
COFINS – Contribution for the Financing of Social Security
CSLL – Social Contribution on Net Profit
DGT – Demonstrative of Tax Expenditures
DOU – Official Federal Gazette
USA – United States of America
EPE – Energy Research Office
E&P – Exploration e Production
FO – Budget Function
GD – Direct Expenditures
GT – Tax Expenditures
GEE – Greenhouse Gases
ICS – Institute for Climate and Society
INESC – Institute of Socioeconomic Studies
IPI – Tax on Industrialized Products
LAI – Access to Information Law
LOA – Annual Budget Law
LDO – Budget Guidelines Law
LRF – Fiscal Responsibility Law
MME – Ministry of Mines and Energy
MP – Provisional Measure
OCI – Oil Change International
ODI – Overseas Development Institute
WTO – World Trade Organization
OR – Other Waivers
O&G – Oil & Gas
OECD – Organization for Economic Co-operation and Development
GDP – Gross Domestic Product
PIS – Social Integration Program
PPI – Investment Partnership Program
REIDI – Special Incentive Regime for Infrastructure Development
REPENEC – Special Incentive Regime for Exports and Imports of Goods Intended for Exploration and Production of Petroleum and Natural Gas
REPETRO – Special Customs Regime for Exports and Imports of Goods Intended for Exploration and Production of Petroleum and Natural Gas
RFB – Brazilian Internal Revenue Service, Ministry of Economy
SEEG – Greenhouse Gas Emissions Estimation System
SIN – National Interconnected System
SISOL – Isolated Systems
TCU – Federal Court of Accounts



FOSSIL FUELS SUBSIDIES IN BRAZIL

KNOW, ASSESS AND REFORM.

BRASÍLIA, NOVEMBER, 2021

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IBP – Center on Budget and

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ICS – Institute for Climate and Society

KNH – Kindernothilfe

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OSF – Open Society Foundations

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PPM – Bread for the World

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