



General Audit Chamber
Algemene Rekenkamer



FINANCIAL STATEMENTS OF SINT MAARTEN 2016

January 2019

This report is an English translation of the original document entitled "Rechtmatigheidsonderzoek: Jaarrekening 2016 van het Land Sint Maarten". In the event of textual contradictions or any other differences, the original Dutch text will prevail.

PREFACE

The General Audit Chamber's fundamental task is the review of the annual financial statements of St. Maarten. While the budget is a forecast of public income and expenditure, the financial statements indicate the actual amount of money collected and spent. Government's priority, in the aftermath of hurricane Irma, is rebuilding. Government also had to contend with the consequences of numerous ICT-failures. Nevertheless, the fact that the 2016 Financial Statements were finally approved by the Council of Ministers at the end of October 2018, negatively impacts Parliament's review of minister's accountability for fiscal year 2016. As such, granting discharge to the ministers by Parliament is reduced to a formality.

Our audit results, not unlike those of recent years, are worrisome. Information provided in the financial statements is not sound, substantiation of the use of public funds is minimal, spending of public money was unlawful, and there is a lack of accountability to Parliament.

In the interest of sound financial management, it is important that Government recovers as soon as possible.

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SUMMARY

In this report, we address whether the 2016 Financial Statements of St. Maarten provide an accurate and true representation of the country's financial position, and give a proper account of income and expenditure at the end of December 2016. In addition, we report whether the financial statements were drafted in keeping with regulations, if financial activities were legally compliant, and whether the ministers delivered an orderly and auditable financial management.

Compared to the 2015, these Financial Statements contain fewer errors. However, the deficiencies identified in the financial management, remain unresolved. For practically every line item presented in the financial statements, there is uncertainty in terms of accuracy and/or completeness of reported amounts.

The 2016 Financial Statements, as well as those of fiscal year 2015, contain substantial legal compliance errors (actions not in accordance with laws and regulations). This means, for example, that expenditures were done in the absence of available budget. In addition, projected revenue was not realized or fell short of the budgeted amount. As an example of legal non-compliance, we refer to the expenditure of ANG 686,000 reported by the Ministry of General Affairs, for which funds were not budgeted. The value of financial errors has increased dramatically and is mainly due to the lack of (required) budget amendments.¹

Besides compliance errors with a financial impact, we identified failures to act in accordance with laws and regulations. Examples of this non-compliance include, issuing grants, and public tendering of services and projects. In the preface of the 2016 Financial Statements, the Minister of Finance claims that the informational value of the statements has significantly improved. We do not share this opinion.

Government's auditor, the Government Accounting Office Foundation (*Stichting Overheidsaccountantbureau - SOAB*), issues two audit opinions regarding the financial statements. One relates to the reliability² of the financial statements, and the other relates to financial compliance.³

The SOAB issued a disclaimer of opinion regarding the reliability of the 2016 Financial Statements. Our opinion differs. In our view, the future obligation for payment of the cost-of-living-allowance (*duurtetoeslag*), should be reported on the balance sheet as a financial provision. We consider this as a reliability error. It should be noted that the obligation is reported in the explanatory notes as an 'off-balance-sheet obligation'.⁴ SOAB's opinion is different on this matter, and as such, differs from our overall opinion regarding the reliability of the Financial Statement. In terms of financial compliance of the financial statements, our opinion does not differ from the negative opinion issued by the SOAB.

In addition to our regular review of the financial statements, we usually select a specific subject to investigate. For this fiscal year, we opted to examine public tendering. Our findings show there is insufficient insight at the ministries about this process. This makes accountability about deviations from public tendering, difficult.

Ministries do not have detailed regulations, nor do they maintain reliable information and documents for public tenders. As a result, the ministries could not provide us with information or documentation necessary to review legal compliance. Based on these findings, we conclude that the ministries are not 'in control' in terms of spending of public funds.

Because there are no detailed rules stipulated for public tendering, the ministries have no standards which they can apply for organizing and executing public tenders. As such, there is a risk that the contrasting methods used by the ministries for public tendering, are not as equitable as intended by regulation, and possibly less efficient as well.

¹ Article 49, sub 2 of the National Accountability Ordinance.

² Reliability means that the information in the financial statements is accurate, complete and adequately explained.

³ Financial compliance means that income and expenditure have been established in accordance with laws and regulations.

⁴ 2016 Financial Statements, C.6.10, page 114.

The Minister of Finance provided a reaction to the report on January 7th, 2019. His response and our epilogue are presented in Chapter 5.

RECOMMENDATIONS

Our recommendations are meant to assist in improving both the financial management of Government, as well as support Parliament's supervisory task. We note that, to date, our recommendations regarding Government's Financial Statements, are (almost) never followed; this happens despite the lack of improvement, and in some case, deterioration, in the quality, of the financial statements.

If the Minister of Finance, Government and Parliament do not intrinsically improve the execution of their respective roles, the financial management of the country will not advance. The fact that St. Maarten currently cannot obtain an unqualified audit opinion, supports the call for improvement.

Our recommendations, which we put forward in each report, remain unchanged:

Recommendations to Government for the improvement of the financial management:

1. Facilitate Parliament by including policy information as part of the financial statements. Without clear information, it is impossible to review whether the expenditure of public funds was legally compliant and effective, or if policy intentions were achieved;
2. Fully comply with the regulations of the National Accountability Ordinance;
3. Prepare the draft National Ordinance for the adoption of the financial statements in a timely fashion;
4. Execute the plans for the improvement of financial management. Keep us informed of the progress.
5. Draft detailed rules for the organization and execution of public procurement in accordance with article 47, sixth paragraph of the National Accountability Ordinance. In addition, regulate what is defined under the term 'disaster'.
6. Maintain a reliable registry of all procurement and include all relevant documents per public tender, in order to comply with the legal requirement related to accountability.

Our recommendations to Parliament:

1. Call the relevant minister(s) to account when information is absent. Information related to accountability is essential for the approval of the budget for the next fiscal year. Without reliable information, it is not possible to approve a sound budget.
2. Ensure that the draft National Ordinance for the establishment of the financial statements is presented to your Parliament in a timely fashion, in order to determine whether ministers will receive discharge or not.

As long as responsibility for the financial cycle of the Country is absent, financial management will not improve.

1 OUR AUDIT

1.1 Basis and scope of the investigation

We review the financial statements of Government on an annual basis. It is a legal requirement.⁵ Our report is presented to Parliament after which it becomes public.⁶ Parliament is required to consider our report.⁷ Our report provides Parliament with an important instrument in terms of discharging ministers of their financial responsibility. By granting discharge, Parliament approves of the ministers' financial management and their accounting thereof.⁸

1.2 Audit questions

We answer the following audit questions in this report:

1. Have the financial statements been drafted in keeping with the relevant requirements?
2. Have ministers provided orderly and auditable (verifiable) financial management?
3. Are income, expenditures and changes to the balance sheet in accordance with the approved⁹ 2016 National Budget and other regulations?
4. Do the 2016 Financial Statements of St. Maarten provide a reliable representation of the financial position as of December 31st, 2016, and give a fair and accurate view of the income and expenditures of the collective sector¹⁰ for the period January 1st, 2016, to December 31st, 2016?¹¹

In every report, we select a specific topic for additional review. For this year, we chose to examine the public procurement of Government. An additional audit question is:

5. Did the ministries comply with the stipulations of article 47 of the National Accountability Ordinance (hereafter: NAO), in terms of the purchase of goods and services for fiscal year 2016?

1.3 Reading guide

In Chapter 2, we discuss the reliability and content of the financial statements. Following this, in Chapter 3, we present our findings regarding the financial management, including whether the income, expenditures and changes to the balance sheet were drafted in accordance with the National Budget and other regulations. We also review whether financial management was orderly and auditable.

Chapter 4 contains the results of our examination of the public procurement for fiscal year 2016.

We conclude our report with the response of the Minister of Finance, supplemented by our epilogue (Chapter 5). In the annexes of the report, we provide an overview of the deviations from the articles of the NAO, the completeness of the summary templates, a list of serious and long-standing deficiencies of the administrative organization and internal control (AO/IC)¹², as well as a short explanation of the types of audit opinions.

⁵ National Ordinance General Audit Chamber (NAR), article 23 and the National Accountability Ordinance (NAO), article 53, third paragraph.

⁶ Constitution, article 100, fourth paragraph.

⁷ NAO, article 54, fourth paragraph.

⁸ NAO, article 54.

⁹ NAR, article 23, second paragraph.

¹⁰ Government and institutions that provide social services: facilities that are collectively paid for and which everyone can use.

¹¹ NAO, article 2.

¹² AO/IC is the abbreviation for Administrative Organization and the related Internal Control. A properly established and functioning AO/IC guarantees that objectives will be achieved and reliable (accountability) information is available.

2 THE FINANCIAL STATEMENTS

The financial statements¹³ represent the conclusion of the financial cycle. The Minister of Finance is responsible for drafting the financial statements.¹⁴ Each minister is responsible for providing the Minister of Finance with the necessary financial information in a timely fashion.¹⁵ Ministers give account for their financial policy¹⁶ and expenditure in the financial statements.

The financial statements, along with an explanatory memorandum, must provide sufficient insight into the financial position, as well as the income and expenditure, so that an informed opinion can be reached.¹⁷ This means that the information in the financial statements must be correct, complete and sufficient (reliable), to allow the reader to form an opinion about the financial management. In other words, the financial statements must provide a true and fair description.

Additionally, the financial statements must be drawn up in accordance with relevant legal requirements.

In this Chapter, we answer whether the financial statements provide a fair and true description, and whether they have been drafted in keeping with relevant requirements. The chapter concludes with our opinion.

2.1 Presentation of the financial statements

The Minister of Finance is required to provide the financial statements to the Board for Financial Supervision (*College financieel toezicht* - Cft) on August 31st. If the Minister has been unable to draft the financial statements, he must provide whatever version he has at his disposal to the Cft.¹⁸ Moreover, the National Accountability Ordinance, requires drafting of financial statements prior to September 1st.¹⁹ We conclude that the Minister did not comply with either legal requirement. The financial statements are dated October 24th, 2018, and were approved by the Council of Ministers on October 30th, 2018. The financial statements were presented to us on November 16th, 2018.²⁰

Drafting the 2016 Financial Statements proved to be an arduous and lengthy process. We expressed this in several letters to the Minister of Finance. Information provided to the General Audit Chamber regarding the progress in drafting the financial statements, was often contradictory. For example, on January 3rd, 2018, the Minister indicated that the presentation of the financial statements would take four to six weeks, and as such could not be completed prior to the end of January 2018.²¹ Subsequently, the Minister twice postponed presentation of the financial statements, while also claiming great progress.²² Eventually, the 2016 Financial Statements were presented in the fourth quarter of 2018.

The Minister of Finance is not authorized to unilaterally postpone the legal deadline for the presentation of the financial statements; a fact we communicated to him in correspondence dated October 5th, 2018. In this correspondence, we also requested clarification regarding the 'significant progress' reported by the Minister. In response, the Minister indicated that substantial progress is evident in, among others, the presentation of the financial statements for fiscal years 2013 and 2014 to Parliament, as well as the initiation of preparatory work for drafting of the 2017 Financial Statements. Furthermore, the Minister

¹³ NAR, article 23, third paragraph.

¹⁴ NAO, article 52, first paragraph.

¹⁵ NAO, article 52, second paragraph.

¹⁶ NAO, article 32, second paragraph.

¹⁷ NAO, article 2.

¹⁸ Article 18 of the Kingdom Law on financial supervision.

¹⁹ NAO, article 52, first paragraph.

²⁰ Letter, reference DIV#2958/A, dated November 16th, 2018.

²¹ Letter from the Minister of Finance dated October 3rd, 2018, without reference number.

²² Letter from the Minister of Finance tot eh General Audit Chamber, dated March 19th, 2018, and the letter from the Minister of Finance to the chairperson of Parliament, dated September 21st, 2018.

reported that, based on consultations with colleagues, more awareness was created within government regarding the process of financial statements. Unfortunately, we conclude that the persistent delays in presenting the financial statements, as well as the progress mentioned by the Minister, has, to date, not resulted in an improvement in the quality of the financial statements.

Repeated deferrals for drafting the financial statements, negatively impacts the financial budget cycle. Information regarding budget realization is required for the preparation of subsequent budgets. It is difficult, if not impossible, to prepare a reliable budget, when dependable information regarding realization of the previous budget is unavailable.

2.2 True and fair representation

2.2.1 SOAB's activities

On November 16th, 2018, the 2016 Financial Statements were presented to the SOAB for audit.

On December 14th, 2018, SOAB presented their findings and audit opinion on the 2016 Financial Statements to the Minister of Finance and the General Audit Chamber. SOAB issued a disclaimer of opinion regarding the reliability of the financial statements.²³

We evaluated SOAB's activities²⁴ in terms of their audit of the 2016 Financial Statements. After assessing their work, we concluded that we can use their audit findings.

However, our opinion regarding the obligation for cost-of-living-adjustments (*duurtetoeslag*), differs from that of the SOAB.

The Ministry of Finance believes that given the strong relationship between the cost-of-living-adjustment, salaries and social costs, and the fact that the adjustment is used as the basis for calculating income tax, he is acting in accordance with the NAO by not making a provision on the balance sheet for this future obligation.

In our estimation, the obligation for future payments of cost-of-living-adjustments should have been included on the balance sheet. In accordance with NAO article 28, an obligation for which the amount is unsure at balance sheet closure, but for which a reasonable estimate can be made, should be recorded on the balance sheet. The obligation in question is not recorded as such, but rather, is mentioned in the explanatory notes as an 'off-balance-sheet obligation'.²⁵ This is not in compliance with NAO 28 and as such, we consider this a reliability error. The SOAB does not.

In light of the size of the obligation (ANG 121,5 million), this reliability error is material and profoundly impacts the financial statements. As a result, we maintain an adverse opinion of the 2016 Financial Statements.

2.2.2 Errors and uncertainties

Errors

Government engaged an actuary to calculate the obligation related to the cost-of-living-adjustment.²⁶ The calculated amount is ANG 121,5 million. In accordance with the NAO, the obligation should have been included on the balance sheet as a provision. This allows for insight into the financial position.

²³ For further clarification about audit opinions, see annex 4.

²⁴ NAR, article 25.

²⁵ 2016 Financial Statements, C.6.10, page 114.

²⁶ Article 103 of the National Ordinance on Civil Service Pensions.

The obligation is not recognized as a provision on the balance sheet, but rather is recorded in the balance sheet notes as an 'off-balance-sheet-obligation'. We consider this a reliability error which is material in scope, and with significant impact on the financial statements.

The amounts recorded in the Financial Statements are not sufficient to provide a reader with a complete picture of the results of financial management and policy. The amounts and figures require clarification. The 2016 Financial Statements, similar to previous years, are deficient in this regard. The lack of adequate explanatory notes about balance sheet items, and income and expenditures, is also an error in reliability. We will discuss the lack of information regarding the achievement of policy intentions in section 2.2.3.

We identified several errors besides the aforementioned reliability errors. As these were not material in nature, no further mentioning is necessary.

Uncertainties

As we have done in previous reports, we identify (section 3.2.1) the procedures and directives required for the execution of (lawful and efficient) fulfillment of public tasks, that we consider inadequate in design, and inadequately supervised by Government to ensure compliance. There is insufficient audit-information to determine (externally and internally) the accuracy and comprehensiveness of items reported in the financial statements. The extent of the uncertainties is material and significantly impacts the Financial Statements.

2.2.3 Achievement of policy intentions

Each minister is required to submit spending estimates to the Minister of Finance no later than May 1st of each fiscal year. An explanation of the intended policy for the coming year must accompany these estimates.²⁷ At the end of the financial cycle, a report is drafted describing the implemented policy. This information is found in a separate memorandum included with the financial statements. The report must explain whether, and to what extent, policy intentions were achieved.²⁸

In the explanatory memorandum of the 2016 National Budget, the Minister of Finance stated that the budget was drafted during a turbulent period (change of Government), and because of this, detailed and extensive policy was not drafted. The budget was characterized as a 'caretaker' budget.²⁹ However, the financial statements do include a separate comprehensive memorandum. It states that "the process of accountability for the achievement of policy intentions is currently still not entirely satisfactory."

We established that each ministry provided an evaluation on policy, operations, and a financial analysis of results.

Because policy intentions are not explicitly formulated and not quantified, it is impossible to report the degree to which policies were achieved. Without sufficient evaluation of the implementation of policies, Parliament is deprived of essential information. We recommend that policy intentions are defined as SMART³⁰ as possible by the relevant ministries. That would provide a basis for evaluation.

2.3 Are the Financial Statements prepared in accordance with the NAO?

The NAO stipulates what the financial statements must contain.³¹ We reviewed whether the financial statements were compliant. Annex 1 contains a summary of the items found to be non-compliant.

²⁷ NAO, article 34.

²⁸ NAO, article 32, second paragraph.

²⁹ Elucidation on the draft National Budget for fiscal year 2016, preface, page 3 of 42.

³⁰ SMART means: policy intentions that are Specific, Measurable, Realistic, and Time-based.

³¹ Chapter 3 of the NAO.

2.3.1 Composition errors

The NAO requires a specific composition for the financial statements. Although the 2016 Financial Statements contains all the legally required summary templates, we established that only 61% of these templates were completed correctly. This is an improvement as compared to the 2015 Financial Statements. Table 1 presents the percentage of correctly and incorrectly completed summary templates for fiscal years 2016 and 2015.

Table 1: Percentage of correctly and incorrectly completed summary templates for 2016 and 2015

Summary Templates	2016	2015
Correctly completed (in %)	11 (61%)	8 (44%)
Incorrectly completed (in %)	7 (39%)	10 (56%)

One of the main reasons for this situation, in our opinion, is the lack of (financial) detail at ministry level. The Minister of Finance does not receive the required supporting data from other ministers and enterprises to explain the figures.³² A listing of the correctly and incorrectly completed summary templates is presented in Annex 2.

2.4 Opinion

Our opinion

Given that the Financial Statements contain material errors and uncertainties of profound influence, we believe that the 2016 Financial Statements and the explanatory memorandum, do not provide a true and fair representation of the size and structure of the financial position and year-end results. Furthermore, the statements are not prepared in keeping with the stipulations of the NAO.

We noted a slight improvement in the composition of the Financial Statements, which we quantified in table 1 and annex 1. The explanatory memorandum, similar to previous years, is insufficient in terms describing achievement of policy intentions.

³² Such as implementation status reports as mentioned in article 18, Kingdom Law Financial Supervision.

3 FINANCIAL MANAGEMENT

We present the results of our audit of government's financial management in Chapter 3.³³ The question whether the income, expenditure and balance sheet changes were achieved in accordance with the 2016 National Budget and other relevant regulations, is addressed. This is referred to as financial compliance. We also report on the presence of an orderly and auditable financial management.

3.1 Financial Compliance

3.1.1 SOAB's activities

In its audit opinion, SOAB indicates that the income, expenditure and balance sheet changes recorded in the Financial Statements, do not meet the requirements necessary for financial compliance. This means that the recorded amounts are not in keeping with the National Budget and other relevant regulations. The SOAB issued a negative opinion on financial compliance.

3.1.2 Execution of the 2016 budget

The Minister of Finance is required to inform both Parliament and the General Audit Chamber about the execution of the budget. In 2016, the Minister of Finance failed to provide Parliament, and us, with the legally required information. This hampered Parliament's supervisory task, and our monitoring.

3.1.3 Legal compliance errors

Income, expenditure or balance sheet changes that are not in keeping with the National Budget or other legal regulations, are considered (legal) compliance errors.

Table 2 presents the total overruns and underruns of Parliament and the ministries, as reported in the 2016 Financial Statements.³⁴ Overruns include income and investments that fall short of the budget.³⁵ Underruns relate to fewer expenditures than budgeted or excess receipts (income).

Table 2: Budget overruns and underruns of Parliament and the ministries according to the 2016 Financial Statements

Parliament & Ministries	Overruns (x ANG 1.000)	Underruns (x ANG 1.000)
Parliament	3.342	4.380
General Affairs	13.503	13.630
Finance	36.696	16.435
Justice	13.335	11.776
Education, Culture, Youth & Sport	5.889	8.197
Tourism, Economic Affairs, Traffic & Telecommunication	28.211	18.635
Public Housing, Spatial Planning, Environment, & Infrastructure	2.361	6.637
Public Health, Social Development & Labor	32.107	22.085
Total	135.443	101.775

³⁴ 2016 Financial Statements, Summary Template 18.

³⁵ NAO, article 48, second paragraph.

The above information indicates non-compliance in excess of ANG 135 million and expenditures 30% above the amounts approved by Parliament for the National Budget.³⁶ Underruns are the opposite of overruns. When combined, the resulting balance is an overrun of ANG 32 million on the 2016 National Budget.

In our view, budgetary overruns are unnecessary and can be avoided. After all, when Parliament is provided with the required memoranda throughout the fiscal year, there is an opportunity to adjust the budget. Budget amendments can be presented along with the memoranda, if necessary.³⁷ The NAO stipulates that impending budget overruns should be avoided as much as possible by means of appropriate and timely measures.³⁸

In addition to budgetary overruns, we found a lack of compliance with legislation and regulation. Examples include public procurement of services and projects, and granting of subsidies. Chapter 4 of this report provides specifics about our examination of the procurement procedure.

3.2 Orderly and auditable financial management

Financial management is considered to be orderly when the authority to act is clearly regulated and there is compliance with the rules. This is also referred to as administrative organization and internal control (AO/IC).

Auditable or verifiable financial management is evident when the available financial information allows external auditors to constantly and simply, reconstruct decision-making. It is essential, that all phases of the process is registered and documented.

3.2.1 Deficiencies

We determined that the procedures and directives required for fulfilling public tasks in a responsible (lawful and efficient) manner, are not properly organized. Moreover, we noted that Government does not adequately monitor legal compliance. This is a serious situation. Government has been repeatedly advised about how to resolve the deficiencies in reports on the financial statements from both the SOAB and the General Audit Chamber, in management letters (hereafter: ML) issued by the SOAB, and in reports from the Cft. Despite good intentions and previous agreements, there is a lack of improvement.

The deficiencies represents risk for the accuracy and comprehensiveness of the figures reported in the financial statements. Just as was the case in previous years, the 2016 Financial Statements reveal inadequate internal control procedures at all ministries. As a result, there are material uncertainties that profoundly influence the financial statements. Table 3 lists the identified uncertainties.

In this table, we show that deficiencies are found in most items reported in the financial statements. These line item deficiencies are found at every ministry, meaning individual ministers failed to meet their respective legal obligations for providing efficient operations at the ministry under his/her charge.³⁹ We reached the same conclusion in our previous audits. It should be clear to everyone, that getting the financial management in order deserves the highest priority. Sound financial management is a prerequisite for the proper accountability that is required by law.

³⁶ Article 2 of the National Ordinance for the adoption of the National Budget of St. Maarten for fiscal year 2016.

³⁷ Article 44 of the NAO stipulates that presentation of interim reports and the possibility to present a budget amendment, occurs at specific times: May 15th, August 15th and November 15th.

³⁸ NAO, article 48, first paragraph.

³⁹ NAO, article 41, second paragraph.

Table 3: Overview of identified deficiencies in the financial statements by line item

Economic category	Amount in ANG x 1.000	Uncertainty in ANG x 1.000	In % of amount
INCOME			
Taxes	366.046	366.046	100
Licenses/permits	16.694	-	0
Concessions, fees and other contributions from institutions	59.233	24.216	48
Contributions & subsidies	0	-	-
Divestments	0	-	-
Release of provisions	9.026	-	-
Other income	16.784	2.500	15
Total income	467.783	392.762	84
EXPENDITURES			
Personnel	217.904	217.904	100
Goods and services	94.146	94.146	100
Social Services	31.908	21.913	69
Grants and transfers	96.436	96.436	100
Scholarships	3.622	3.622	100
Asset devaluation	10.490	-	-
Depreciation	9.857	-	-
Losses on divestments	0	-	-
Interest	16.990	-	-
Total Expenditures	481.353	434.021	90
Total income and expenditures	949.136	826.783	87

The “-” in the table represents items where the deficiency could not be quantified. This does not mean that there is certainty about the accuracy and/or completeness of the item in question.

In every case, uncertainty was caused by deficiencies in financial management.

3.3 Implementation of sub-projects for improving financial management

On June 16th, 2016, the Council of Ministers approved the project plan Approach for Improving Financial Management 2015-2017 (*Plan van Aanpak verbetering financieel 2015 – 2017*). The project plans are designed to improve financial management and, in so doing, resolve the deficiencies and (legal) compliance errors. The Minister informed us on July 24th, 2017, that the implementation of the project plan was on schedule for 2017.⁴⁰ However, there is no evidence of this.

We recently learned from the report “*Working Towards a Sustainable Financial Future for Sint Maarten*”, that the project has stopped, and as a result, improvement of the financial management is further bogged down. The report also mentions that the Minister of Finance will issue a general plan to restart the process at the end of October 2018.⁴¹

In a letter dated December 3rd, 2018, the Minister of Finance states that there is an agreement with the Cft to ensure that the 2021 Financial Statements receive an unqualified

⁴⁰ Letter dated 24 July 2017, attribute 2270/17B.

⁴¹ Section 4.2 of the report: “Working towards a Sustainable Financial Future for Sint Maarten”.

audit opinion. The Minister further indicates in the letter, that the ministry is working diligently to review the approach and design of the entire project.⁴² Finally, the Minister writes that he will provide us with information in January 2019, after the plan has been handled in the Council of Ministers.

As was the case with the presentation of the 2016 Financial Statements, the schedule regarding this plan is being pushed forward. After all, the plan was supposed to be delivered at the end of October 2018.

3.4 Opinion

Our Opinion

Income, expenditures, and balance sheet changes do not comply with the 2016 National Budget and other regulations.

Our audit results, the audit opinion and SOAB's audit report, indicate that Government's financial management is not in order, and it has not been in order from the inception of the country on October 10th, 2010. We have not seen improvement.

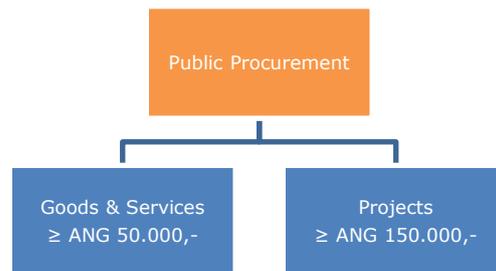
⁴² Reference number: DIV#2864/B.

4 PUBLIC PROCUREMENT

4.1 Accounting regulations

To ensure the most efficient use of scarce resources, and to guarantee a fair and open process, specific rules were drafted.⁴³ For example, in principle, all purchasing is open and should be publicly procured. A public tender is a method of purchasing whereby business or entrepreneurs who wish to sell a service or product, are able to make an offer based on price and quality. This system is illustrated in Figure 1.

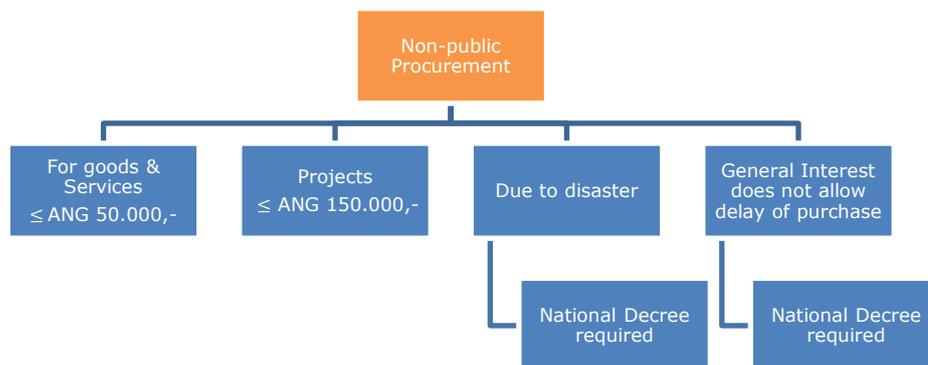
Figure 1: Public Procurement



In certain cases, public procurement is not required. For example, in situations where the amount of the purchase for goods or services is less than ANG 50.000,00, and ANG 150.000,00 for the execution of projects.⁴⁴

Moreover, in cases where procurement is done as a result of a disaster or in cases where the public interest precludes delay of the purchase, the requirement for a public tender can be waived. However, there is a condition that the Minister of Finance must present the waiver. Figure 2 provides an illustration of the process.

Figure 2: Non-public procurement



Because the process is subject to audit via the approval of the financial statements, in cases where public procurement procedures are waived, the Minister of Finance is accountable. To this end, article 47, sixth paragraph of the National Accountability Ordinance, requires Government to set forth detailed regulations for, among others, the organization of the procurement procedure.

⁴³ NAO, article 47.

⁴⁴ NAO, article 47, third paragraph.

Such regulations allow government procurement to be uniformly organized, which is in the benefit of all potential suppliers. Expenditure of public funds should, after all, occur in a fair and transparent fashion.⁴⁵

The Minister of Finance can advise regarding deviating from the procurement procedure. The Ministry of Finance is expected to be aware of all proposed procurement, including the justification for waiving the requirement for public tenders.

The main question related this audit topic is:

Did ministries comply with the requirement for public procurement when procuring goods and services, and executing projects?

To answer this question, we examined whether:

- if detailed regulations were drafted (by national decree) to regulate public procurement methodology, including the procedure for procurement when waiving the requirement of publicly tendering;
- there are national decrees (public tender waivers) issued by the Minister of Finance in all cases of non-public procurement.

4.2 Findings

4.2.1 Detailed regulations

We determined that Government has not yet established detailed regulations by National Decree containing general measures, for the organization and implementation of public procurement.⁴⁶

When asked, ministries informed us that they act in accordance with 'commonly used rules of the civil service'. When dealing with invitations to tender, the departments of 'New Projects' and 'Infrastructure Management' ('*Nieuwe Werken*' en '*Beheer*') of the Ministry of Public Housing, Spatial Planning, Environment and Infrastructure (*VROMI*), use the guidelines of the FIDIC.⁴⁷

The Ministry of Finance prepared a manual entitled Procure-To-Pay. This manual describes procedures for the purchase of goods, services and projects. According to the ministry, the manual is used at four ministries.⁴⁸ The manual has been amended a number of times, most recently on November 23rd, 2016, based on experience at these ministries. However, the manual has not been formally adopted.⁴⁹

Because there are no formally established rules, the ministries do not have a standard which they can apply when organizing and implementing public tenders. Hence, there is a risk that the manner in which public procurement is organized and executed by the various ministries, is less fair and transparent than was legally intended, and that procurement is less efficient. Figure 3 illustrated how this works in practice.

Figure 3: the procurement situation in practice



⁴⁵ Explanatory Memorandum of NAO, article 47.

⁴⁶ NAO, article 47, sixth paragraph.

⁴⁷ FIDIC means: Fédération Internationale des Ingénieurs-Conseils.

⁴⁸ The Ministries of General Affairs, Public Health, Social Development and Labor, Finance and Justice.

⁴⁹ Written confirmation from the interim Secretary-General of the Ministry of Finance, dated November 14, 2018.

4.2.2 Deviation from the public procurement requirement

We asked the Ministry of Finance for a registry of all the variations from the tendering procedure. The Ministry of Finance informed us they do not maintain such a registry.⁵⁰

All ministries were asked to provide a listing of invitations to tender, specified by public and non-public tendering.

No ministry had reliable information on tenders organized and executed in fiscal year 2016.

The reason for this situation, is that proposed or actual tenders are not formally documented. As a result, the ministries cannot readily give account for compliance with article 47 of the NAO, and there is no way to determine, after the fact, whether the ministries indeed acted in accordance with procurement rules.

Due to the fact that the ministries do not maintain reliable information on procurement, it is possible that the data we received from the ministries is incomplete.

The aforementioned means that we cannot provide certainty regarding the number and nature of the deviation from the rules. There is a chance that there are more deviations than we were able to identify. Figure 4 illustrates this.

2016 Figure 4: The consequences of the lack of a reliable procurement paperwork for fiscal year



Based on the information and documentation provided by the ministries, we examined when deviations from the public tendering requirement took place, whether this was done by means of a proposal from the Minister of Finance, and if so, whether the waiver was granted by National Decree. A listing, per ministry, of our findings based on audited public tenders is available in annex 5.

The annex shows that the General Audit Chamber was unable to determine whether a public tender actually took place on the basis of documentation provided to us, in 17 cases. For the non-public tenders, we were unable to establish whether the required proposal from the Minister of Finance was present in 8 cases. The (signed) proposals from the Minister of Finance were missing. The likelihood of non-compliance with article 47 NAO is evident in these cases.

In the event of a disaster, or if the public interest opposes delay of procurement, the requirement for public tendering can be waived.⁵¹ The NAO does not further specify what is defined under disaster or in which cases the public interest opposes delay. We determined that for seven of eighteen invitations to tender examined by us, no justification was provided for deviation from the requirement for public tendering. In eleven cases, the public interest was stated as the reason for the deviation, but in these cases there was also no further justification provided.

⁵⁰ Written confirmation from the interim Secretary-General of the Ministry of Finance, dated November 14, 2018

⁵¹ NAO, article 47, fourth and fifth paragraph.

4.2.3 Other findings – Centralized purchasing

Article 13 of the National Ordinance *structure and organization of national government* stipulates that the Ministry of General Affairs is responsible for providing support services for all ministries, including centralized purchasing. The definition of support services has been left open to interpretation. According to the Ministry of General Affairs, they are responsible for centralized purchasing, including public tendering, for all ministries⁵². We determined that the all ministries manage their own procurement, including public tendering.

4.3 Opinion

The National Accountability Ordinance requires that detailed rules are drafted to govern public tendering. No such rules have been drafted by Government since the inception of the country on October 10th, 2010. It amazes us that the manual drafted by the Ministry of Finance, entitled Procure-to-Pay, is not required for all ministries. As a result, the process of public tendering is not uniformly organized, and there are fewer guarantees for fair and transparent tendering than intended by law.

Due to insufficient insight into the tendering process, ministries are unable to provide proper accountability for deviations from public tender requirement. They do not possess approved detailed rules, nor reliable information and documentation regarding public tenders that have taken place. As such, the ministries were unable to provide us with the required information and documentation to confirm compliance with the NAO. Based on these findings, we are of the opinion that the ministries are not 'in control' of public funds as far as public tendering is concerned.

The lack of adequate substantiation for tenders that deviated from the public bidding requirement, means that there is a risk that interests, other than those of the public, may have been a determinant factor.

⁵² Approved minutes of meeting with the Ministry of General Affairs, May 30, 2017.

5 RESPONSE FROM THE MINISTER AND OUR EPILOGUE

5.1 The Minister of Finance's response

The following is the translation of the reaction of the Minister of Finance

To: General Audit Chamber
Attn: Mrs. Joane Dovale-Meit, Secretary-General
Juancho Yrausquin Blvd #10, unit 4 & 5

Date: January 7, 2019
Our Ref: DIV#2958/D
Your Ref:
Subject: Reaction to your draft final report "Compliance audit: 2016 Financial Statements of St. Maarten"

Esteemed Mrs. Dovale-Meit,

Thank you for presenting the draft final report "Compliance Audit: 2016 Financial Statements of St. Maarten, including the findings and recommendation contained therein.

Your report contains many findings that we, as government, must consider for improving our responsibility for policy and financial results for the fiscal year in question. It is therefore important action is taken on the most important shortcomings as listed in annex 3 of the draft report. Such will be accomplished by means of implementation of the project "Plan for Improving Financial Management" (hereafter: PVA Financial Management), which, as stated in section 3.3 of the report, is currently being revised in both approach and organization. The project will also ensure that we meet our goal of an unqualified opinion for the financial statements of fiscal year 2021.

Despite the many challenges we face for improving financial management and the quality of the financial statements, we are pleased to learn from your report that the General Audit Chamber identified some progress. The evidence of this is found in the tables presented in annex 1 and 2 of the report, as well as in the Summary, where you state that the 2016 Financial Statements contain fewer errors than those of the previous year, 2015. This is trend that will definitely continue in coming years.

By means of this letter, I present you with my response to the most essential findings of the draft final report, as well as my reaction to the report's recommendations.

1. *The General Audit Chamber concludes that the Minister of Finance did not comply with the legal requirement for presenting the Financial Statements on time. Repeated deferrals for drafting the financial statements, negatively impact the financial budget cycle.*

A variety of internal and external factors caused the late drafting and presentation of the 2016 Financial Statements. The causes include, among others, several hacking and malware attacks on the ICT system, as well as hurricanes Irma and Maria in 2017. All that is possible is currently being done to make up the backlog, and to facilitate timely preparation and presentation of financial statements. The 2017 Financial Statements are expected to be presented to Parliament in the second quarter of 2019, and we anticipate presenting the 2018 Financial Statements on time.

2. *It is the General Audit Chamber's opinion that the obligation for future payments for cost-of-living-adjustments should be included on the balance sheet. The General Audit Chamber feels that this is not in compliance with NAO 28, and as such, considers this a reliability error. The SOAB does not.*

It is regrettable that the General Audit Chamber maintains an opinion that differs from the SOAB regarding the manner of reporting the obligation for the future cost-of-living-adjustment payments. Reasons for not reporting this obligation on the balance sheet, but rather to record it as an off-balance sheet obligation and annually report in the statement of Income and Expenditures, were provided during the technical consultations between the Audit Chamber and the Ministry, and in section 2.2.1 of the report. We consulted with the SOAB about this method of accounting in the past, and as such, chose to follow SOAB's view on the matter. In my estimation, when providing insight into the financial position and year-end result according to article 2 NAO, it is

preferable to use this methodology and report actual cost by fiscal year, rather than recording a substantial future obligation as of balance sheet date.

3. *The explanatory memorandum of the 2016 Financial Statements, similar to previous years, is insufficient in terms of achievement of policy intentions, according to the General Audit Chamber.*

Although there has been significant improvement in this area in the last years, this opinion will be considered during the preparation of the 2017 Financial Statements. The amounts and related uncertainties between individual line items and the recorded amounts will be explained in more detail.

4. *Because policy intentions are not explicitly formulated and quantifiable, it is impossible to report the degree to which policies were achieved. The General Audit Chamber recommends that policy intentions are, as much as possible, defined as SMART by the relevant ministries. Only then is there a basis for evaluation.*

We take this recommendation to heart and will include it as part of the of the budget- and accountability improvement process currently underway. In coming years, evaluation of policy intentions will show clear improvement as a result of explanatory memorandum included with the financial statements.

5. *Only 61% of the total summary templates were correctly completed.*

As stated in section 2.3.1 of your report, this represents an improvement as compared with the 2015 Financial Statements. Nevertheless, we acknowledge that this is a particularly low percentage and all summary templates need to be correctly completed. As previously mentioned, the positive trend will be continued.

6. *Financial management is not in order. Income, expenditure and balance sheet changes were not established in accordance with the 2016 National Budget and other relevant regulations.*

Necessary improvement will take place by means of intensifying the implementation of the PvA Financial Management in the coming years. As previously mentioned, our goal is to receive an unqualified opinion from the auditors for the 2021 Financial Statements; not only in terms of reliability but also in terms of legal compliance. We will keep you informed about the progress of this project.

7. *The process of public tendering is not uniformly organized, and there are fewer guarantees for fair and transparent tendering than intended by law. The ministries are not 'in control' of public funds as far as public tendering is concerned.*

Ultimately, to achieve an unqualified opinion for fiscal year 2021, this deficiency will also have to be resolved in the coming years by means of the implementation of the PvA Financial Management.

Respectfully,

Perry F. Geerlings
Minister of Finance

5.2 Epilogue

The 2016 Financial Statements, by law, should have been drafted by September 1st, 2017. In the end, due to a variety of reasons summarized in the Minister of Finance's reaction, the Financial Statements were approved by the Council of Ministers in October 2018.

It is not only the delayed presentation, but also the quality of the 2016 Financial Statements, that fall short. The Minister agrees. We understand that there are many challenges in terms of improving Government's financial management. Our objective is adding value by identifying areas requiring improvement. It is then up to Government, with the Minister of Finance as the focal point, to act on our findings and recommendations.

Parliament's role should not be underestimated in this regard. As supervisor and representative of St. Maarten, Parliament's task is guaranteeing that financial management actually improves.

The fact that the Minister can relate with us regarding the areas requiring improvement and our recommendations, is a step in the right direction. The Plan for Improving Financial Management can be an important focal point, provided that the plan is properly brought to fruition.

We appreciate the Minister of Finance's cooperation and his response to the report.

ANNEX 1: NON-COMPLIANCE WITH NAO STIPULATIONS

Non-compliance with articles of the National Accountability Ordinance				
No.	NAO-article	Description	2016	2015
1	20	The statement of income and expenditures is a true and fair representation of the nature and scope of the income, expenditure, and the balance.		
2	22	Each capital investment is adequately explained in the explanatory notes for the capital account.		
3	23	The balance sheet and the relevant explanatory notes provide a true and fair representation of the financial position of the Country and include the size and composition of the assets and liabilities at year-end.		
4	25	<ul style="list-style-type: none"> - The portion of long-term debt that is due or directly payable within one year, is disclosed under current liabilities. - Under current liabilities, short-term debt and accruals are recorded separately. 	n.v.t.	
5	26	Amounts below which depreciation of investments is not required, are set forth by National Decree related to general measures. The amounts are charged directly to the account 'income and expenditure' of the operational account.		
	27	<p>When calculating the depreciation amounts:</p> <ul style="list-style-type: none"> - a date proportional to the time between delivery and the balance sheet date for investments of ANG 100.000 or higher for the income and expenditure of the operational account; - on investment lower than ANG 100.000 first written off in the year following the delivery year 		
7	28	Provisions are formed because of the liabilities, losses, risks and expenditure.		
8	29, par. a and b	Lists and summaries that must be included with the balance sheet for subsidies.		
9	32	The annual report for fiscal year 2016 is included as a separate memorandum of the financial statements.		
10	52, second paragraph	The financial information for the preparation of the financial statements is provided on time by all ministers to the Minister of Finance.		
11	53, first paragraph	The financial statements were immediately provided to the General Audit Chamber and the SOAB after approval by the Council of Ministers.		

ANNEX 2: SUMMARY TEMPLATES

No.	Description	Complete	Accurate and complete	2016	2015
1	Income and expenditure per chapter	Yes	Yes		
2	Capital account per chapter	Yes	Yes		
3	Summary of income and expenditure account and capital account per chapter	Yes	Yes		
4	Capital investments per project	Yes	At the time of drafting of the financial statements, the information was not available/not known.		
5	Deferred projects above ANG 1 million	Yes	At the time of drafting of the financial statements, the information was not available/not known.		
6	Shareholdings	Yes	Yes		
7	Issued (long-term) loans collective sector	Yes	Yes		
8	Recorded (long-term) loans collective sector	Yes	Yes		
9	Guaranteed loans	Yes	n/a		
10	Other guarantees	Yes	n/a		
11	Off-balance-sheet rights and obligations	Yes	Yes		
12	Assessments levied for fiscal year and previous fiscal years	Yes	No, no reason provided.		
13	Personnel size	Yes	Yes		
14	Detailed information on subsidies	Yes	Partially. No information provided regarding carry-overs/deferrals, and thus no insight provided in keeping with NAO article 29, paragraph a. ⁵³		
15	Progression of grants and subsidies to government	Yes	At the time of drafting of the financial statements, the information was not available/not known.		
16	Balance Collective Sector	Yes	Not complete due to missing financial statements ⁵⁴		
17	Income and expenditure account for Collective Sector	Yes	Not complete due to missing financial statements ⁵⁵		
18	Account of income and expenditure by function	Yes	Yes		

⁵³ A listing of grants to institutions, contributions and other transfers, by year awarded as well as a list of the grants, contributions and other revenue disbursed over the fiscal year.

⁵⁴ No data entered for 7 of 14 entities (2015: 7 of 16)

⁵⁵ In 2016, no information provided for 7 of 14 (2015: 7 of 16)

ANNEX 3: LIST OF SERIOUS AND LONG-STANDING DEFICIENCIES

No.	Deficiency	Description	Source	Since
1	Wages and salaries	The process for personnel expenditures is not properly organized. There is uncertainty regarding the legal compliance and efficient use of financial resources.	Plan improving financial management (hereafter: Plan) ML Gen. Affairs ML Finance	October 10, 2010
2	Goods and services without public tender	The process of "procure-to-pay" is not adequately organized. There is uncertainty regarding the legal compliance and efficient use of public funds.	Plan ML Finance	October 10, 2010
3	Tax revenues	The process of tax levies and collection is not adequately organized. There is uncertainty regarding the completeness of income.	Letter from SOAB included with Plan, Audit Chamber reports, SOAB reports	October 10, 2010
4	Government health scheme (<i>Overheid Ziektekosten Regeling -OZR</i>)	There are no audited settlements for the OZR from USZV for 2012-2014.	Plan 2016 Financial Statements C6.9	October 10, 2010
5	Subsidies/grants	The process for granting subsidies, the control and settlement is not properly organized. Uncertainty exists about the legal compliance and efficient use of funds.	Plan ML Gen. Affairs ML ECYSA	October 10, 2010
6	Study financing	The accuracy and amount of the reported loans for study financing is not clear.	Plan Reports Audit Chamber	October 10, 2010
7	Economic licenses	The process of issuing economic licenses is not adequately organized. Uncertainty exists regarding the lawful issuance of permits and the completeness of the revenue.	Plan ML TEATT	October 10, 2010
8	Work permits	The process of issuing work permits is not adequately organized. Uncertainty exists regarding the lawful issuance of permits and the completeness of the income.	Letter from SOAB included with Plan	October 10, 2010
9	Tangible fixed assets	Details about assets is absent and the substantiation such as invoices, delivery- and procurement documentation is missing.	Plan SOAB: work program MVA	October 10, 2010
10	Shareholding and Collective Sector institutions	Companies do not provide their financial statements on time to meet government's deadline for its financial statements.	Plan Financial Statements, summary templates 16 & 17	October 10, 2010
11	Creditors, other short-term debts	There general ledger the creditor administration cannot be reconciled, and balance sheet data is corrupted.	Plan	October 10, 2010
12	Debtors and other receivables	The general ledger and the debtor administration cannot be reconciled, and the balance sheet data is corrupted.	Plan	October 10, 2010
13	Provisions	There is uncertainty regarding the completeness of the recorded provisions.	Audit Chamber reports, SOAB findings.	October 10, 2010

ANNEX 4: AUDIT OPINION TYPES

The objective of an auditing assignment is to allow the auditor to determine, with a high degree of certainty, that financial statements do not contain material errors. The auditor cannot provide absolute certainty about the accuracy of the financial statements because there is a chance that he was deliberately misled by an organization, the estimates recorded in the financial statements are often subjective, and it is not economically acceptable to examine every individual transaction. For this reason, auditors refer to a reasonable degree of certainty.⁵⁶

Below, the four types of audit opinions are specified⁵⁷:

1. Unqualified opinion

In the auditor's opinion, there is a reasonable degree of certainty that the financial statements provide a true and fair representation of the assets on balance sheet date, and the financial result of the previous year. The auditor also states in this opinion that the income, expenditure, and balance sheet changes are legally compliant. This means that errors in the financial statements do not exceed 1 percent and uncertainties do not exceed 3 percent.

2. Qualified opinion

Here the auditor approves the financial statements but with exceptions. With this opinion, there is a true representation and legal compliance, except for certain parts of the financial statements. A part can represent one or more items on the balance sheet, items related to the financial results or explanatory notes. The auditor substantiates his judgement in a separate section of his opinion: 'In our opinion, the financial statements, except for the possible effects of the matter described in the section "substantiation of the qualified opinion", proves a fair and true representation of...'.⁵⁷

This opinion occurs in two situations:

- There are material differences but are not of significant influence. This means that the errors in the financial statements total between 1 and 3 percent.
- The auditor is unable to receive sufficient and suitable audit information to issue an opinion. However, he is certain that the possible consequences of unidentified anomalies are material, but not of significant influence. This means that the audited uncertainties are between 3 and 10 percent.

3. Disclaimer of opinion

The auditor is unable to approve or reject the financial statement. The available information is insufficient and unsuitable making issuing an opinion impossible. However, the auditor is certain that the possible consequences of the uncertainties are material and can significantly influence the financial statements; thus, making a qualified opinion impossible. This means that uncertainties identified during the audit exceed 10 percent. These can also relate to balance sheet items, items related to the financial result and the explanatory notes. Substantiation is provided in a separate section of the opinion, which must include all elements resulting in the disclaimer. Items not mentioned, are therefore implicitly approved.

4. Adverse opinion

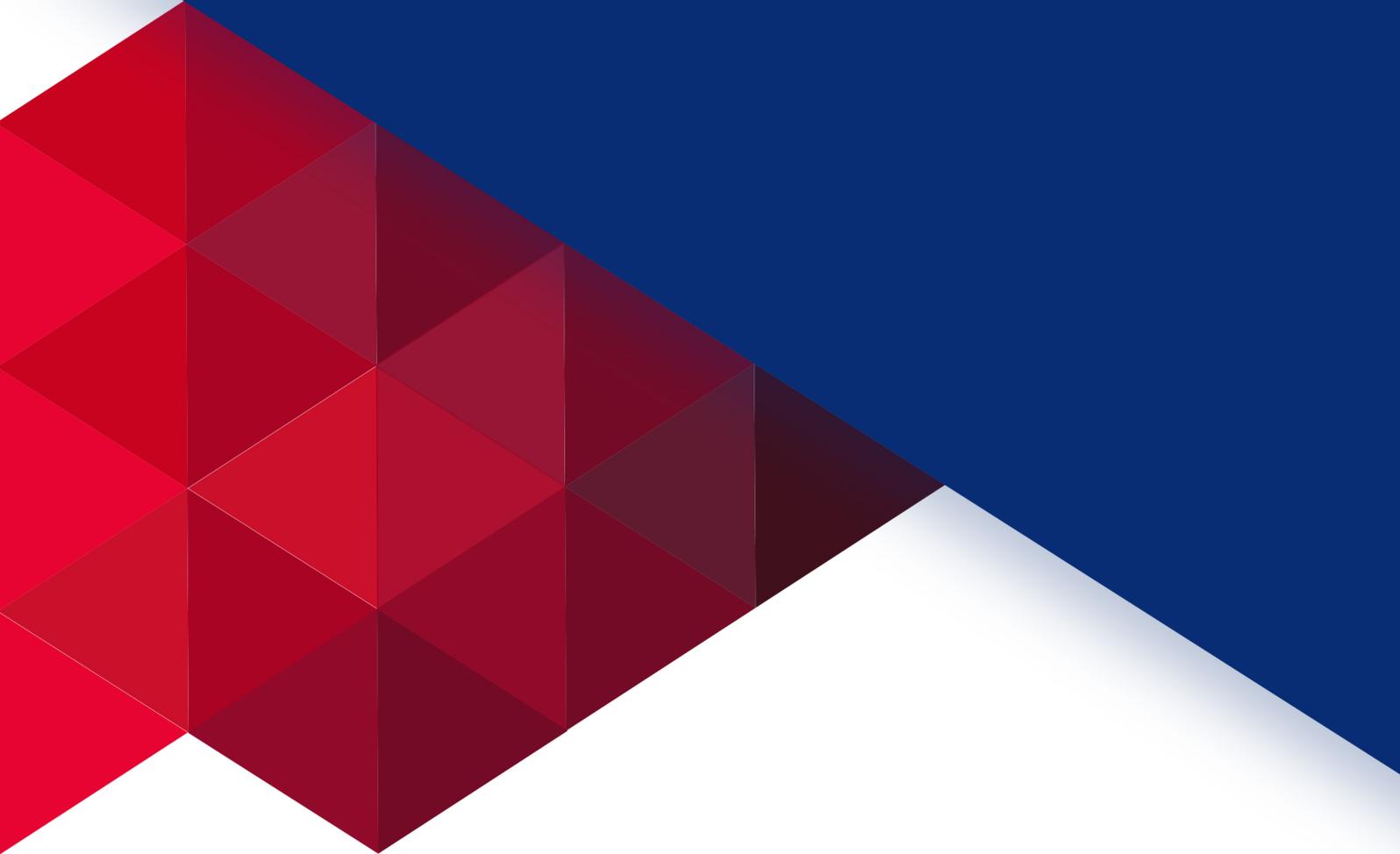
The auditor rejects the entire financial statement as it fails to meet the established requirements. He is certain that the identified errors are material and significantly influence the financial statement, otherwise he would have issued a qualified opinion. This means that errors in the financial statements exceed 3 percent. Again, these can also relate to balance sheet items, items related to the financial result and the explanatory notes. Substantiation is provided in a separate section of the opinion, which must include all elements resulting in the disclaimer. Items not mentioned, are therefore implicitly approved.

⁵⁶ Source: The auditor issues an opinion! (*De accountant Verklaart!*), NBA Brochure.

⁵⁷ Source: Audit opinion explained. The limits of audit opinion statements for decentralized governments (*Controleverklaringen verklaard, De strekking van de controleverklaring bij decentrale overheden*), June 2016, NBA Brochure.

ANNEX 5: SUMMARY OF FINDINGS REGARDING TENDERING

Ministry	Total tenders according to ministry	Total tenders without documentation	Number of audited tenders	Number of public tenders	Expenditure for public tenders	Number of non-public tenders	Expenditure for non-public tenders	Number of proposal (waiver) from Minister of Finance	Number of national decrees ex NAO art. 47, 4 th par.
Justice	4	0	4	1	272.160	3	7.788.366	3	3
Gen. Affairs	5	2	3	0	0	3	1.170.904	2	3
ECYSA	7	7	0	0	0	0	0	0	0
TEATT	15	3	12	0	0	12	3.158.317	6	12
VSA	0	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Finance	0	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
VROMI	12	5	7	7	50.196.668	0	0	n/a	n/a
Total	43	17	26	8	Unknown	18	Unknown	11	18



General Audit Chamber

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