

## **Section 1001 – Fixed Charges on Book Debts Guidelines for Caseworkers**

**Reviewed – July 2017**

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## Section 1001, TCA 1997 Fixed Charges on Book Debts

### Legislation and Procedures -

1. Section 1001, Taxes Consolidation Act 1997, which applies only to Fixed Charges on the 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 PAYE/PRSI or VAT liabilities. (See [Appendix 1: Legislation](#)).

### Definitions:

- Book Debts:** Any debt due *or* to become due at some future time to any person/company on account of *or* in connection with any profession, trade or business carried on by such person/company whether entered in a book or not.
- Fixed Charge:** A fixed security over a book debt for the purposes of S1001 is described as one where:
1. Ownership of the book debts remains with the company  
**and**
  2. 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.
- Chargeholder:** The holder of the Fixed Charge – generally a bank or other financial organisation 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 Chargeholder.

2. In order for the Chargeholder to become liable they must have received the appropriate '**Notice of Default**' from Revenue setting out the outstanding liabilities.

The criteria for issuing **Letters of Notice of Default** and /or **Letters of Notice of Liability for Default** under S. 1001 TCA, 1997, are as follows:

- Phoenix / Commonality cases with serious non-compliance issues that are currently being monitored by Dedicated Pursuit Unit.
- The liabilities have been included in a Final Demand to the taxpayer and 14 days must have elapsed without any response from taxpayer either to address full payment immediately or to commit to a phased payment arrangement.

- When issuing letters of Chargeholder liability for the Company taxes in default (i.e. letters at Appendix 3 and Appendix 4) the debts included are not currently the subject of any other form of enforcement or included in a phased payment / instalment arrangement
- The Notice of Default must be signed by an Authorised Officer. AP's / PO's in the Insolvency Unit, Dedicated Pursuit Unit and Customer Services Unit are authorised officers under S1001 (6).

### 3. There are two types of Notices of Default:

#### (i) **Revenue Notified of the Charge – Letter of Notice of Default – Appendix 2.**

If the Chargeholder 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 their liability is limited to any PAYE/PRSI and VAT liabilities incurred by the company after Revenue has issued the first 'Notice of Default' letter at [Appendix 2](#).

This letter advises the Chargeholder that the company has incurred PAYE/PRSI and/or VAT liabilities in default (under the legislation the Chargeholder must be notified but is not liable for these liabilities) and that they will become liable for payment of any PAYE/PRSI and/or VAT liabilities in default\* which arise after the date on the letter. Such liabilities for which the Chargeholder will be liable must be set out in a follow-up letter to the Chargeholder. Ref: [Appendix 3](#) below.

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

#### (ii) **Revenue Not Notified of the Charge**

In cases where Revenue was not officially notified of the Fixed Charge and the caseworker is subsequently advised by a Chargeholder or Agent (usually in the course of other caseworking activity), that there is a Fixed Charge in place over the book debts, then the caseworker should issue the relevant 'Notice of Default' Letter, (See [Appendix 4](#)).

In these circumstances, the Chargeholder **is liable** for all the PAYE/PRSI and VAT liabilities of the company in default subsequent to the date of the Fixed Charged Agreement and including those incurred in the period **prior** to Notice of Default letter issued by Revenue.

If the Chargeholder responds to Revenue's Notice of Default by stating that the charge is not one to which S. 1001 applies, the caseworker should request a copy of the Debenture (Agreement) so that this can be confirmed.

In order for a Fixed Charge on Book Debts to be a valid charge for the purposes of S.1001, TCA 1997, the Debenture, 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.

4. The Chargeholder's liability will not exceed the amount they have received on foot of the company debts included in the Fixed Charge Agreement after the Notice from Revenue has issued if Revenue has received notification of the charge **or** from the date of the creation of the charge where the Chargeholder failed to notify revenue.
5. Section 1001 (2) grants Revenue the power to proceed with enforcement action against any Chargeholder 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**

1001.-(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, 1963), 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-

- (a) 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-
  - (i) may become liable for payment of any relevant amount which the company subsequently fails to pay, and
  - (ii) where paragraph (c) does not apply, has become liable for the payment of the relevant amount which the company has failed to pay,
- (b) to any amounts received by the holder of the fixed charge from the company before the date on which the holder is notified in writing by the Revenue Commissioners in accordance with paragraph (a), and
- [(c) where within 21 days of the creation 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; and
  - (v) the name and address of the holder of the fixed charge;

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 paragraph (a).]

- (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 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.
- (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 – CHARGEHOLDER HAS NOTIFIED REVENUE OF THE CHARGE WITHIN 21 DAYS OF ITS CREATION

Company Secretary  
Chargeholder 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 write to you on behalf of the Revenue Commissioners. I refer to the fixed charge held by you on the book debts of the above company, of which you have notified the Revenue Commissioners 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
PAYE/PRSI	
VAT	

I hereby notify you, pursuant to section 1001(3)(a) of the Act, that 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

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XXXX



### **Appendix 3: Letter of Notice of Default [Revenue Notified of Charge] Chargeholder Liable for Amounts in Default**

#### **LETTER OF NOTICE OF LIABILITIES**

- **Chargeholder has Notified Revenue of the Charge Within 21 Days of its Creation**
- **Revenue has previously issued the first Notification Letter at Appendix 2**

Company Secretary  
Chargeholder 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 write to you on behalf of the Revenue Commissioners. 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 the Revenue Commissioners the 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.

<b>Taxhead</b>	<b>Period</b>	<b>Amount</b>	<b>Interest</b>	<b>Total</b>
PAYE/PRSI				
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 on behalf of the Revenue Commissioners 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 the Revenue Commissioners will without further notice proceed against you in like manner as it would any other tax defaulter.

Yours sincerely,

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## **Appendix 4: Letter of Notice of Default [Revenue Not Notified of Charge] Chargeholder Liable for Amounts in Default**

### **LETTER OF NOTICE OF LIABILITIES: CHARGEHOLDER HAS FAILED TO NOTIFY REVENUE WITHIN 21 DAYS OF THE CREATION OF THE CHARGE**

Company Secretary  
Chargeholder Company  
Street  
Town  
County

Date: XX Month YEAR

Re: Company XYZ, Reg No. 7654321Z

Dear Sir/Madam,

I write to you on behalf of the Revenue Commissioners. 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 the Revenue Commissioners the details of the fixed charge within the 21 days of the creation 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 and VAT for which it is liable.

<b>Taxhead</b>	<b>Amount</b>
PAYE/PRSI	
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 along with any future company PAYE/PRSI 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,

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## **Appendix 5: Letter of Notice of Default [Revenue Not Notified of Charge] Chargeholder Liable for Amounts in Default**

### **LETTER OF NOTICE OF LIABILITIES**

- **Chargeholder has Notified Revenue of the Charge Within 21 Days of its Creation**
- **Revenue has previously issued the first Notification Letter at Appendix 4**

Company Secretary  
Chargeholder 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 write to you on behalf of the Revenue Commissioners. 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 the Revenue Commissioners the 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.

<b>Taxhead</b>	<b>Period</b>	<b>Amount</b>	<b>Interest</b>	<b>Total</b>
PAYE/PRSI				
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 on behalf of the Revenue Commissioners 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 the Revenue Commissioners will without further notice proceed against you in like manner as it would any other tax defaulter.

Yours sincerely,

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