Disclosure of Tax Avoidance Schemes (DOTAS) Regime and the Annual Tax on Enveloped Dwellings (ATED)

Draft regulations and Taxes Information and Impact Note

15 July 2013
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1. Introduction

Tax avoidance represents a significant part of the UK tax gap. It involves using the tax law to obtain a tax advantage that Parliament never intended. It frequently involves contrived, artificial transactions that serve no purpose other than to reduce tax liability. And it enables some taxpayers to gain an unfair advantage, undermining confidence in the tax system.

HMRC’s anti avoidance strategy has three core elements:

- Preventing avoidance at the outset where possible;
- Detecting it early where it persists;
- Countering it effectively by challenge by HMRC.

The Disclosure of Tax Avoidance Schemes (DOTAS) Regime

The Disclosure of Tax Avoidance Schemes (DOTAS) regime is a key component of the detection element of the strategy. It enables HMRC to:

- Get early information about avoidance schemes and how they work - informing anti-avoidance legislation;
- Get information about who has used the scheme - informing our operational response;
- Reduce the supply of avoidance schemes and deter promoters and users from getting into avoidance.

The regime works by requiring a promoter (and in some cases users) to provide information to HMRC about schemes falling within certain descriptions (known as hallmarks), which might be expected to provide a tax advantage as a main benefit. A tax arrangement must be disclosed when:

- it will, or might be expected to, enable any person to obtain a tax advantage;
- that tax advantage is, or might be expected to be, the main benefit or one of the main benefits of the arrangement;
- it is a tax arrangement that falls within any description (known as 'hallmarks') prescribed in the relevant regulations.

A scheme reference number ("SRN") system identifies the users of schemes. When a promoter discloses a scheme, HMRC may allocate a SRN and notify it to the promoter; the promoter must pass the SRN to clients who in turn must identify themselves to HMRC by reporting the information back to HMRC, usually on a return, but sometimes separately.

In addition, promoters must periodically provide HMRC with information about clients; clients who are intermediaries must pass SRN information to other users of a scheme. Intermediaries may be required to provide HMRC with information leading to the identification of the promoter of a scheme. HMRC may issue a Scheme Reference Number (SRN) to the promoter, who in turn must pass on to clients who use the scheme. A promoter is required to provide a quarterly report of clients who have been issued with an SRN.

You can find out more about the disclosure regime on the Tax Avoidance pages of the HMRC website.
What is being done

Finance Bill 2013 introduced a new tax – the Annual Tax on Enveloped Dwellings (ATED). In some cases properties are owned by a company (or other entities, for example a collective investment vehicle). In these circumstances the property is said to be ‘enveloped’ because the ownership sits within a corporate ‘wrapper’ or ‘envelope’. ATED is a tax payable by entities which own such ‘enveloped’ residential properties. It will apply where the property is situated in the UK and it is valued at more than £2m on 1 April 2012 (or at acquisition if later). ATED will start on 1 April 2013 and will be payable each year. The tax is a fixed amount that is payable based on the band into which the value of the property corresponds. There are 4 bands:

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<tr>
<th>Property Value</th>
<th>Annual Tax 2013-14</th>
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<tr>
<td>£2,000,001 to £5,000,000</td>
<td>£15,000</td>
</tr>
<tr>
<td>£5,000,001 to £10,000,000</td>
<td>£35,000</td>
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<tr>
<td>£10,000,001 to £20,000,000</td>
<td>£70,000</td>
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<td>£20,000,001 and over</td>
<td>£140,000</td>
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The amount charged per band is to be increased by the consumer prices index annually. There are reliefs that could reduce the tax completely but they can only be claimed in a return. You can read more about ATED on the HMRC website at [http://www.hmrc.gov.uk/ated/basics.htm](http://www.hmrc.gov.uk/ated/basics.htm).

Finance Bill 2013 added ATED to the list of taxes to be covered by DOTAS. Extending DOTAS to ATED ensures that DOTAS covers all relevant taxes and will enable early detection of avoidance schemes.

In order to be more certain that we get early warning of such schemes, regulations are being introduced to describe the types of ATED schemes requiring disclosure. Additional regulations are also needed to set out the information requirements and time limits for complying with a disclosure obligation.

This technical paper now exposes draft regulations setting out the types of ATED arrangements to be disclosed to HMRC and the information and time limits for disclosing them.

We welcome any comments you may have on these draft regulations. Please direct any comments to the contact name below by 27 August 2013.

Legislative context

Part 7 of the Finance Act (“FA”) 2004 (“Part 7”), comprising sections 306–319, provides for the notification, or “disclosure”, to HMRC of certain tax arrangements and proposals for arrangements (“schemes”).

Clauses 94-174 and Schedules 33-35 of Finance Bill 2013 introduced ATED.

Paragraph 2 of Schedule 33 of Finance Bill 2013 amended section 318 of Finance Act 2004 and added ATED to the list of taxes to be bought within DOTAS.

Separate regulations set out the descriptions of schemes requiring disclosure and the information requirements and time limits for doing so.
Proposed legislative changes

The draft Annual Tax on Enveloped Dwellings Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2013

These regulations specify the arrangements that should be notified to HMRC in relation to ATED. The descriptions of arrangements in regulation 2(2) have been drawn deliberately widely to catch transfers between parties. However, schemes are exempted from disclosure where they fall within the list of excluded arrangements in the Schedule.

The draft Tax Avoidance Schemes (Information) (Amendment) Regulations 2013

These regulations specify the information requirements and time limits for promoters to disclose an ATED scheme and for users to notify HMRC that they have used a disclosed scheme. They amend the Tax Avoidance Schemes (Information) Regulations 2012 SI 2012/1836.

In most circumstances a user must report the use of a notifiable ATED scheme on the ATED return. However, in some circumstances a user must report the use of the scheme separately from the return, for example where no ATED return is due or where the filing date has already passed. A draft copy of this form (form AAG4 (ATED)) is available at the end of this technical note.

Questions

Question 1: Do you have you have any comments on the proposed descriptions of ATED schemes to be disclosed? Do you consider they will be proportionate and effective and if not, why not?

Question 2: Do you think innocent transactions will be caught by these regulations? If yes, what kind of transactions and how many?

Question 3: Do you have any comments on the proposed information requirements and time limits for disclosing an ATED scheme?

Question 4: Do you have any comments on the revised Tax Information and Impact Note (TIIN)?

Question 5: Do you have any comments on the draft form AAG4 (ATED).

Contact

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London
SW1A 2BQ

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The Treasury make the following Regulations in exercise of the powers conferred upon them by sections 306(1)(a) and (b), 317(2) and 318(1) of the Finance Act 2004.

Citation and commencement

1. These Regulations may be cited as the Annual Tax on Enveloped Dwellings Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2013 and come into force on 1 October 2013.

Prescribed description of arrangements in relation to annual tax on enveloped dwellings

2.—(1) For the purposes of Part 7 of the Finance Act 2004 (disclosure of tax avoidance schemes) the arrangements specified in paragraph (2) are prescribed in relation to annual tax on enveloped dwellings.

(2) The arrangements are prescribed if they do not comprise excluded arrangements under the Schedule to these Regulations and as a result of the arrangements, or any element of the arrangements—

(a) a company, partnership or collective investment scheme ceases to meet the ownership condition in respect to the chargeable interest;

(b) the taxable value of the chargeable interest is reduced to £2 million or less; or

(c) the taxable value of the chargeable interest is reduced with the consequence that the chargeable interest falls within a lower tax band than it otherwise would.

(3) In this regulation—

“chargeable interest” has the meaning given by [section 104 of the Finance Act 2013(1)];

“collective investment scheme” has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 235 of that Act);

“company” has the meaning given by [section 164(1) of the Finance Act 2013];

“partnership” has the meaning given by [section 165 of the Finance Act 2013];

“relevant date” has the meaning given by [section 308(2) of the Finance Act 2004];

(1) 2004 c.12. Paragraph 2 of Schedule 33 to Finance Act 2013 (c.XX) inserted “annual tax on enveloped dwellings” into the definition of tax in section 318(1). Section 317(2) was amended by section 56 of, and Schedule 17 to, the Finance Act 2010 (c.13).

(2) 2013 c.XX
reference to meeting the “ownership condition” is to be read in accordance with [section 91(4) to (7) of the Finance Act 2013]; and
reference to falling within a lower “tax band” is to be read in accordance with the table at [section 96(4) of the Finance Act 2013].

**Time for providing information: transitional provisions**

3.—(1) Where paragraph 2 applies, the period or time (as the case may be) to be found in accordance with regulation 5 of the Tax Avoidance Schemes (Information) Regulations 2012(3) shall end on 30 November 2013 instead of the day on which it would end by virtue of that regulation.

(2) This paragraph applies in respect of proposals or arrangements (as the case may be) that are notifiable by virtue of regulation 2 where—

(a) for the purposes of section 308(1) of the Finance Act 2004 the relevant date in relation to a proposal falls within the period beginning with 13 December 2012 and ending on 30 September 2013;

(b) for the purposes of section 308(3) of the Finance Act 2004 the date on which the promoter first becomes aware of any transaction forming part of the arrangements falls within the period beginning with 13 December 2012 and ending on 30 September 2013; or

(c) for the purposes of section 309 and 310 of the Finance Act 2004 the date on which any transaction forming part of the arrangements is entered into falls within the period beginning with 13 December 2012 and ending on 30 September 2013.

Date 2013  Two of the Lord Commissioners of Her Majesty’s Treasury

**SCHEDULE**

**Excluded Arrangements**

Arrangements are excluded from being prescribed arrangements for the purposes of these Regulations if they comprise a transfer of the chargeable interest from a company, partnership or collective investment scheme (a “transferor”) to a transferee where—

(a) the transferor and transferee are not connected persons, and the transfer is on arm’s length terms;

(b) the transferor and the transferee are members of the same group of companies, the transfer is on arm’s length terms and the transferee meets the ownership condition;

(c) the transfer constitutes a company distribution, and the transferee is an individual, a corporation sole or a person who meets the ownership condition; or

(d) the transfer constitutes a settlement.

In this Schedule—

“company distribution” has the same meaning as in the Corporation Tax Act 2010(4) (see section 1000);

“on arm’s length terms” means on such terms, including but not limited to the amount of consideration in money payable, as would reasonably be expected to be agreed between unconnected persons;

“settlement” has the meaning given by section 43 of the Inheritance Tax Act 1984(5);

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(3) SI 2012/1836.
(4) 2010 c. 4.
(5) 1984. c.51.
reference to not being “connected persons” or “unconnected persons” is to be read in accordance with section 1122 of the Corporation Tax Act 2010; and

reference to companies being “members of the same group of companies” is to be read in accordance with section 152 of the Corporation Tax Act 2010.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe arrangements which enable or might be expected to enable any person to obtain a tax advantage in relation to annual tax on enveloped dwellings, and which a promoter is required to notify to HMRC.

Regulation 1 provides for the citation and commencement of these Regulations.

Regulation 2 prescribes arrangements in relation to annual tax on enveloped dwellings which must be notified to HMRC under Part 7 of the Finance Act 2004 (c. 12). The duty to notify does not arise in the cases specified in the Schedule to these Regulations.

Regulation 3 makes transitional provision for arrangements arising between 13 December 2012 and 30 September 2013.

A Tax Information and Impact Note covering this instrument is published alongside this draft and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.
The Commissioners for Her Majesty’s Revenue and Customs (6) in exercise of the powers conferred by sections 308(1) and (3), 313(1) and (3), 317(2) and section 318(1) of the Finance Act 2004(7) and section 132 of the Finance Act 1999(8), make the following Regulations:

Citation and commencement

4. These Regulations may be cited as the Tax Avoidance Schemes (Information) (Amendment) Regulations 2013 and come into force on 1 October 2013.

Amendments to the Tax Avoidance Schemes (Information) Regulations 2012

5. The Tax Avoidance Schemes (Information) Regulations 2012(9) are amended as follows.

Annual tax on enveloped dwellings: consequential changes

6. In regulation 2(2)—

(a) the definition of “the filing date” at 2(2)(a) is amended so that after “the last day of the period mentioned in regulation 9(5)(b)” insert “or in the case of annual tax on enveloped dwellings the last day of the period mentioned in regulation 10(6A)(b)”;

(b) for the definition of “the prescribed taxes” substitute “the prescribed taxes” means capital gains tax, corporation tax, income tax, inheritance tax, stamp duty land tax and annual tax on enveloped dwellings.”.

(6) The functions of the Commissioners of Inland Revenue (who are referred to in section 318 as “the Board”) were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5 of the Commissioners for Revenue and Customs Act 2005 (c.11). Section 50(1) of that Act provides that, in so far as it is appropriate in consequence of section 5, a reference, however expressed, to the Commissioners of Inland Revenue is to be taken as a reference to the Commissioners for Her Majesty’s Revenue and Customs.

(7) 2004 c.12. Sections 308 and 313 were amended by paragraphs 1, 2 and 5 of Schedule 8 to the Finance Act 2008 (c. 9). Section 317(2) was amended by section 56 and paragraphs 1 and 8 of Schedule 17 to Finance Act 2010 (c. 13). Section 318(1), which was amended by [paragraph 2] of Schedule 33 to Finance Act 2013 (c.XX), gives the meaning of “prescribed” for the purposes of Part 7 of Finance Act 2004, except for section 306.

(8) 1999 c.16. Section 132 was amended by paragraph 156 of Schedule 17 to the Communications Act 2003 (c. 21).

(9) SI 2012/1836.
7. In regulation 4(1)(b) after “the Arrangements Regulations,” insert “the ATED Arrangement Regulations,”.

8. In regulation 4(2)(c) after “the Arrangements Regulations,” insert “the ATED Arrangement Regulations,”.

9. In regulation 4(3)(b) after “the Arrangements Regulations,” insert “the ATED Arrangement Regulations,”.

10. In regulation 4(5) after the definition of “the Arrangement Regulations” insert—

    “the ATED Arrangement Regulations” means the [Annual Tax on Enveloped Dwellings Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2013(10).]

11. After regulation 9(5) insert—

    “(6) Subject to regulation [10(7) and (8)] in the case of a person who—

    (a) expects an advantage to arise in respect of that person’s liability to pay, entitlement to a repayment of, or deferment of the liability to pay, annual tax on enveloped dwellings as a result of notifiable arrangements; and

    (b) is required to make a return to HMRC under [section 157] of the Finance Act 2013(11) in respect of annual tax on enveloped dwellings,

    the prescribed information shall be included in the return under that section.”.

12. After regulation 10(6) insert—

    “(6A) In the case of a person who—

    (a) expects an advantage to arise in respect of that person’s liability to pay, entitlement to a repayment of, or deferment of the liability to pay, annual tax on enveloped dwellings as a result of notifiable arrangements; and

    (b) is not required to make a return to HMRC under [section 157] of the Finance Act 2013 in respect of a transaction forming part of the notifiable arrangements within a period of 30 days beginning with the later of—

        (i) the effective date of the first transaction which forms part of the arrangements; or

        (ii) the date of the receipt of the reference number allocated under the provisions of section 311,

    the prescribed information shall be provided separately to HMRC in such form and manner as they may specify.”

13. In regulation 11(3) after “(apart from paragraph (2)” insert “and any case relating to annual tax on enveloped dwellings”.

14. After regulation 11(4) insert—

    “(5) In the cases prescribed in regulation 10(6A), (7) and (8), where they relate to annual tax on enveloped dwellings, the prescribed information is—

    (a) the name and address of the person providing it;

    (b) any tax reference number or other personal identifier allocated by HMRC or a foreign tax authority to the person to whom the information relates;

    (c) where a foreign tax authority has allocated a personal identifier, the name of the country on behalf of which that foreign tax authority acts;

    (d) the reference number (or if more than one, any one reference number) allocated by HMRC under section 311 to the notifiable arrangements or proposed notifiable arrangements;

    (e) the address of the property forming the subject of the arrangements (“the property”); and

    (f) the title number of the property (if any is allocated);
(g) the first chargeable period (by reference to [section 91(8) of the Finance Act 2013]) in which
the person providing the information expects to obtain a tax advantage by virtue of the
notifiable arrangements;
(h) the name of the person providing the declaration as to the accuracy and completeness of the
notification; and
(i) the capacity in which the person mentioned in sub-paragraph (g) is acting.”.

15. After regulation 12(5) insert—
“(5A) In the cases prescribed in regulation 10(6A), (7) and (8), where they relate to annual tax on
enveloped dwellings, any time during the period of 30 days beginning with the later of—
(a) the effective date of the first transaction which forms part of the arrangements; or
(b) the date of the receipt of the reference number allocated under the provisions of section
311.”.

16. In regulation 12(6) after “regulation 10(7) and (8)” insert “, except where they relate to annual tax on
enveloped dwellings,”.

Date

Two of the Commissioners for Her Majesty’s Revenue and Customs
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations amend the Tax Avoidance Schemes (Information) Regulations 2012 (SI 2012/1836) (“Information Regulations”) in two tranches. These changes are made following the amendment of Part 7 of the Finance Act 2004 (“the 2004 Act”) by the Finance Act 2013.

Regulations 1 to 13 make consequential changes to the Information Regulations. These are required in order to extend this regime to arrangements which enable, or might be expected to enable, any person to obtain a tax advantage in relation to annual tax on enveloped dwellings. This instrument should be read with the Annual Tax on Enveloped Dwellings Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2013 ([SI XX]).

A Tax Information and Impact Note covering this instrument is published alongside this draft and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.
4. Taxes Information and Impact Note

A revised Tax Information and Impact Note (TIIN) “Taxation of high-value UK residential property held by certain non-natural persons” is published and updates that published at Budget 2013. This revised TIIN sets out the impacts of ATED being brought within the Disclosure of Tax Avoidance Schemes (DOTAS) regime.

A copy of the revised TIIN is published on the HMRC website at www.hmrc.gov.uk/thelibrary/tiins.htm
Disclosure of ATED Avoidance Scheme
(Notifcation of scheme reference number by scheme user)

Who should use this form?
You should use this form if you have received an 8 digit scheme reference number (SRN) from HM Revenue & Customs, a scheme promoter, or the client of a scheme promoter, you expect to obtain an Annual Tax on Enveloped Dwellings (ATED) advantage and one or more of the following applies:

- You are not liable to submit an ATED return;
- You are liable to submit an ATED return but the statutory date for doing so is later than the date by which you must report the SRN;
- You are liable to submit an ATED return but your return will not be submitted by the statutory filing date or it has already been submitted without the SRN;
- You are liable to submit an ATED return but you have more SRNs to report than there are spaces on the return (use this form to report excess SRNs).

You must send in this form within 30 days of entering into the first transaction which forms part of the scheme or on receipt of the SRN, whichever is later.

If you are a partner in a partnership, read the ‘How to complete this form’ notes below.

<table>
<thead>
<tr>
<th>Name of scheme user</th>
<th>Title number of the relevant property (if allocated)</th>
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<tr>
<th>Address of scheme user</th>
<th>Address of the relevant property</th>
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<tr>
<th>Postcode</th>
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<table>
<thead>
<tr>
<th>Telephone Number of Scheme User</th>
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<thead>
<tr>
<th>Business Unique Identifier (if allocated)</th>
<th>Country of origin and type of Business Unique Identifier</th>
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<thead>
<tr>
<th>Scheme Reference Number</th>
<th>First Chargeable period in which tax advantage arises</th>
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Declaration

The information I have given on this form and any continuation sheets is correct and complete to the best of knowledge and belief.

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<thead>
<tr>
<th>Signature</th>
<th>Name of signatory (use capital letters)</th>
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<th>Date</th>
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If the scheme user named above is also notifying as the representative partner on behalf of other partners in a partnership to which he belongs, indicate here the number of additional partners who are liable to notify, and list them separately:

14
For guidance on completing this form please see overleaf or go to http://www.hmrc.gov.uk/aiu/forms-tax-schemes.htm

Notes

Background
Details of certain ATED avoidance schemes must be notified to HM Revenue & Customs (HMRC), usually by the scheme promoter. The user of the scheme must make the notification where the scheme is devised 'in-house', the promoter is outside the UK and no promoter notifies, or the information is to be covered by legal professional privilege.

When an ATED scheme is notified, HMRC may issue a SRN to the person making the notification. A promoter to whom a SRN is issued must provide it to each client who implements the scheme. If there are other users of the scheme the client must provide the SRN to them.

If you have received a SRN, whether from HMRC, the scheme promoter, or a client of the promoter, you are required to declare the use of the scheme to HMRC. This is done by entering the SRN and certain other information on this form.

How to complete this form

Partnerships
If you are a partner in a partnership, you should consider any expected ATED advantages from the perspective of your own liabilities to ATED, notwithstanding that the partnership may be regarded as a legal person or body corporate under the law of the country or territory under which it is formed.

If you and other members of the partnership have a duty to notify the SRN, a representative partner may make a single notification on behalf of the others provided that the names of all of those with a duty to notify are scheduled and attached to this form.

Title number of the relevant property
Enter the title number (if any is allocated) of the property forming the subject of the arrangements e.g. the UK HM Land Registry title number (or equivalent for Scotland and Northern Ireland). In some cases the property subject to ATED may be registered under more than one title number, for example where properties under separate title numbers are treated as one for ATED purposes. In this scenario, you should enter one title number in the 'Property title number' box and any other title numbers in the Notes section of this form.

Address of relevant property
Enter the address of the property forming the subject of the arrangements.

Business Unique Identifier
Enter any Business Unique Identifier (for example, your HMRC Corporation Tax Unique Taxpayer Reference Number or Self Assessment Unique Taxpayer Reference. If you do not hold such a reference number you can enter the Company Registration Number allocated by the Registrar of Companies where the company is incorporated, the VAT Registration Number or Employer PAYE reference number)

Country of Origin and type of Business Unique Identifier
Enter the name and country of the organisation that allocated the reference, plus the type of tax reference quoted, for example HMRC UK VAT Registration Number.

Scheme reference number (SRN)
Enter in the boxes the 8 digit SRN provided to you.

First Chargeable Period in which Tax Advantage Arises
Enter the start date of the first chargeable period in which you expect to gain a tax advantage from using the scheme, for example 01 04 2013.

When to send in this form
You must send in this form within 30 days of the first transaction which forms part of the scheme or receipt of the SRN, whichever is later. Submission should not be delayed if, for example, a formal valuation of the property has not been obtained.

Where to send this form
You should send this form to:

Anti-Avoidance Group (Intelligence),
HM Revenue & Customs
CTISA Intelligence S0528
PO Box 194
Bootle L69 9AA