

Section 1001 – Fixed Charges on Book Debts

Guidelines for Caseworkers

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Legislation and Procedures

1. Section 1001, Taxes Consolidation Act (TCA) 1997

Section 1001, TCA 1997, which applies only to Fixed Charges on book debts of a company, states that, where a Fixed Charge is placed over the Book Debts of a company, the holder of the Fixed Charge **may** become liable for the company's outstanding Employer Income Tax/PRSI/USC/LPT or VAT liabilities (See [Appendix 1: Legislation](#)).

2. Definitions

Book Debts

Any debt due or to become due at some future time to any person or company on account of, or in connection with, any profession, trade or business carried on by such person or company, whether entered in a book or not.

Fixed Charge

A fixed security over a Book Debt for the purposes of Section 1001 is described as one where:

- a) ownership of the Book Debts remains with the company
and
- b) the proceeds of the Book Debts are put beyond the control of the company so that they cannot be used in the course of its normal day-to-day operations.

Charge-holder

The holder of the Fixed Charge, generally a bank or other financial institution that extends credit using the Book Debts as security as a means of recouping the credit extended.

Debenture

The document setting out the terms of the agreement between the original owner of the Book Debts and the Charge-holder.

3. Notice of Default

- i. In order for the Charge-holder to become liable, the Charge-holder **must** have received the appropriate 'Notice of Default' letter from Revenue setting out the outstanding liabilities.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

There are two types of **Notices of Default**:

- a) where Revenue is notified of the Companies Registration Office (CRO) registered charge.
 - b) where Revenue is **not** notified of the CRO registered charge.
- ii **Where Revenue is notified of the CRO registered charge.**
- a. Where the Charge-holder has notified Revenue with details of the Fixed Charge, i.e. submitted to Revenue a copy of the particulars sent to the CRO Registrar within 21 days of the creation of the Charge, then the Charge-holder's liability is limited to any Employer Income Tax/PRSI/USC/LPT and VAT liabilities incurred by the company **subsequent to** Revenue issuing the 'Notice of Default' letter at [Appendix 2](#).

This letter advises the Charge-holder that the company has incurred Employer Income Tax/PRSI/USC/LPT and/or VAT liabilities in default (under the legislation the Charge-holder must be notified but is not liable for these liabilities) and that the Charge-holder will become liable for payment of any Employer Income Tax/PRSI/USC/LPT and/or VAT liabilities in default* which arise **after** the date on the letter. Such liabilities for which the Charge-holder will be liable must be set out in a follow-up letter to the Charge-holder. See [Appendix 3](#) below.

*** In default: Unpaid liabilities where there has been no acceptable response to the Final Demand.**

- b. Where a charge transfers from one Charge-holder to another, the new Charge-holder has 21 days to submit details of the transfer of the charge to Revenue.

Once Revenue is notified of the transfer of the charge, Revenue must issue a new Notice of Default letter to the new Charge-holder (See [Appendix 2](#)).

- iii **Where Revenue is not notified of the CRO registered charge.**
- a. In cases where Revenue was not officially notified of the Fixed Charge and the CG Caseworker is subsequently advised by a Charge-holder or Agent (usually in the course of other case-working activity), that there is a Fixed

Charge in place over the Book Debts, then the CG Caseworker should issue the relevant 'Notice of Default' Letter (See Appendix 4).

- b. In these circumstances, the Charge-holder is liable for all the Employer Income Tax/PRSI/USC/LPT and VAT liabilities of the company in default subsequent to the date of the Fixed Charge Agreement (Debenture document) and including those incurred in the period prior to the Notice of Default letter issued by Revenue.
- c. If the Charge-holder responds to Revenue's Notice of Default by stating that the charge is not one to which Section 1001, TCA 1997 applies, the CG Caseworker should request a copy of the Fixed Charge Agreement (Debenture document) so that this can be confirmed.
- d. In order for a Fixed Charge on Book Debts to be a valid charge for the purposes of Section 1001, TCA 1997, the Debenture document i.e. the Fixed Charge Agreement, should stipulate that the proceeds of Book Debts are put beyond the control of the company so that they cannot be used by the company in the course of its normal day-to-day operations.
- e. The Charge-holder's liability will not exceed the amount the Charge-holder has received on foot of the company's debts included in the Fixed Charge Agreement, **after** the Notice from Revenue has issued.
- f. The notification of transfer under Section 1001 (3A) TCA 1997 relates to a transfer of legal ownership.
- g. Transfers of **beneficial interest** do **not** require notification to Revenue of the particulars listed in subsection (3) above. Once Revenue notifies the Fixed-Charge-holder in accordance with Section 1001 (3), any liability that arises and becomes due for payment subsequently is the responsibility of the beneficial owner.
- h. Section 1001(2), TCA 1997 grants Revenue the power to proceed with enforcement action against any Charge-holder who neglects or refuses to pay the stated tax liabilities in default in the same manner as it would with any other defaulter.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

Appendix 1: Legislation - Fixed Charges on Book Debts

Section 1001 Taxes Consolidation Act 1997

(1) In this section, "relevant amount" means any amount which the company is liable to remit under -

- (a) **Chapter 4** of this Part,
- (b) the **Value-Added Tax Consolidation Act 2010**, and
- (c) the **Finance (Local Property Tax) Act 2012**.

(2) Subject to this section, where a person holds a fixed charge (being a fixed charge created on or after the 27th day of May, 1986) on the book debts of a company (within the meaning of the **Companies Act 2014**), such person shall, if the company fails to pay any **relevant amount** for which it is liable, become liable to pay such **relevant amount** on due demand, and on neglect or refusal of payment may be proceeded against in the like manner as any other defaulter.

(3) This section shall not apply unless the holder of the fixed charge has been notified in writing by the Revenue Commissioners that a company has failed to pay a **relevant amount** for which it is liable and that by virtue of this section the holder of the fixed charge -

(a) may become liable for payment of any **relevant amount** which the company subsequently fails to pay, and

(b) where subsection (3A) does not apply, has become liable for the payment of the **relevant amount** which the company has failed to pay.

(3A) Where -

(a) within 21 days of the creation of the fixed charge, or

(b) in a case in which the fixed charge has been transferred (whether before or after the coming into operation of **section 72** of the Finance Act 2019) on or before whichever is the later of -

(i) 31 January 2020, and

(ii) the date that is 21 days from the date of transfer of the fixed charge,

the holder of the fixed charge furnishes in writing to the Revenue Commissioners the following details in relation to the charge:

(I) the name of the company on whose book debts the charge has been created;

(II) the registration number of the company as issued by the Companies Registration Office to that company;

(III) the tax registration number of the company as issued by the Revenue Commissioners to that company;

(IV) the date the fixed charge was created or transferred, as the case may be;

(V) the name and address of the holder of the fixed charge,

then this section shall not apply to any **relevant amount** which the company was liable to pay before the date on which the holder is notified in writing by the Revenue Commissioners in accordance with subsection (3).

(4) The amount or aggregate amount which a person shall be liable to pay in relation to a company in accordance with this section shall not exceed the amount or aggregate amount -

(a) which the person has, while the fixed charge on book debts in relation to the company is in existence, received directly or indirectly from that company in payment or in part payment of any debts due by the company to the person, or

(b) which the holder of the fixed charge received from the company after the date on which the holder is notified in writing by the Revenue Commissioners in accordance with subsection (3).

(5) The Revenue Commissioners may, at any time and by notice in writing given to the holder of the fixed charge, withdraw with effect from a date specified in the notice a notification issued by them in accordance with subsection (3); but such withdrawal shall not -

(a) affect in any way any liability of the holder of the fixed charge under this section which arose before such withdrawal, or

(b) preclude the issue under subsection (3) of a subsequent notice to the holder of the fixed charge.

(6) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this section to be performed or discharged by the Revenue Commissioners.

Appendix 2: Letter of Notice of Default [Revenue notified of Charge]

Letter of notice of liabilities – charge-holder has notified Revenue of the charge within 21 days of its creation or transfer (as applicable)

Company Secretary

Charge-holder Company

Street

Town

County

Date: XX Month YEAR

Notification pursuant to section 1001 of the Taxes Consolidation Act 1997 (hereinafter “the Act”)

Re: Company XYZ, Reg No. 1234567A

Dear Sir/Madam,

I refer to the Fixed Charge held by you on the book debts of the above company, of which you have notified Revenue pursuant to Section 1001(3)(c) of the Act by letter dated the [INSERT DATE OF SECTION 1001(3)(C) NOTIFICATION BY FIXED CHARGE-HOLDER TO REVENUE].

Please be advised that the above-named company has failed to pay the following relevant amounts for which it is liable:

Taxhead	Amount
Employer Income Tax/PRSI/USC/LPT	
VAT	

I hereby notify you, pursuant to Section 1001(3)(a) of the Act that, by virtue of Section 1001 of the Act (as amended), you may become liable for the payment of any relevant amounts, together with any interest incurred, which the company fails to pay, subsequent to this notification.

Yours sincerely,

XXXX

Appendix 3: Letter of Notice of Default [Revenue notified of Charge] Charge-holder Liable for Amounts in Default

LETTER OF NOTICE OF LIABILITIES

- Charge-holder has notified Revenue of the Charge within 21 days of its creation or transfer
- Revenue has previously issued the first Notification Letter at Appendix 2

Company Secretary

Charge-holder Company

Street

Town

County

Date: XX Month YEAR

Re: Company XYZ, Reg. No. 1234567A

Demand pursuant to Section 1001 of the Taxes Consolidation Act 1997 (hereinafter "the Act")

Dear Sir/Madam,

I refer to the Fixed Charge held by you on the book debts of the above company. I note that you had furnished in writing to Revenue details of the Fixed Charge listed in Section 1001(3)(c) of the Act. I also refer to the notification dated the [INSERT DATE OF SECTION 1001(3)(A) NOTIFICATION] provided to you pursuant to Section 1001(3)(a) of the Act.

Please be advised that, in the period since the date of the Section 1001(3)(a) notification referred to above, the above-named company has failed to pay the following relevant amounts for which it is liable:

Taxhead	Period	Amount	Interest	Total
Employer Income Tax/PRSI/USC/LPT				
VAT				
TOTAL				

Interest as stated above has been charged to DD/MM/YY and will continue to accrue until the debt is paid. Please note that your liability for the company's default is capped at the aggregate amount which, during the existence of the Fixed Charge, you received directly or indirectly from [INSERT NAME OF COMPANY] on foot of the Fixed Charge on the book debts of the company. In accordance with Section 1001 of the Taxes Consolidation Act 1997 as amended, I therefore hereby demand payment in the amount of [INSERT ACTUAL LIABILITY OF FIXED CHARGE-HOLDER].

Please note that, in the event you refuse or neglect to pay this liability within 21 days, Revenue will, without further notice, use enforcement measures to collect the debt. Also, you will be liable to payment of enforcement costs in addition to payment of the liability.

Yours sincerely,

XXXX

Appendix 4: Letter of Notice of Default [Revenue **not** notified of Charge] Charge-holder Liable for Amounts in Default

Letter of notice of liabilities: charge-holder has failed to notify Revenue within 21 days of the creation or transfer (as applicable) of the charge

Company Secretary

Charge-holder Company

Street

Town

County

Date: XX Month YEAR

Re: Company XYZ, Reg No. 7654321Z

Dear Sir/Madam,

I refer to the Fixed Charge held by you on the book debts of the above company. I note that you have not furnished in writing to Revenue details of the Fixed Charge within the 21 days of the creation or transfer of the Charge pursuant to Section 1001(3)(c) of the Act.

Please be advised that the above-named company has failed to pay the following relevant amounts of PAYE/PRSI/USC/LPT and VAT for which it is liable:

Taxhead	Amount
Employer Income Tax/PRSI/USC/LPT	
VAT	

I hereby notify you, pursuant to Section 1001(3)(a) of the Act that, by virtue of Section 1001 of the Act (as amended), you have become liable for the payment of the above relevant amount which the company has failed to pay. You are also liable for any future company PAYE/PRSI/USC/LPT and VAT liabilities which are not paid by the company from monies you receive post the date of this notification on foot of the Fixed Charge on the book debts of the company.

Yours sincerely,

XXXX

Appendix 5: Letter of Notice of Default [Revenue not notified of Charge] Charge-holder Liable for Amounts in Default

LETTER OF NOTICE OF LIABILITIES

- Charge-holder has not notified Revenue of the Charge within 21 days of its creation or transfer
- Revenue has previously issued the first Notification Letter at Appendix 4

Company Secretary

Charge-holder Company

Street

Town

County

Date: XX Month YEAR

Re: Company XYZ, Reg No. 7654321Z

**Demand pursuant to section 1001 of the Taxes Consolidation Act 1997
(hereinafter “the Act”**

Dear Sir/Madam,

I refer to the Fixed Charge held by you on the book debts of the above company. I note that you had not furnished in writing to Revenue details of the Fixed Charge listed in Section 1001(3)(c) of the Act. I also refer to the notification dated the [INSERT DATE OF SECTION 1001(3)(A) NOTIFICATION] provided to you pursuant to Section 1001(3)(a) of the Act.

Please be advised that the above-named company has failed to pay the following relevant amounts for which it is liable:

Taxhead	Period	Amount	Interest	Total
Employer Income Tax/PRSI/USC/LPT				
VAT				
TOTAL				

Interest as stated above has been charged to DD /MM/YY and will continue to accrue until the debt is paid. Please note that your liability for the company's default is capped at the aggregate amount which, during the existence of the Fixed Charge, you received directly or indirectly from [INSERT NAME OF COMPANY] on foot of the Fixed Charge on the book debts of the company. In accordance with Section 1001 of the Taxes Consolidation Act 1997 as amended, I therefore demand payment in the amount of [INSERT ACTUAL LIABILITY OF FIXED CHARGE HOLDER].

Please note that, in the event you refuse or neglect to pay this liability within 21 days, Revenue will, without further notice, use enforcement measures to collect the debt. Also, you will be liable to payment of enforcement costs in addition to payment of the liability.

Yours sincerely,

xxxx