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**Accounting treatment of tax credits arising from the exclusion of ICMS from the PIS and COFINS calculation base of publicly traded companies**

**Tratamiento contable de los créditos fiscales derivados de la exclusión de los ICMS de la base de cálculo de PIS y COFINS de las empresas que cotizan en bolsa**

**Tratamento contábil dos créditos tributários provenientes da exclusão do ICMS da base de cálculo do PIS e COFINS de empresas de capital aberto**

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### **Abstract**

**Purpose:** The objective of the study was to demonstrate the accounting treatment adopted by companies listed on B3, Novo Mercado, regarding the dispute over the exclusion of ICMS from the PIS and COFINS calculation basis, as well as demonstrating the change in accounting treatment, following the decision of the Federal Supreme Court, favorable to companies in 2017, modulated in 2021.

**Methodology:** This research has a descriptive, documentary, and qualitative nature. The initial sample was composed of the financial statements (Balance Sheet, Income Statement for the Year and Notes and Explanations) of 80 companies in the Novo Mercado segment of Brazil, Stock Exchange and Counter - B3, between 2018 and 2021 (including). After initial analysis, companies that did not present information on tax credits arising from the exclusion of ICMS from the PIS and COFINS Calculation Base were excluded, resulting in a final sample of 34 companies. In analyzing this data, Excel® spreadsheet systems and PDF readers (Foxit® and Adobe®) were used to search for information on the accounting treatment of credits arising from the exclusion of ICMS.

**Results:** The results demonstrate that there was a change in the accounting treatment of recording these tax credits. In 2017, 8/9; in 2018 12/18; in 2019 5/27; in 2020 5/29, and in 2021, 1/34 companies registered as Contingent Assets. The change in treatment began in 2018, with 6/18; in 2019, 22/27; In 2020, 24/29, and in 2021 33/34 companies registered as Assets to be Recovered. It was also found that credits arising from the exclusion of ICMS from the PIS and COFINS calculation base had a positive impact on the results presented by companies in the years 2018 to 2021.

**Contributions of the Study:** The main contribution of the study consists of showing that companies, faced with legal uncertainty in the country, make different accounting registration/recognition options when it comes to tax rights/obligations, as the subject supporting the object of the study has been discussed for almost decades until its outcome was favorable to companies in 2021.

**Keywords:** Contingent Asset. Taxes to be Recovered. CPC 25. Calculation Basis.

### Resumen

**Objetivo:** El objetivo del estudio fue demostrar el tratamiento contable adoptado por las empresas listadas en B3, Novo Mercado, respecto de la disputa por la exclusión del ICMS de la base de cálculo del PIS y COFINS, así como demostrar el cambio de tratamiento contable, luego de la decisión del Tribunal Supremo Federal, favorable a las empresas en 2017, modulada en 2021.

**Metodología:** Esta investigación tiene un carácter descriptivo, documental y cualitativo. La muestra inicial estuvo compuesta por los estados financieros (Balance General, Estado de Resultados del Ejercicio y Notas y Explicaciones) de 80 empresas del segmento Novo Mercado de Brasil, Bolsa e Balcão - B3, entre 2018 y 2021 (inclusive). Luego del análisis inicial, se excluyeron las empresas que no presentaron información sobre los créditos fiscales derivados de la exclusión del ICMS de la Base de Cálculo del PIS y COFINS, resultando una muestra final de 34 empresas. Para el análisis de estos datos se utilizaron sistemas de hojas de cálculo Excel® y lectores de PDF (Foxit® y Adobe®) para buscar información sobre el tratamiento contable de los créditos derivados de la exclusión del ICMS.

**Resultados:** Los resultados demuestran que hubo un cambio en el tratamiento contable del registro de estos créditos fiscales. En 2017, 8/9; en 2018 18/12; en 2019 27/5; en 2020 29/5, y; en 2021, 1/34 empresas registradas como Activos Contingentes. El cambio de tratamiento se inició en 2018, con 6/18; en 2019, 22/27; En 2020, 24/29, y; en 2021 33/34 empresas registradas como Activos a Recuperar. También se encontró que los créditos provenientes de la exclusión del ICMS de la base de cálculo del PIS y COFINS tuvieron un impacto positivo en los resultados presentados por las empresas en los años 2018 a 2021.

**Contribuciones del Estudio:** El principal aporte del estudio consiste en mostrar que las empresas, ante la inseguridad jurídica en el país, realizan diferentes opciones de registro/reconocimiento contable cuando se trata de derechos/obligaciones tributarias, ya que el tema que sustenta el objeto de estudio ha sido discutido durante casi 2 años hasta que su resultado final fuera favorable a las empresas en 2021.

**Palabras clave:** Activo Contingente. Impuestos a Recuperar. CPC 25. Base de Cálculo.

### Resumo

**Objetivo:** O objetivo do estudo foi demonstrar o tratamento contábil adotado pelas empresas listadas na B3, Novo Mercado, referente ao contencioso da exclusão do ICMS da base de cálculo do PIS e da COFINS, bem como demonstrar a mudança de tratamento contábil, pós decisão do Supremo Tribunal Federal, favorável as empresas em 2017, modulado em 2021.

**Metodologia:** A presente pesquisa tem caráter, descritiva, documental e qualitativa. A amostra inicial foi composta pelas demonstrações financeiras (Balanço Patrimonial, Demonstração de Resultado do Exercício e Notas e Explicativas) de 80 empresas do segmento do Novo Mercado da Brasil, Bolsa e Balcão - B3, entre 2018 e 2021 (inclusive). Após análise inicial, foram excluídas as empresas que não apresentaram informações dos créditos tributários provenientes da exclusão do ICMS da Base de Cálculo do PIS e da COFINS, resultando em uma amostra final de 34 empresas. Na análise desses dados, foram utilizados os sistemas de planilhas

eletrônicas Excel<sup>®</sup> e leitores de PDF (Foxit<sup>®</sup> e Adobe<sup>®</sup>), na busca das informações sobre o tratamento contábil dos créditos provenientes da exclusão do ICMS.

**Resultados:** Os resultados demonstram que houve uma mudança no tratamento contábil do registro desses créditos tributários. Em 2017, 8/9; em 2018 12/18; em 2019 5/27; em 2020 5/29, e; em 2021, 1/34 empresas registraram como Ativo Contingente. A mudança no tratamento iniciou-se em 2018, com 6/18; em 2019, 22/27; em 2020, 24/29, e; em 2021 33/34 empresas registraram como Ativo a Recuperar. Constatou-se também que os créditos oriundos da exclusão do ICMS da base de cálculo do PIS e da COFINS, impactaram positivamente nos resultados apresentados pelas empresas nos anos de 2018 a 2021.

**Contribuições do Estudo:** A principal contribuição do estudo, consiste em evidenciar que as empresas face a insegurança jurídica no país, fazem opções diferentes de registro/reconhecimento contábil, quando se trata de direitos/obrigações tributárias, pois o tema suporte do objeto do estudo, tramitou por quase 2 décadas até que teve seu desfecho final favorável as empresas em 2021

**Palavras-chave:** Ativo Contingente. Impostos a Recuperar. CPC 25. Base de Cálculo.

## 1 Introduction

Brazil has a complex and unequal tax system. According to the annual bulletin of Estimates of the Gross Tax Burden of the General Government, released in March 2023, the gross tax burden (CTB) of the government in general (federal, state and municipal) was 33.71% of the gross domestic product (GDP) for the year 2022. In addition, the World Bank developed the Doing Business Ranking 2020 (World Bank, 2020), a consultation system to determine the average time spent on opening, issuing licenses, paying taxes, executing contracts and other existing practices in companies. In this system, it is possible to identify that Brazil has an average expenditure requirement of 1,501 hours/year, just for the regular payment of taxes due in its operations, being at the time considered one of the highest tax burdens in the world, with the aggravating factor of being the one that consumes the most time in its calculation process (Oliveira, 2021).

Tax complexity in Brazil leads to a high rate of tax litigation by taxpayers, motivated by sociocultural, political and economic, regulatory and procedural aspects (Souza, Vargas, & Batista, 2019; Bueno, 2021). Due to this high tax burden in Brazil, companies seek legal solutions to reduce the percentages of taxes paid. As a result, the Brazilian judicial system has a high demand for tax cases pending at the Federal Supreme Court (STF).

In October 2023, the backlog of cases at the STF was 24,361 cases, of which 3,068 are cases in the tax area, which represents a percentage of 12.60% of the cases pending at the Supreme Court, whether original (10,277 cases) or appeals (14,084 cases) (STF, 2023).

Given the high number of tax disputes and lawsuits, in some cases the taxpayer manages to obtain a legal victory over the tax authorities. An example of these discussions is the issue of the exclusion of the Tax on Transactions related to the Circulation of Goods and on the Provision of Interstate and Intermunicipal Transportation and Communication Services (ICMS) from the calculation basis of the Social Integration Program (PIS) and the Contribution for the Financing of Social Security (COFINS), known as topic 69 of General Repercussion. The

defenders of this exclusion present arguments based on its financial, social and tax impact on companies and society. The discussions regarding the unconstitutionality of ICMS as the calculation basis for PIS and COFINS have been going on since the end of the 1990s, according to Extraordinary Appeal – RE No. 240,785/MG (STF, 2014). However, this discussion gained a new chapter in March 2017, when the STF, when judging topic 69, through Extraordinary Appeal No. 574,706/PR, voted for the unconstitutionality of ICMS in the calculation basis for PIS and COFINS (STF, 2017). After the decision, companies awaited the decision's modulation, to define which ICMS should be excluded from the calculation basis, whether it would be the ICMS paid, or the ICMS highlighted in taxed outputs. This modulation occurred in May 2021.

On May 13, 2021, the STF ruled on the infringing embargoes and decided that the ICMS to be excluded would be the ICMS highlighted in taxed outputs. This decision had its effects modulated (and retroactive) as of March 16, 2017. After this modulation, companies began to have the opportunity to recover these amounts paid in excess, during the period from March 2017 to May 2021.

Questions arose regarding the accounting of tax credits arising from the exclusion of ICMS from the PIS and COFINS calculation basis. Bueno (2021) justified the questions on two sides. The STF considered the accrual basis and the regulations of the Federal Revenue Service (SRF) (SRF Interpretative Declaratory Act No. 25/2003), which provides for the recognition of credits arising from tax disputes, which only occurs after the case has become final and binding, especially for the purposes of calculating Corporate Income Tax (IRPJ) and Social Contribution on Net Profit (CSLL) (SRF, 2003).

On the other hand, the SRF, through administrative instruments to regulate internal processes and procedures to be adopted by its inspectors, used the Internal Consultation Solution, COSIT No. 13 of 2018, to indicate that the amount to be excluded from the calculation basis would be the tax to be collected and not that indicated on the invoice (SRF, 2018). This characterizes a restrictive interpretation of the credit arising from the STF decision, reducing the amount to which the company would be entitled, even if a final court decision eventually ensures a more comprehensive right to the taxpayer.

The impact of the modulation of the STF decision was positive for companies, with the recording of untimely revenues in exchange for the assessment of recoverable taxes. For example, in 2021, the average increase in net income was 24.22% for the companies in the sample. This result corroborates those found in the study by Zago, Silva and Rigo (2022).

Regarding public coffers, a study prepared by the Brazilian Institute of Planning and Taxation (IBPT) in 2021 indicates that the financial impact will be approximately R\$358 billion, referring to the recovery of credits paid by companies in the period from 2003 to 2020, based on the exclusion of ICMS from the PIS and COFINS calculation basis. With the modulation of the effects of RE 574.706/PR in 2021, the government will save R\$230 billion. (IBPT, 2021).

In view of the above, scenarios are raised regarding the operationalizations by companies regarding this exclusion of ICMS, hence the following research question arises: What are the accounting treatments used by publicly traded companies on B3 regarding tax credits resulting from the exclusion of ICMS from the PIS and COFINS calculation basis? To answer the research question, the study aims to analyze the accounting treatment of credits arising from the exclusion of ICMS from the PIS and COFINS calculation basis of publicly traded companies listed on the Novo Mercado. This segment was chosen because it has different listing rules, intended for shares of companies that commit to adopting more consistent

corporate governance and disclosure practices in addition to what is required by law (B3, 2023). This research is justified in practical terms, because companies have concerns about accounting for the credits obtained, since accounting for these credits has a direct impact on their results. It is also justified by the fact that fraudulent situations have already occurred, in which irregular revenues from tax credits were used in their financial statements. The National Financial System Appeals Board, through appeal 13,343 on October 11, 2016, condemned the Banco do Estado do Sergipe for the practice of recording tax credits without certainty of their existence and necessary liquidity (Brasil, 2016).

Studies on tax economics (Yoshitake, Ferreira, Silva, & Marques, 2021), financial impacts (Teixeira & Machado, 2018) and the effects of the exclusion of ICMS from the PIS and COFINS calculation basis on companies (Zago, Silva, & Rigo, 2022) have demonstrated the relevance of the topic. In this sense, this research complements these studies, as it highlights the change in the accounting treatment of Contingent Assets, originating from tax/fiscal demands, complying with the accounting principles of measurement, recognition and disclosure, more specifically CPC 25/NBC TG 25 (R2).

## 2 Literature Review

### 2.1 National Tax System

The National Tax System (STN) is the set of laws that regulate the collection and collection of taxes throughout the Brazilian territory. It includes laws, decrees, ordinances, constitutional articles and normative instructions that regulate all areas of taxpayers (Costa, 2021). It is through tax collection that the State maintains public policies, such as health and education services, and makes investments in urbanization and basic sanitation (Klein & Plastina, 2018). The Brazilian tax system is composed of several types of taxes, and this research will address the concepts of social contributions (PIS and COFINS) and taxes (ICMS), and their directions, which are regulated by Law 5,172, of October 25, 1966 (called the National Tax Code).

As provided in article 3 of Law No. 5,172, the concept of Tax is defined as “any compulsory pecuniary payment, in currency or whose value can be expressed in currency, that does not constitute a sanction for an unlawful act, established by law and collected through a fully linked administrative activity”. According to Costa (2021), article 4 of the National Tax Code states that the hypothesis of incidence of the tax is the determining factor for establishing the legal nature of the tax species.

The ICMS is regulated by art. 155 of the Federal Constitution of 1988. The competence for its institution and other measures must be carried out by the States and the Federal District, which have their own internal regulations (Marques, 2010). It is the tax with the highest revenue in Brazil, in 2022, its revenue was 814.5 billion reais (Brasil, 2023). Another point noted by Marques (2010) is that ICMS is a state tax with internal charges that are generally included in the prices of goods and services. Its value is highlighted in the tax document and is the best example of taxation on consumption, since the value is integrated into the price of the product/service, directly impacting the end consumer.

According to article 13 of Complementary Law No. 87 of 1996, the ICMS calculation basis is the value of the transaction involving the circulation of goods or the price of the service provided. The calculation basis also includes the value of freight, if this is carried out by the

sender himself and is charged separately. The tax is non-cumulative, offsetting what is due in each transaction with the amount charged in previous phases by the state or another state entity, related to the circulation of goods or provision of services (interstate and intercity transportation, as well as energy and communication). Non-cumulative tax is understood as the right granted to the taxpayer to offset the amount charged in previous transactions with the amount due in his/her own transaction (Marques, 2010).

Due to the ICMS operating system, in which there is a cascading incidence and its offsetting through tax credits, the taxpayer who must pass on the tax rate to the State ends up receiving these amounts as if they were related to the sale of goods, since the tax is included in the price of the goods. In turn, the public treasury considers this amount as part of the entity's revenue, requiring it to be included in the calculation basis for PIS and COFINS contributions (Marcon, 2013).

There is no ICMS incidence on transactions that involve the transaction of goods abroad, books, newspapers or similar, presentation in electronic media, departure of goods from the service provider establishment covered by municipal taxation, among others (Marcon, 2013). Social contributions were established by the Federal Constitution of 1988, in its article 195, and amended by Constitutional Amendment No. 20/1998, with its concept of contributor being extended to include, in addition to the employer, as provided for by the Federal Constitution, companies and entities equivalent to it under the law. Among the contributions, the most notable are PIS, established by Complementary Law No. 7 of September 7, 1970, and COFINS, established by Complementary Law No. 70 of December 30, 1991.

Ferrarezi and Carleto (2005) emphasize that PIS and COFINS contributors are legal entities under private law in general and persons equivalent to them by income tax legislation, except for microenterprises and companies opting for the SIMPLES Nacional tax assessment regime. Law No. 9,715 of November 25, 1998, in its art. 3, defines that revenue is the gross income from the sale of goods in own-account transactions, the price of services provided, and the result obtained in third-party transactions. In this sense, the triggering event for PIS and COFINS contributions is the total monthly revenue (revenue) earned by the entity, regardless of name or accounting classification (Ribeiro & Pinto, 2014).

**Table 1**  
*Contingent Asset.*

Definition	These are characterized in situations in which, because of past events, there is a possible asset whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not fully under the entity's control.		
Accounting Treatment	The entry of economic benefits is virtually certain.	The entry of economic benefits is probable, but not virtually certain.	The entry is not probable.
Accounting Recognition	The asset is not contingent.	No asset is recognized.	No asset is recognized.
Disclosure in the Notes	Disclosure is not required, since this is an Asset that must be included in the entity's Balance Sheet.	Disclosure is required.	No disclosure is required.

**Source:** Adapted from *NBC TG 25 R2 (CFC, 2017)*.

Accounting must be guided by basic principles that guide the preparation and development of financial statements. Entities must continually reassess the treatment of a

Contingent Asset, because if their expectation of gain (success) with the inflow of resources becomes practically certain, the asset and related revenue must be recognized in the financial statements. Likewise, if the expectation of gain (success) of a Contingent Asset becomes probable, the entity must disclose it in explanatory notes (Lemes & Carvalho, 2010).

## 2.4 Related Studies

The study carried out by Bueno (2021) focused on publicly traded companies listed on B3 and members of the Ibovespa index at the end of 2020. The objective was to describe the accounting treatment applied to the tax recognition of revenues arising from court decisions resulting from the exclusion of ICMS from the PIS and COFINS Calculation Base, seeking to analyze the recognition of credits as assets or as contingent assets. The study concluded that approximately 1 in 5 companies recognized contingent assets due to the calculation of credits, which impacts the collection of IRPJ and CSLL by companies. It was also concluded that the matter was handled with extreme caution, even by companies that did not recognize contingent assets linked to tax recovery.

The study by Fonseca (2020) investigated the level of compliance of companies in the air transportation segment listed on B3, regarding the recognition and disclosure of provisions and contingent liabilities of tax origin. The financial statements of the companies Azul S/A and Gol Smart Airlines S/A were analyzed, for the period from 2016 to 2019. As a result, it was observed that these companies follow the guidelines of CPC 25 for the recognition and disclosure of provisions and contingent liabilities of a tax nature. However, both do not fully meet the requirements of the technical pronouncement, thus having, according to the author, an average level of compliance with CPC 25. It was also noted that the companies inappropriately use the term provision to address obligations that do not fit the definition given by CPC 25.

Among the reasons for which these provisions and contingent liabilities originated, the non-incidence of ICMS, PIS and COFINS on some of the operations carried out by Gol and Azul stands out. Through the comparison between the years, it was noted that the companies-maintained consistency in the information that is disclosed, Azul presented a better result than Gol in relation to the disclosure of provisions of tax origin. However, in relation to contingent liabilities of the same origin, Gol stood out more.

The study by Ribeiro and Oliveira (2021) analyzed compliance and the level of transparency in the disclosure of contingent assets and liabilities in the explanatory notes to the financial statements of the ten largest Brazilian companies, by market value, listed on B3, excluding those in the financial segment in the first quarter of 2020. The analysis was carried out by comparing the parameters established in the accounting literature, especially in CPC 25, and the content in the explanatory notes of the contingent assets and liabilities of these companies. The result revealed that the disclosure of the companies' contingent assets and liabilities is mostly in line with the accounting standards in force in Brazil, following the principles of full disclosure, transparency, and completeness of the information made available to the entity's stakeholders.

## 3 Methodological Procedures

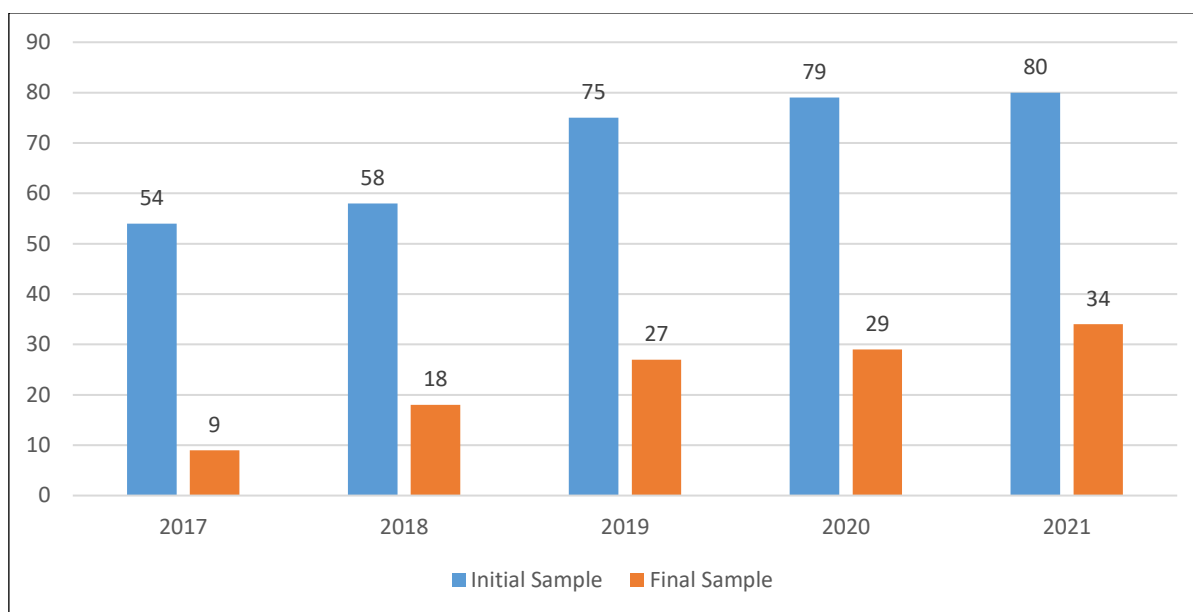
To compose the sample, this research used the financial statements (Balance Sheet, Income Statement and Notes and Explanatory Notes) of 80 companies in the Novo Mercado segment of Brazil, Stock Exchange and Counter - B3, between 2018 and 2021 (including), 20



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companies in the No-Cyclical Consumption sector and 60 companies in the Cyclical Consumption sector.

After the initial analysis, companies that did not present information on tax credits resulting from the exclusion of ICMS from the PIS and COFINS Calculation Base were excluded, resulting in a final sample of 34 companies, being 09 companies in 2017; 18 companies in 2018; 27 companies in 2019; 29 companies in 2019, and 34 companies in 2021. Figure 1 presents a summary of the sample.



**Figure 1** Companies analyzed by year

Source: Research data (2023).

Table 2 presents the companies that are the subject of the study, as well as the nomenclature of the asset traded on B3.

**Table 2**

List of companies analyzed

Company	Asset	Company	Asset	Company	Asset
ALLIED	ALLD	GUARARAPES	GUAR	QUERO-QUERO	LJQQ
AMERICANAS	AMER	IMC S/A	MEAL	SAO MARTINHO	SMT0
AREZZO CO	ARZZ	IOCHP-MAXION	MYPK	SLC AGRICOLA	SLCE
ASSAI	ASAI	JBS	JBSS	SPRINGS	SGPS
BRF SA	BRFS	LE LIS BLANC	LLIS	TECHNOS	TECN
CAMIL	CAML	LOJAS MARISA	AMAR	UNICASA	UCAS
CARREFOUR BR	CRFB	LOJAS RENNER	LREN	VIA	VIIA
CEA MODAS	CEAB	M.DIAS BRANCO	MDIA	VIVARA S.A.	VIVA
GRENDENE	GRND	MAGAZ LUIZA	MGLU	VULCABRAS	VULC
GRUPO NATURA	NTCO	METAL LEVE	LEVE	ZAMP S.A.	ZAMP
GRUPO SBF	SBFG	P. ACUCAR-CBD	PCAR		
GRUPO SOMA	SOMA	PETZ	PETZ		

Source: Research data (2023).

For data analysis, the financial statements available on the B3 website in structured reports and on the investor relations portals of the companies in the sample were used in order to identify the accounting treatment used by these companies in relation to these credits. The financial statements were analyzed individually to identify the accounting treatment used by the organizations in relation to the credits resulting from the Exclusion of ICMS from the PIS and COFINS Calculation Base.

For the analysis of this data, the Excel® spreadsheet systems and PDF readers (Foxit® and Adobe®) were used to facilitate the search for information on credits resulting from the exclusion of ICMS. After this search on the exclusion of ICMS from the PIS and COFINS calculation base, tables were created to analyze the treatment used by the companies in each year observed.

By tabulating the data, it was possible to identify the pattern used by companies to treat credits and any changes in the pre-modulation and post-modulation period of the STF, which occurred on May 13, 2021. Subsequently, the impact generated by any untimely revenues from credits from the exclusion of ICMS in the PIS and COFINS calculation basis in the period from 2017 to 2021 was analyzed.

## 4 Results and Analysis

### 4.1 Description of the Data from the Analyzed Sample

This study analyzed the financial statements of 80 companies, divided into 60 companies in the Cyclical Consumption sector and 20 companies in the Non-Cyclical Consumption sector. After downloading the accounting files available on the B3 portal, in the subtopics of structured reports, these were checked against the reports available on the companies' portals, under the Investor Relations icon. Based on this procedure, the individual statements were analyzed and the companies with information regarding the exclusion of ICMS from the PIS and COFINS calculation basis were selected. This procedure resulted in a final sample of 34 companies.

Table 3 lists the 34 companies that presented information regarding the exclusion of ICMS from the PIS and COFINS calculation basis, and it is possible to verify in chronological order how the accounting treatments were applied from 2017 to 2021.

**Table 3**  
*Chronological Evolution of Accounting Treatment*

Companies	2017	2018	2019	2020	2021
	Treatment	Treatment	Treatment	Treatment	Treatment
BRF SA	Contingent A. <sup>1</sup>	Contingent A. <sup>1</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
GRENDENE	Contingent A. <sup>1</sup>	Contingent A. <sup>1</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
GUARARAPES	Contingent L. <sup>2</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
IMC S/A	Contingent A. <sup>1</sup>	Contingent A. <sup>1</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
LOJAS MARISA	Contingent A. <sup>1</sup>	Contingent A. <sup>1</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
M.DIAS BRANCO	Contingent A. <sup>1</sup>	Contingent A. <sup>1</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
MAGAZ LUIZA	Contingent A. <sup>1</sup>	Contingent A. <sup>1</sup>	Recovered A. <sup>3</sup>	Contingent A. <sup>1</sup>	Recovered A. <sup>3</sup>
P. ACUCAR-CBD	Contingent A. <sup>1</sup>	Contingent A. <sup>1</sup>	Contingent A. <sup>1</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
VIA	Contingent A. <sup>1</sup>	Contingent A. <sup>1</sup>	Contingent A. <sup>1</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
CARREFOUR BR		Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>

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CEA MODAS	Contingent A. <sup>1</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
GRUPO SBF	Contingent A. <sup>1</sup>	Recovered A. <sup>3</sup>	Contingent A. <sup>1</sup>	Recovered A. <sup>3</sup>
LE LIS BLANC	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
LOJAS RENNER	Contingent A. <sup>1</sup>	Contingent A. <sup>1</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
SLC AGRICOLA	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
SPRINGS	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
TECHNOS	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
UNICASA	Contingent A. <sup>1</sup>	Contingent A. <sup>1</sup>	Contingent A. <sup>1</sup>	Contingent A. <sup>1</sup>
AMERICANAS		Recovered A. <sup>3</sup>	Contingent A. <sup>1</sup>	Recovered A. <sup>3</sup>
AREZZO CO		Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
ASSAI		Contingent A. <sup>1</sup>	Contingent A. <sup>1</sup>	Recovered A. <sup>3</sup>
CAMIL		Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
GRUPO NATURA		Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
IOCHP-MAXION		Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
PETZ		Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
QUERO-QUERO		Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
VIVARA S.A.		Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
GRUPO SOMA			Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
JBS			Recovered A. <sup>3</sup>	Recovered A. <sup>3</sup>
ALLIED				Recovered A. <sup>3</sup>
METAL LEVE				Recovered A. <sup>3</sup>
SAO MARTINHO				Recovered A. <sup>3</sup>
VULCABRAS				Recovered A. <sup>3</sup>
ZAMP S.A.				A. Recuperar <sup>3</sup>

1 - Contingent Assets; 2 - Contingent Liabilities; 3 - Assets to be Recovered

Source: Research data (2023).

Based on the data in Table 3, it can be seen that of the 34 companies that presented information about the exclusion of ICMS from the PIS and COFINS calculation basis, 13 companies initially presented contingent assets, 15 companies did not present information on contingent assets, only accounting for recoverable assets in their financial statements, and the remaining 6 companies presented information on recoverable assets, but did not have statements from previous years, which does not provide certainty as to whether the companies disclosed information on contingent assets.

In the analysis of the information collected, a gradual increase in information regarding PIS and COFINS credits was noted after 2017, which may reflect the STF decision that occurred in 2017, that ICMS should not be part of the PIS and COFINS calculation basis.

When analyzing by year, in 2017, of the 09 companies that presented information on the exclusion of ICMS from the PIS and COFINS calculation basis, 08 companies treated the credits as contingent assets, as provided for in CPC 25. This result corroborates the study by Fonseca (2020), as well as complements the research by Ribeiro and Oliveira (2021), as it demonstrates adherence to the accounting standards in force in the country (CPC 25). It is worth noting that in 2017, the company Atacadão S.A. did not constitute contingent assets, nor did it present PIS and COFINS credits to be recovered. However, the company pointed out in its explanatory notes that after the STF decision on the unconstitutionality of ICMS on the PIS and COFINS calculation basis, it stopped considering the incidence of ICMS in the calculation basis. However, the company reported the creation of PIS and COFINS credits to be recovered,

in the explanatory notes in 2017, and reported that it was no longer including ICMS in the PIS and COFINS calculation basis, but it did not provide information on the company's active legal actions.

According to the explanatory notes, Atacadão S.A (Atacadão Carrefour BR, 2017, p. 80):

With the non-cumulative system for calculating PIS and COFINS, the Group requested the right to exclude the ICMS amount from the calculation bases of these two contributions.

In March 2017, the Brazilian Supreme Court (“STF”), in the system of general repercussion, decided that “ICMS should not be included in the calculation basis of PIS and COFINS”. In September 2017, the STF decision was published.

Based on this decision and the legal opinions of its legal advisors, the Company believes that the outcome of the STF judgment on the merits is unlikely to change, which is why it stopped including ICMS in the calculation basis of PIS and COFINS in the 12-month period ended December 2017. The Group is evaluating and quantifying the recognition of credits related to periods prior to the 2017 financial year.

Another highlight is the company Guararapes Confeções S.A, which was the only one in the sample to present a different treatment of credits. Instead of constituting credits for the periods, it chose to exclude ICMS directly from the PIS and COFINS calculations and constituted provisions for tax liabilities during the period in dispute. However, in 2017, the company reversed these provisions, as per explanatory note No. 25.c.1.1. (Guararapes Confeções S.A, 2017).

The Parent Company, considering the favorable opinion of its attorneys assessing the possible loss, related to the exclusion of ICMS from the PIS and COFINS calculation basis, especially as a result of the decision handed down by the STF (RE No. 574,706), in March 2017 reversed the provision that had been constituted since 2007, when it obtained a preliminary injunction suspending the collectability of the disputed amounts. Parent Company and subsidiary Lojas Riachuelo, supported by new preliminary decisions, have been calculating and collecting these taxes monthly with the exclusion of ICMS from their calculation bases and without the constitution of a provision. The Administration awaits the judgment by the STF of the declaratory appeals filed by the Attorney General's Office of the National Treasury, dealing especially with the modulation of the effects of the decision handed down in March of this year, to estimate the amount of tax credit to be recovered, as well as to assess other past and future effects of this decision.

The Company's tax advisors consider the loss of the Company to be possible.

After the 2017 STF decision in 2018, there was an increase in the number of companies that presented information on the exclusion of ICMS from the PIS and COFINS calculation basis, consequently there was an increase in the different treatments observed for these undue amounts. For companies that did not constitute contingent assets, it was noted that these companies presented balances in the tax accounts to be recovered in 2018, due to judgments that became final after the STF decision. An important fact observed is that in the sample year 2017, 09 companies presented information on the exclusion of ICMS from the PIS and COFINS calculation basis. This number jumped to 18 at the end of 2018.

Based on the analysis of the financial statements, it is important to note that the companies that constituted recoverable assets in 2018, apart from the company Guararapes Confeccões S.A, did not present information on contingent assets in the 2017 financial statements; there was only recognition of revenue from recoverable credits, in exchange for the recoverable taxes account. This complements the results presented in the research by Bueno (2021), in which one in five companies constitute contingent assets. This may be motivated by the calculation of the determination of the credits, which directly impacts the collection of IRPJ and CSLL by companies (Moraes, 2018).

Also in 2018, it was observed that companies treated any tax credits as contingent assets, even after the STF decision. This fact may be motivated by the legal uncertainty that still existed, even after the STF decision. Starting in 2019, there was a change in the treatments observed. For companies that did not constitute contingent assets, it was observed that they presented balances in the accounts of recoverable taxes in 2019, due to judgments that became final after the STF decision in 2017. It was also noted that the number of companies analyzed grew, jumping from 18 companies in 2018 to 27 in 2019.

Of the companies that presented balances of recoverable assets, it was observed that until the 2018 fiscal year, they had not yet presented contingent asset balances, presenting only information on the recognition of credits after the final judgment of the actions. However, in 2019, it was observed that several companies presented favorable rulings regarding the recovered PIS and COFINS credits.

In 2019, there was a change in the accounting treatment. Most companies stopped presenting information such as contingent assets, used in 2017 and 2018, and started treating them as recoverable asset credits. The creation of recoverable assets directly reflects on the results obtained by companies, and in most cases, they are recorded as non-operating revenues. In 2020, the percentage of companies that created contingent assets is like 2019.

The onset of the Covid-19 pandemic in March 2020 was an event that directly affected several companies, causing losses and even the closure of some of them. Thus, the creation of recoverable assets, with direct impacts on results, served as a help for these companies that began to experience difficulties due to the pandemic. This effect may be one of the reasons that led to several companies that began to record the creation of recoverable assets, even though they did not present in their explanatory notes, lawsuits questioning the inclusion of ICMS in the calculation basis for PIS and COFINS.

The major change in accounting treatment occurred in 2021. Only one company maintained the constitution of a contingent asset for undue payments resulting from the exclusion of ICMS from the calculation basis, the other companies observed (33) presented information as assets to be recovered. This change is mainly due to the STF decision that occurred in May 2021, in which it decided that ICMS does not make up the calculation basis for PIS and COFINS, and the ICMS to be excluded is the ICMS highlighted in the note, after this decision the companies began to have their actions finalized, and with the favorable decisions, they were able to recognize these credits as assets to be recovered in exchange for untimely revenues. In the analysis of the financial statements to identify the accounting treatment applied to the recognition of credits arising from the exclusion of ICMS from the PIS and COFINS calculation basis, the company Unicasa Indústria de Móveis S.A. stands out. It was the only company not to present as an asset to recover the rights related to undue PIS and COFINS, in its financial statements. According to the company's explanatory note, it has not yet been successful in the action it is taking to have ICMS excluded from the PIS and COFINS

calculation basis, and because of this, it is presenting the constitution of the contingent asset, as provided for in Technical Pronouncement – CPC 25.

Explanatory Note No. 16 D) Provisions – Contingent Assets (Unicasa Indústria de Móveis S.A.)

If the third MS No. 5018133-45.2018.4.04.7107 becomes final and binding, if the Company is successful with these legal measures, it may request the decision from the SRF. At this time, and due to the specific circumstances of the Company's legal proceedings, the asset is contingent, in accordance with Technical Pronouncement - CPC 25, and no asset related to PIS and COFINS should be recognized in the individual and consolidated accounting information for this year, given the lack of final and binding MS 5018133-45.2018.4.04.7107, especially due to the possibility of reversing the case on appeal in view of the previous judgment in MS 2000.71.07.002357-1. In any case, we will keep the market informed of any relevant information regarding the matter. In fact, as of May/2021, the Company has already started to exclude ICMS from the calculation basis of Federal Contributions, in view of the STF decision in that same month regarding the definition of the calculation basis of the value “highlighted in NF” and the modulation of the effects of this topic.

It is observed that the company is operating in accordance with CPC 25, and since 2018 it has presented information on contingent assets in its financial statements.

#### 4.2 Impact of exclusion on the results presented

After identifying the accounting treatment used by the companies, we sought to demonstrate the effect of the exclusion of ICMS from the PIS and COFINS calculation basis in the organizations. To measure the impact of the tax credit presented, the amount of revenue presented in the Income Statement and the net profit in the year observed were analyzed, so that it is possible to identify the percentage of participation of the untimely revenue in the company's results.

In 2017, there was no constitution of recoverable assets. Therefore, there was no untimely revenue related to credits arising from the exclusion of ICMS from the PIS and COFINS calculation basis. Table 4 presents the amount of credit (in thousands of reais) and the percentage that this credit represents in the company's net profit (N/P).

**Table 4**

*Impact of Exclusion on Results from 2018 to 2021.*

Company*	2021		2020		2019		2018	
	Credit	% N/P	Credit	% N/P	Credit	% N/P	Credit	% N/P
ALLIED	133,593	46.35%	133,593	46.35%				
AMERICANAS	260,863	47.97%	260,863	47.97%				
AREZZO CO	138,426	40.27%	138,426	40.27%	46,364	95.43%		
ASSAI	216,000	13.42%	216,000	13.42%				
BRF SA	92,171	21.97%	92,171	21.97%	99,065	7.16%		
CAMIL	4,000	0.84%	4,000	0.84%	2,838	0.61%		
CARREFOUR BR							121,000	7.29%
CEA MODAS	245,200	74.53%	245,200	74.53%				
GRUPO NATURA	135,297	11.88%	135,297	11.88%				

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GRUPO SBF	39,734	7.98%	39,734	7.98%		
GRUPO SOMA	21,394	7.14%	21,394	7.14%	7,060	10.13%
GUARARAPES						1,167,782 94.51%
IOCHP-MAXION	249,649	46.47%	249,649	46.47%		
JBS	419,455	2.05%	419,455	2.05%	785,719	17.09%
LE LIS BLANC					21,971	1.10% 64,678 62.51%
LOJAS RENNER					1,363,029	124.33%
M.DIAS BRANCO	125,265	24.81%	125,265	24.81%	368,833	48.29%
METAL LEVE	116,687	20.58%	116,687	20.58%		
P. ACUCAR-CBD	280,000	29.17%	280,000	29.17%	1,609,000	73.84%
PETZ	6,304	8.40%	6,304	8.40%	12,521	21.44%
QUERO-QUERO	27,412	40.18%	27,412	40.18%	18,260	26.91%
SAO MARTINHO	49,109	3.32%	49,109	3.32%		
SLC AGRICOLA						27,926 7.32%
SPRINGS						208,924 187.26%
TECHNOS						58,363 406.17%
VIA					1,330,000	132.47%
VULCABRAS	126,080	40.17%	126,080	40.17%		
ZAMP S.A.	8,473	-3.09%	8,473	-3.09%		

\* Values in thousand reais

Source: Research data (2023).

In Table 4, in 2018, of the 06 companies that presented the constitution of assets to be recovered, 04 companies had a significant impact on their revenues, compared to their results presented. These credits may be refunded or offset, via the federal revenue system.

In 2019, 18 companies presented revenues from credits from the exclusion of ICMS from the PIS and COFINS calculation basis. These revenues had a significant impact on the companies' results. Of these, 05 companies presented revenues higher than the balances of net profits for the fiscal year 2019, thus demonstrating the importance of these revenues for the companies' operations. It was observed that some companies that presented negative results, when recording the untimely revenues from the exclusion of ICMS in the PIS and COFINS calculation basis, minimized their negative results with the constitution of these revenues. These results corroborate the study by Teixeira and Machado (2018).

In 2020, there was a reduction in the number of companies that presented information on the result obtained from untimely revenues, resulting from the exclusion of ICMS from the PIS and COFINS calculation basis. Of the 23 companies that presented information on recoverable assets, 12 companies disclosed these results, the other 11 companies only presented information on offsets and constitution of credits in previous periods.

The year with the highest number of companies with untimely revenues is 2021. This may reflect the STF decision that occurred in May/2021. In the analysis of the financial statements, it is possible to observe that the exclusion caused positive impacts on companies, the average percentage of the relationship between untimely revenue and the net profit of companies observed in 2021 was 24.22%. These results corroborate those found in the studies by Zago et al., (2022).

In this context, in 2021, 33 companies presented information on assets to be recovered, resulting from the exclusion of ICMS from the PIS and COFINS calculation basis. Of these 33 companies, 20 companies reported positive impacts on their results, which represents a

percentage of 60.60% of the companies analyzed in the study, below only the year 2019, when the percentage of companies that constituted assets to be recovered and reported the impacts on their results was 81.81%.

## 5 Final Considerations

This study sought to identify the accounting procedures adopted by companies in Brazil, Stock Exchange and Counter (B3), listed on the Novo Mercado, in relation to the accounting of tax credits arising from tax disputes over the exclusion of ICMS from the PIS and COFINS calculation basis, because of the STF decision in 2017.

The discussion on this topic lasted more than two decades, during which time some companies obtained favorable and others unfavorable opinions for the recovery of amounts that, in the taxpayers' view, were undue. Thus, in 2017, the STF decided that ICMS should not be part of the PIS and COFINS calculation basis. This decision, however, generated controversy as to how the calculation of these credits should be considered, since there were divergent interpretations between taxpayers and the Federal Revenue Service regarding what the ICMS basis would be for the purposes of excluding PIS and COFINS. Given these differences, it was only in May 2021 that the STF modulated the effects of the decision, defining that the ICMS highlighted in the invoices should not be included in the calculation basis for PIS and COFINS, and that this decision would have its effects applied as of March 2017.

Given the impact generated by this event and its importance within the tax context, some questions arose, which this research sought to answer. Through the analysis of the financial statements (Balance Sheet, Income Statement and Explanatory Notes) of the companies that make up the sample, this study sought to identify the accounting treatment used by the companies, in the period between 2017 and 2021 (inclusive), regarding these tax credits.

With the STF's decision in 2017 that ICMS should not be included in the calculation basis for PIS and COFINS, a gradual increase in the number of companies that presented information on the subject was noted. This shows that after the STF decision, companies began to feel more confident about recognizing this tax and began to be successful in their actions, justifying the increase in companies that began to record tax credits in their financial statements.

In the financial statements of the 34 companies analyzed in the period, 117 statements presented information on the accounting treatment used in relation to the exclusion of ICMS from the PIS and COFINS calculation basis. The accounting treatment as contingent assets was used by 08 companies in 2017, 12 in 2018, 05 in 2019 and 2020 and 01 in 2021, which represents a percentage of 39.31% of the sample. Regarding the recording of contingent assets, this is like the study by Ribeiro and Oliveira, (2021). However, starting in 2018, in addition to the number of companies, there was a progressive increase in the change in the way they were disclosed, with companies naming this record as recoverable assets. After the modulation in 2021, 32 of the 33 companies adopted this accounting treatment for these credits. Only one maintained the accounting treatment as a contingent liability. Unlike Fonseca (2020), this study observed that the companies adequately complied with the provisions of CPC 25.

As for the companies that constituted recoverable assets, the conclusion is that the exclusion of ICMS from the PIS and COFINS calculation basis positively affected these companies, as they obtained an average increase of 61.07% in their net profit with the constitution of these tax credits. This conclusion is like the study by Klein and Platina, (2018). This demonstrates the importance of companies having qualified professionals who follow



accounting standards, resolutions and principles, since the recognition of these credits significantly impacted the results presented by companies.

Finally, the results presented can serve as a basis for future research on the subject, in which the trend is that there may be a significant increase in companies including and recognizing credits to be recovered from the 2022 fiscal year, after the modulation of the effects of RE 574.706/PR and after Normative Instruction No. 2121/2022, which generated greater legal certainty for companies to exclude ICMS from the PIS and COFINS calculation basis. As a suggestion for further research, it would be appropriate to analyze the impacts of the exclusion of ICMS from the PIS and COFINS calculation basis for society, regarding the reduction of revenues for the federal government, since PIS and COFINS are social contributions that meet the needs of society. Therefore, what is the impact generated by the reduction of these revenues for society?

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