

FAILED NEGOTIATIONS, LASTING CONSEQUENCES: THE CASE OF A BRAZILIAN AGRICULTURAL COOPERATIVE

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ABSTRACT

This article presents a comprehensive examination of the intricacies and challenges inherent in negotiations aimed at liquidating an agricultural cooperative in Brazil, utilizing a single descriptive case study approach. By examining the complexities of such negotiations, this study illuminates the multifaceted challenges that arise during the process while also distilling valuable lessons learned from these experiences. Furthermore, the discussion emphasizes the paramount importance of judicial *res judicata* in Brazilian tax law, underscoring its superiority over administrative decisions when the subject matter overlaps. The analysis reveals that judicial decisions take precedence, thereby strengthening the administrative debate due to their binding nature. Ultimately, this article contributes to a deeper understanding of the nuances involved in cooperative liquidation negotiations and the interplay between judicial and administrative decision-making in Brazil's tax law context, providing actionable insights for stakeholders and policymakers alike. The findings and lessons learned from this study offer valuable implications for future negotiations and policy development.

Keywords: Negotiation, Judicial Liquidation, Agricultural Cooperative, Brazil.

NEGOCIAÇÕES FRACASSADAS, CONSEQUÊNCIAS DURADOURAS: O CASO DE UMA COOPERATIVA AGRÍCOLA BRASILEIRA

RESUMO

Este artigo apresenta um exame abrangente dos meandros e desafios inerentes às negociações destinadas à liquidação de uma cooperativa agrícola no Brasil, utilizando uma abordagem de estudo de caso descritivo único. Ao examinar as complexidades de tais negociações, este estudo ilumina os desafios multifacetados que surgem durante o processo, ao mesmo tempo em que destila lições valiosas aprendidas com essas experiências. Além disso, a discussão enfatiza a importância primordial da *res judicata* no direito tributário brasileiro, ressaltando sua superioridade sobre as decisões administrativas quando a matéria se sobrepõe. A análise revela que as decisões judiciais têm precedência, fortalecendo o debate administrativo devido ao seu

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caráter vinculante. Em última análise, este artigo contribui para uma compreensão mais profunda das nuances envolvidas nas negociações de liquidação cooperativa e da interação entre a tomada de decisões judiciais e administrativas no contexto do direito tributário do Brasil, fornecendo insights acionáveis para as partes interessadas e formuladores de políticas. As conclusões e lições aprendidas com este estudo oferecem implicações valiosas para futuras negociações e desenvolvimento de políticas.

Palavras-chave: Negociação, Liquidação Judicial, Cooperativa Agrícola, Brasil.

NEGOCIACIONES FALLIDAS, CONSECUENCIAS DURADERAS: EL CASO DE UNA COOPERATIVA AGRÍCOLA BRASILEÑA

RESUMEN

Este artículo presenta un examen exhaustivo de las complejidades y desafíos inherentes a las negociaciones destinadas a liquidar una cooperativa agrícola en Brasil, utilizando un enfoque de estudio de caso descriptivo único. Al examinar las complejidades de tales negociaciones, este estudio arroja luz sobre los desafíos multifacéticos que surgen durante el proceso, al tiempo que extrae valiosas lecciones aprendidas de estas experiencias. Además, la discusión enfatiza la importancia primordial de la *res judicata* en el derecho tributario brasileño, subrayando su superioridad sobre las decisiones administrativas cuando la materia se superpone. El análisis revela que las decisiones judiciales tienen primacía, fortaleciendo así el debate administrativo por su carácter vinculante. En última instancia, este artículo contribuye a una comprensión más profunda de los matices involucrados en las negociaciones de liquidación cooperativa y la interacción entre la toma de decisiones judiciales y administrativas en el contexto del derecho tributario de Brasil, proporcionando información práctica tanto para las partes interesadas como para los formuladores de políticas. Las conclusiones y lecciones aprendidas de este estudio ofrecen implicaciones valiosas para futuras negociaciones y desarrollo de políticas.

Palabras clave: Negociación, Liquidación Judicial, Cooperativa Agrícola, Brasil.

1 INTRODUCTION

In a Democratic State of Law, the supremacy of the Judiciary in resolving conflicts is a fundamental principle. When there is a similarity between what is addressed administratively and what has been definitively decided by the Judiciary, the binding judicial decision, or *res judicata*³,

³ *Res judicata* (from Latin) is a legal concept that refers to a final and unappealable judicial decision. This decision becomes immutable and cannot be questioned again, meaning the matter has already been decided and cannot be submitted for trial.

takes precedence. This understanding is rooted in the principle of separation of powers outlined in Article 2 of the Federal Constitution (Brasil, 1988) and the effectiveness of *res judicata* mentioned in Article 5 (Brasil, 1988).

This situation highlights the rule that a tax becomes definitively established only after a judicial controversy is resolved, thereby suspending its enforceability. The doctrine dictates that a judicial decision acknowledging the enforceability of a tax, even if issued or denied through a writ of *mandamus*⁴, has a binding effect on the Public Administration. This study examines a negotiation process related to failure. It highlights the juridical aspects and the absence of creative solutions that could avoid the liquidation of the agriculture cooperative located in Paraná state, southern Brazil. This research aims to answer the following research question: What are the complexities and challenges associated with negotiating the liquidation of an agricultural cooperative in Brazil, and what lessons can be learned from a failed negotiation process? In this case, all parties involved, including their real names and identities, were preserved for compliance and ethical purposes and are hereafter referred to simply as “the cooperative.”

The cooperative operated in the region for over 40 years and has been liquidated. The negotiation process for liquidating an agricultural cooperative in Brazil is a complex and challenging endeavor, fraught with difficulties that can lead to negotiation failures. The case of the cooperative, a prominent agricultural cooperative with a rich history and significant economic impact, is a valuable example of the intricacies involved in such negotiations. This article examines the tax substitution causes and further challenges encountered during the negotiations to liquidate the cooperative, shedding light on the lessons learned from these negotiation failures and providing insights into the complexities of cooperative liquidation in Brazil.

The descriptive case study describes the cooperative from its background, highlighting the negotiation failure, until its judicial liquidation. This article is subdivided into theoretical framework, methods and materials, background and case description and analysis, implications and discussion, lessons learned, and future research.

⁴ *Mandamus*, in Portuguese from Portugal, refers to a court order intended to compel a public or administrative authority to comply with a legal duty imposed on it or to refrain from doing something.

2 THEORETICAL FRAMEWORK

Bankruptcy, insolvency, including judicial reorganization have been appreciated over the past decades (Abreu, 2024; Almeida, 2003; Bastos, 2016; Estevez, 2011; Fazzio Jr., 2005; França 2007; Franco, 2015; Lobo, 2009; Mamede, 2009, 2020; Munhoz, 2007; Ordin, 1983; Skeel, 2001; Tabb & Brubaker, 2011; Wald & Waisberg, 2009; White, 2007).

Conversely, Negotiation involving cooperatives have attracted scholars's interest recently (Dalacosta *et al.*, 2019; ; Dias, 2023; Dias, 2023a; Dias, 2023b; Dias *et al.*, 2023; Dias, 2019; Dias, 2018; Dias *et al.*, 2019; Dias & Teles, 2019; Fisher, Ury & Patton, 1981; Kissinger, 1969; Lax & Sebenius, 1986; Navarro & Dias, 2024; Pruitt, 1981; Raiffa, Richardson & Metcalfe, 2002; Rubin & Brown, 1975; Santos & Dias, 2024), and is defined as a "process of communication by which two or more parties seek to advance their interests or those of the persons they represent by an agreement on the desired future action" (Salacuce, 2003, p. 11). Moreover, Negotiation has been investigated in different scenarios, such as retail and family negotiations (Dias, 2023; Dias, Almeida, Silva, Russo, *et al.*, 2022; Dias, Lafraia, Schmitz *et al.*, 2024; Dias, Leitão, Batista & Medeiros, 2022; Dias, Pereira, Teles & Lafraia, 2023; Dias, Pereira, Vieira, *et al.*, 2023; Dias, Pires *et al.*, 2022; Dias, Toledo, Silva, *et al.*, 2022; Dias, Toledo, Silva, Santos *et al.*, 2022; Moura & Dias, 2025; Santos & Dias, 2024; Scheuer & Dias, 2025; Smejoff, Zornitta & Dias, 2025; Valente & Dias, 2023), including real estate negotiations (Soliva & Dias, 2025); software negotiations (Valle, Trindade & Dias, 2025; Delgado & Dias, 2025); buyer-seller negotiations (Gasparini, Vieira & Dias, 2025); process of communication between parties during negotiations (Acuff, 1993; Dias, 2016; Salacuse, 2003, 2006; Schatzki & Coffey, 1981; Shell, 2006; Zartman, 1988); extrajudicial negotiations (Cunha & Dias, 2021; Dias, Nascimento *et al.*, 2021; Navarro & Dias, 2024; Panzarini & Dias, 2025). We adopted in a large extent the Four Type Negotiation Matrix (Dias, 2020), shown in Figure 1:

Figure 1 The Four-Type Negotiation Matrix



Source: Dias, 2020. Reprinted under permission.

3 METHODOLOGY

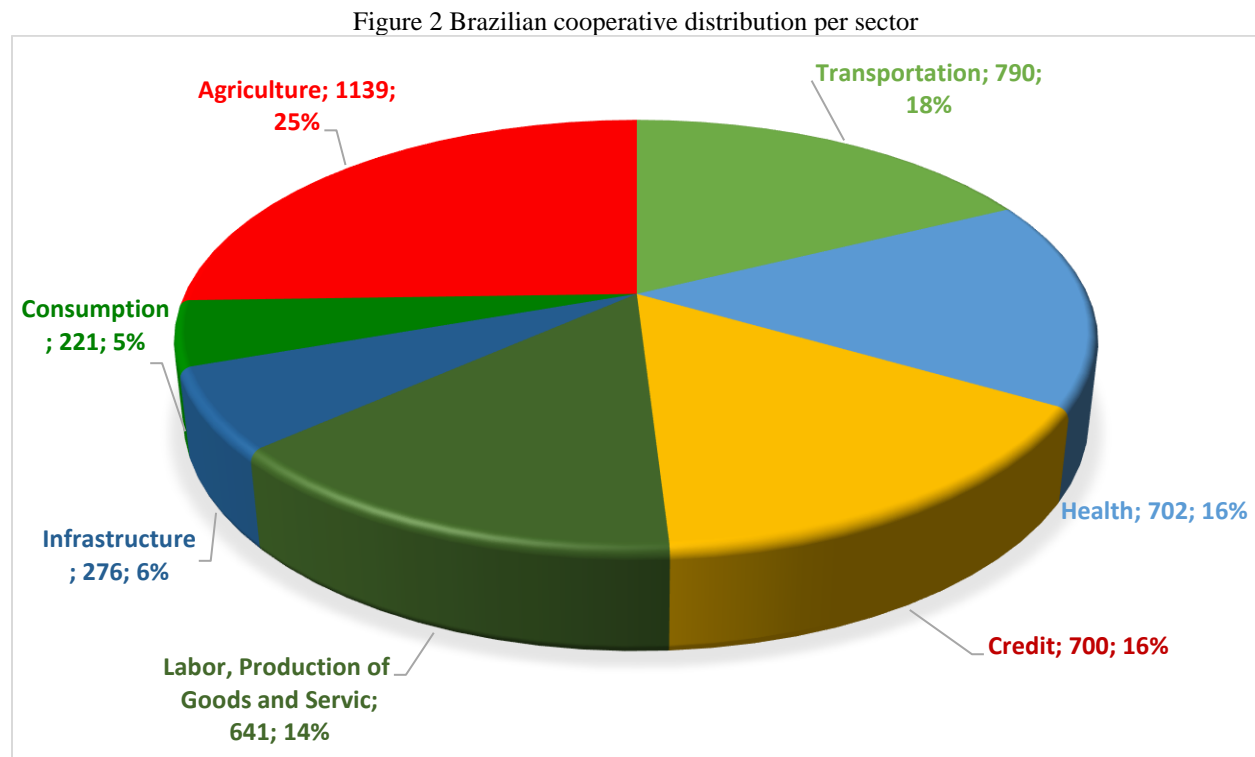
The article's approach outlines the type of research conducted, the selection of samples, the methods of data collection and analysis, ethical considerations, and the study's limitations, as well as the techniques employed. Following the guidance of Saunders, Lewis, and Thornhill (2009), this study adopted an inductive approach grounded in interpretive philosophy. A detailed and transparent description of these elements is crucial for interpreting and generalizing the results and ensuring the replicability and reliability of the findings. In line with Yin (2004), we examined a failed negotiation case involving multiple parties attempting to sell an Agricultural Cooperative in Paraná state, Brazil. One of the authors was directly involved in this case, which became the focus of our study.

4 COOPERATIVES IN BRAZIL

Approximately three million cooperatives worldwide, with gross revenues of \$2.17 trillion, involving nearly one billion associates, are responsible for 280 million direct jobs (OCB, 2024). According to the Brazilian Cooperativism Yearbook 2024 (OCB, 2024), the nation already has 23.45 million cooperative members, equivalent to 11.55% of the population. Furthermore, 23% of

the working population, 550,611 professionals, and R\$ 692 billion in financial movement are included in the migration (OCB, 2024).

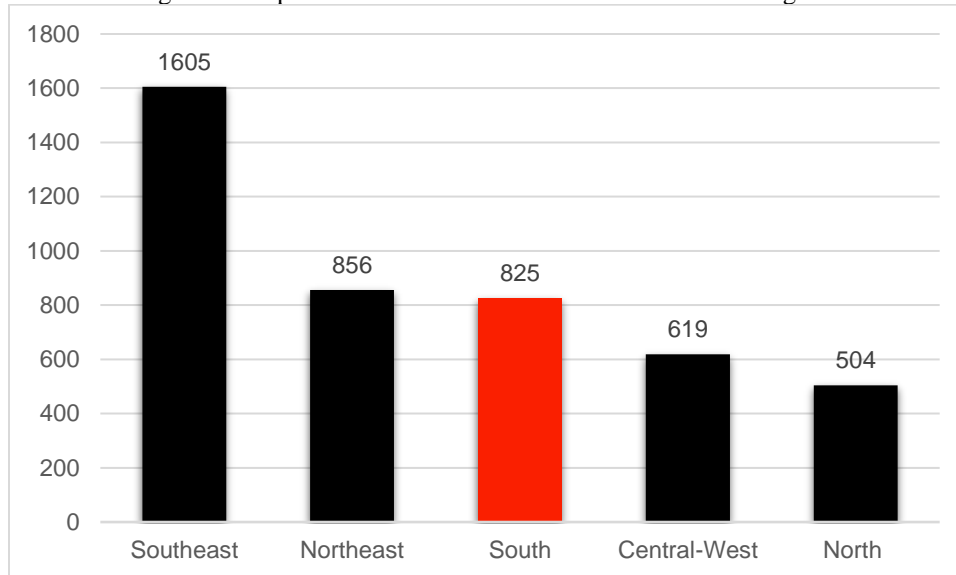
Figure 2 illustrates the 4,509 Cooperatives distributed into seven sectors (Agriculture, Transportation, Health, Credit, Labor, Production of Goods and Services, Infrastructure, and Consumption), as follows:



Source: adapted OCB (2024)

Figure 2 highlights the Agricultural cooperatives (in red) as the largest sector, comprising 1,179 cooperatives (25%). Cooperatives are also present in 1,398 municipalities, which represent 25% of the total municipalities in Brazil (5,570), distributed in the five Brazilian regions, shown in Figure 3, as follows:

Figure 3 Cooperatives distributed into the five Brazilian Regions



Source: adapted OCB (2024)

Figure 3 highlights the region where the agricultural cooperative is located (red bar), in the municipality of Porecatu, Paraná state, described in the upcoming section.

5 BACKGROUND

Firstly, a group of 28 coffee growers from Porecatu, who were unhappy with the selling mechanism for their output, formed the agricultural cooperative in 1963. The cooperative started concentrating on coffee production, but eventually expanded into grains. To diversify its operations and offset the consequences of a severe frost that had destroyed coffee harvests in the area, the cooperative built a sugarcane distillery in Florestópolis, Paraná state, in 1980. Working with sugarcane, soybeans, wheat, and coffee, the cooperative used to turn sugarcane into fuel, anhydrous alcohol (for gasoline mixing), and sugar. With a 600,000-ton sugarcane crushing capacity, the cooperative became prominent in the agricultural industry in the 1980s and 1990s. With a turnover of R\$91.6 million in the 2000s, the cooperative grew by 26%. Over the previous year, the cooperative's Surplus, or operational result, rose to R\$1,040,000. Because the cooperative paid its members above-average rates throughout the year, the assembly approved the result's inclusion in every member's capital account. The cooperative had over 700 members in its golden

period. The cooperative's general assembly is important for discussing operational and financial outcomes.

6 NEGOTIATIONS IN THE COOPERATIVE CASE: PLANNING OBJECTIVES OPTIONS, INTERESTS, AND ALTERNATIVES (BATNA)

6.1 OBJECTIVES

The goals set by each party became incompatible with each other, due to the unilateral way in which the operation was structured:

Cooperative: Formalize, in a short period, the full sale of operating assets to Cocamar, emptying liabilities and avoiding foreclosures.

Potential partner: Obtain control of Cooperative's structure (including employees, machinery, storage, and cooperative base) with legal protection against tax and civil liabilities.

Creditors and the Public Treasury: Monitor and participate in any reorganization or liquidation plan, as required by Article 1,145 of the Civil Code (Brasil, 2002), ensuring the receipt of credits.

6.2 INTERESTS

Interests representing the underlying motivations that drive the parties' behavior:

Cooperative: Preserve economic activity and avoid bankruptcy, even in the face of tax and labor debts, seeking to maintain the institutional image and ensure some operational continuity.

Potential partner: Expand its regional operations quickly and at low cost, taking advantage of Cooperative's physical structure and cooperative base, without assuming the liabilities of the selling cooperative.

Creditors and the Public Treasury: Ensure the payment of overdue debts, preserving the integrity of the debtor's assets for future enforcement purposes, including tax, under the terms of Article 133 of the National Tax Code (Brasil, 1966).

6.3 OPTIONS

The following options were discussed at the bargaining table:

(a) Partial and staggered assumption of liabilities by Cocamar, with an offset clause; (b) Publicity of the sale with judicial or extrajudicial approval before creditors; (c) Constitution of a reserve fund with part of the value of the assignment, intended for the amortization of tax debts; (d) Proposal for out-of-court reorganization with the adhesion of public and private creditors. (e) The lack of any mediation mechanism or prior hearing emptied this ZOPA, promoting an environment of unilateral negotiation and exclusion, typical of unproductive adversarial strategies (Salacuse, 2000).

6.4 BEST ALTERNATIVE TO A NEGOTIATED AGREEMENT (BATNA)

The absence of a negotiated solution activated the Best Alternative to a Negotiated Agreement (BATNA), following Fisher, Ury & Patton (1981), which are each party's best alternative to negotiation, including:

Cooperative opted for a strategy of contractual shielding with confidentiality clauses and limitation of liability, which contributed to the intense judicialization of the operation and allegations of fraud and simulation.

Creditors: Filed judicial executions and requests for piercing the corporate veil (IDPJ), in addition to questioning the fraud in the execution, according to Art. 792 from Code of Civil Procedure (Brasil, 2016), and the liability of the acquirer, according to Art. 133 from the National Tributary Code (CTN) (Brasil, 1966).

National Treasury: Filed a tax foreclosure based on a CERTIFICATE OF ACTIVE DEBT (CDA) extracted from an administrative proceeding closed only in 2019, even with the final and unappealable nature of the writ of *mandamus* in 2014, according to Art. 174 from the National Tributary Code (Brasil, 1966).

7 NEGOTIATIONS AGGRAVATED: FROM THE WRIT OF *MANDAMUS* TO TAX EXECUTION

The case is aggravated when considering the parallel process of a writ of *mandamus* filed in 2009 by the Cooperative to suspend the enforceability of federal taxes. This lawsuit was dismissed, with a final and unappealable judgment on November 28, 2014, recognizing the validity of the tax demand. Despite this, the Tax Administration only closed the administrative proceeding on the same credit in October 2019, issuing the Certificate of Active Debt (CDA) based on this date. This conduct frontally ignores the rule of article 174 of the National Tributary Code (Brasil, 1966), which establishes that the statute of limitations for judicial collection of the tax credit begins with the definitive constitution of the credit – which, in this case, occurred with the final and unappealable judgment of the lawsuit, according to the consolidated case law of the Federal Tribunals (TRF4, TRF2) and the Justice Supreme Court (STJ).

The attempt to set the constitutional framework based on the final date of the administrative proceeding, five years after the judicial decision, disrespects the principle of *res judicata*, following the Federal Constitution, Article 5, XXXVI (Brasil, 1988), and ultimately constitutes a procedural fraud institutionalized by omission.

8 AN INTEGRATIVE ANALYSIS IN THE LIGHT OF THE THEORY OF CONFLICTS AND TAX LIABILITY

This article proposes a critical analysis of the controversy surrounding the moment of the definitive constitution of the tax credit to count the statute of limitations provided for in Article 174 of the National Tax Code (Brasil, 1966). The discussion is especially relevant in cases where administrative discussion and lawsuit coexist with a suspensive effect on the same tax credit.

The analysis of the sale of the goodwill of the Agroindustrial Cooperative to Cocamar shows a paradigmatic case of complex business failure in a crisis environment, typical of business relationships involving significant tax liabilities. In this case, a Type IV negotiation was issued, following Dias (2020), where multiple parties negotiate multiple issues. This episode involves not only the absence of dialogue between directly affected parties, such as creditors, cooperative

members, and state entities, but also an attempt to empty assets, operationalized under the guise of a regular assignment of assets.

The case reveals technical elements of negotiation theory that, if observed, could have led to a cooperative and effective solution, avoiding years of litigation and legal uncertainty. Next, the analytical decomposition of the conflict is proposed based on Type IV negotiation (Dias, 2020), associating the concepts with the case study.

The Agricultural Cooperative of Porecatu (Paraná), involved a lawsuit that suspended the enforceability of the tax credit — it seeks to demonstrate that the milestone of the definitive constitution of the credit cannot be fixed based on the closure of the administrative proceeding, but rather on the final and unappealable decision that put an end to the tax controversy. Failure to comply with this understanding, in addition to offending the principles of legal certainty and legality, may lead to the statute of limitations of the state's enforcement claim. In this sense, the research articulates specialized doctrine, consolidated jurisprudence of the Supreme Court of Justice (STJ) and Federal Regional Court (TRF), and systematic interpretations of the national tax legislation. The objective is to contribute to the delimitation of a precise and secure legal criterion for counting the statute of limitations of the executive tax action, safeguarding the authority of judicial *res judicata*, and avoiding duplicity or undue prolongation of tax controversies.

Based on this problematization, the study is organized into four sections: (i) constitutional and infra-constitutional foundations of judicial *res judicata*; (ii) suspension of tax enforceability and its repercussion on the statute of limitations; (iii) jurisprudential analysis; and (iv) practical implications of the definition of the framework for the definitive constitution of the tax credit in the context of tax enforcement.

9 DISCUSSION AND IMPLICATIONS

The study provides insights into the complexities of cooperative liquidation in Brazil, implying the need to carefully consider tax implications and judicial decisions. Moreover, the article contributes to understanding Brazilian tax law, particularly the relationship between administrative and judicial decisions and the importance of judicial *res judicata* in resolving tax controversies. This implies the need to improve Negotiation strategies for cooperatives and other

organizations facing similar challenges, emphasizing the need for creative solutions and careful consideration of tax implications.

There are also implications in other areas of study, including (a) judicial reorganization (Abreu, 2024; Almeida, 2003; Bastos, 2016; Estevez, 2011; Fazzio Jr., 2005; França 2007; Franco, 2015; Lobo, 2009; Mamede, 2009, 2020); (b) bankruptcy and insolvency (Blum, 2006; Campinho, 2012; Cerezetti, 2012; Coelho, 2012; Coelho, 2021; Cuevas, 2018); (c) private equity negotiations (Correa *et al.*, 2025); business negotiations on cooperatives (Dalacosta *et al.*, 2019; Dias, 2019; Dias, 2018; Dias *et al.*, 2019; Dias & Teles, 2019), for example.

The article's findings highlight the importance of understanding the complexities of cooperative liquidation and the role of judicial *res judicata* in resolving tax controversies. The study's results have implications for cooperatives, policymakers, and practitioners involved in negotiations and tax disputes. The article contributes to developing effective negotiation strategies and a deeper understanding of Brazilian tax law by shedding light on the challenges and lessons learned from the case study.

10 CONCLUSION

In conclusion, this study highlights the complexities and challenges associated with negotiating the liquidation of an agricultural cooperative in Brazil. The article emphasizes the importance of judicial *res judicata* in resolving tax controversies and sheds light on the lessons learned from the case study. The findings have implications for cooperatives, policymakers, and practitioners involved in negotiations and tax disputes, and contribute to a deeper understanding of Brazilian tax law and cooperative liquidation. Ultimately, the study underscores the need to consider tax implications and judicial decisions in cooperative liquidation processes.

Answer to the research question: What are the complexities and challenges associated with negotiating the liquidation of an agricultural cooperative in Brazil, and what lessons can be learned from a failed negotiation process? Complexities and challenges associated with negotiating the liquidation of an agricultural cooperative in Brazil include incompatible objectives and interests among parties, lack of dialogue and communication, attempts to empty assets and avoid liabilities, and the importance of judicial *res judicata* in resolving tax controversies. The lessons

learned underscore the importance of carefully considering tax implications and judicial decisions, devising creative solutions, and employing effective negotiation strategies.

Benefits to Society and Academia: This study benefits both society and academia by offering practical insights into cooperative liquidation, deepening the understanding of Brazilian tax law, and informing future research. Its findings can foster the growth and sustainability of cooperatives while advancing academic discourse on negotiation, tax law, and the liquidation of cooperatives.

11 RESEARCH LIMITATIONS

The research limitations are as follows: The findings of this study are based on a single case study of a Brazilian agricultural cooperative, which may restrict their generalizability to other businesses or industries. While the qualitative approach provides in-depth insights, it may not adequately address quantitative aspects. Furthermore, the study's emphasis on tax law and judicial *res judicata* may not consider other important legal or regulatory factors related to cooperative liquidation, such as insolvency law or governance regulations. Additionally, the focus on Brazilian law may limit the applicability of the findings to other jurisdictions.

12 FUTURE RESEARCH

Future research on cooperatives in Brazil could explore the effectiveness of governance structures, particularly in financial cooperatives, in improving decision-making processes and member engagement. Investigating the relationship between cooperative membership and agricultural production value at the municipality level could also provide insights into the impact of cooperatives on local economies. Additionally, examining the role of credit cooperatives in Brazil's financial landscape could shed light on their contribution to financial inclusion and stability. Researching the factors that influence the sustainability of cooperatives in Brazil, including their social, economic, and environmental impact, could inform strategies for long-term viability. Potential research questions include: What are the key factors influencing the success or failure of cooperatives in Brazil? How do cooperatives contribute to local economic development

and poverty reduction? What are the challenges and opportunities facing credit cooperatives in Brazil? Answering these questions could contribute to a deeper understanding of cooperatives in Brazil and inform policies and practices that support their growth and sustainability.

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