



State aid recovery in the Madeira Free Zone

Can tax enforcement still be suspended?

Taxpayer guarantees and domestic suspension mechanisms after the CJEU ruling in Utile dulci (C-545/24)

Including the Central Administrative Court South (TCAS) decision of 29 July 2026, case 374/24.8BEFUN.CS1

KEY TAKEAWAYS

A shift in Portuguese case law

Utilisedulci reversed a line of national case law that had been favourable to taxpayers.

01

No automatic suspension

Domestic rules suspending enforcement upon a guarantee, or a waiver of the guarantee, must be disregarded.

02

Guarantees must neutralise the advantage

A guarantee that merely secures the tax debt is not enough: it must deprive the beneficiary of the competitive advantage.

03

Economic hardship is irrelevant

Financial difficulties justify neither a delay in recovery nor a waiver of the guarantee.

04

Challenging the debt does not suspend

Pending oppositions or administrative appeals do not, in themselves, secure suspension.

05

Rights of defence remain

Courts must still examine the grounds of opposition to tax enforcement.

Two regimes in tension

Recovery of MFZ Regime III aid follows national procedures, but only insofar as they allow the immediate and effective execution of the Commission decision.



EU law

- Commission Decision C(2020) 8550 of 4.12.2020 (SA.21259): recovery of Regime III aid
- Article 16(3) of Regulation (EU) 2015/1589: immediate and effective recovery
- Priority: removing the undue competitive advantage



Portuguese law

- Collection through tax enforcement proceedings
- Suspension upon provision of a guarantee (Art. 169 CPPT)
- Waiver of the guarantee (Art. 52(4) LGT; Art. 170 CPPT) and opposition to enforcement (Art. 204 CPPT)

How the case law has evolved

BEFORE UTILEDULCI

03.07.2024

STA

088/24.9BEFUN

Held that domestic procedural guarantees apply to the recovery of the aid.

11.07.2024

STA

094/24.3BEFUN

Accepted the provision or waiver of a guarantee: the Tax Authority could not create a collection regime removing those guarantees.

AFTER UTILEDULCI

21.05.2026

CJEU

Utiledulci, C-545/24

Excluded suspension under the national guarantee or waiver regime, unless the guarantee removes the competitive advantage.

03.06.2026

STA

0276/24.8BEFUN

Grounds of opposition (Art. 204 CPPT) must be examined: case remitted to the first-instance court.

29.07.2026

TCAS

374/24.8BEFUN.CS1

Applied Utiledulci and upheld the refusal to waive the guarantee, despite the challenge to the debts.

In short: Utiledulci restricts suspension, but rights of defence remain subject to judicial protection.

Interplay of regimes: what changes in practice

Domestic mechanism	General regime	State aid recovery (after Utiledulci)
Provision of a guarantee (Art. 169 CPPT)	Suspends enforcement	Suspends only if the guarantee deprives the beneficiary of the competitive advantage
Waiver of the guarantee (Art. 52(4) LGT; Art. 170 CPPT)	Available where irreparable harm or a manifest lack of economic means is shown	Disregarded (TCAS, 29.07.2026)
Economic difficulties	May support a waiver of the guarantee	Do not justify delaying recovery (CJEU)
Pending administrative appeal or opposition	Allow suspension with a guarantee	Do not, in themselves, secure suspension (TCAS)
Opposition to enforcement (Art. 204 CPPT)	Defence available to the debtor	Remains available: grounds must be examined (STA, 03.06.2026)

Which guarantee can suspend collection?

In the recovery of unlawful aid, the test is no longer whether the guarantee covers the debt, but whether it effectively removes the competitive advantage.



Insufficient

A guarantee that merely secures the debt, leaving the beneficiary free to use the aid amount.



Potentially acceptable

A guarantee that removes the competitive advantage, e.g. a pledge or a deposit in a blocked account of the unlawful aid and interest, depriving the taxpayer of its use.



Who decides? It is for the national court to assess whether the guarantee effectively removes the advantage.

In focus: TCAS, 29 July 2026

1

The company sought a waiver of the guarantee to suspend three tax enforcement proceedings for the recovery of MFZ aid, citing lack of economic means and challenging the assessments.

2

Appeal dismissed; refusal to waive the guarantee upheld. The court applied *Uitedulci* and disregarded Art. 52(4) LGT and Art. 170 CPPT. Pending oppositions and administrative appeals did not change the outcome.

3

No "surprise decision": the EU law issue had already been raised and debated by the parties, and the CJEU simply answered it.

“

The rules on waiver of the guarantee which would allow the suspension of tax enforcement proceedings brought to recover unlawful State aid must be disregarded.

Headnote, point 1 (free translation)

Single-judge decision (Art. 656 CPC)
Case 374/24.8BEFUN.CS1

Practical implications



Revisit the suspension strategy

Requests to waive the guarantee on grounds of lack of means are no longer effective.



Consider guarantees that remove the advantage

For example, a deposit or pledge in a blocked account covering the aid and interest.



Keep defences alive

Opposition and challenges to the assessments are still examined by the courts.



Plan for liquidity

Without an acceptable guarantee, collection may proceed immediately, including interest.

Challenging the debt does not, in itself, suspend enforcement: defence and guarantee strategies should be designed together.

REFERENCES

Case law and legislation

- CJEU, 21.05.2026, Utiledulci, C-545/24, ECLI:EU:C:2026:412
- STA, 03.06.2026, case 0276/24.8BEFUN
- STA, 03.07.2024, case 088/24.9BEFUN
- Regulation (EU) 2015/1589, Article 16(3)
- TCAS, 29.07.2026, case 374/24.8BEFUN.CS1
- STA, 11.07.2024, case 094/24.3BEFUN
- Commission Decision C(2020) 8550 of 4.12.2020 (SA.21259)
- LGT, Art. 52(4); CPPT, Arts. 169, 170 and 204

STA – Supreme Administrative Court · TCAS – Central Administrative Court South · LGT – General Tax Law · CPPT – Tax Procedure and Process Code

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