



[2020] UKFTT 0080 (TC)

**TC07575**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2013/04774  
TC/2013/07492**

*VALUE ADDED TAX – claims for repayment of output tax – motor trader – ‘Elida Tables’ and ‘Italian Tables’ – whether appellant has established claim to additional repayments – preliminary issue as to level of manufacturer bonuses and number of demonstrator vehicles supplied*

**BETWEEN**

**IAN WORKMAN**

**Appellant**

**-and-**

**THE COMMISSIONERS FOR  
HER MAJESTY’S REVENUE AND CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE JONATHAN CANNAN**

**Sitting in public in Manchester on 1 October 2019**

**Mr Tim Brown of counsel instructed by The VAT People Limited for the Appellant**

**Mr Keith Golder of HM Revenue and Customs for the Respondents**

## DECISION

### INTRODUCTION

1. This appeal concerns a claim for repayment of VAT in connection with the business of Mossweald (2001) Limited (“Mossweald”). Mossweald carried on business as a motor trader and prior to its dissolution in 2004 it assigned any rights to repayment of VAT to Mr Ian Workman, who had been a director and shareholder of Mossweald. A claim for repayment of VAT pursuant to s80 Value Added Tax Act 1994 was originally made by Mr Workman in 2003. It was settled in accordance with the practice prevailing at that time. In 2008, a further claim for repayment of VAT was made covering years 1979 to 1996 (“the Period”). This claim was made pursuant to the extended time limits for such claims following the litigation in *Fleming v HM Revenue & Customs* [2008] UKHL 2. The further claim was not formally rejected until June 2012. Thereafter Mr Workman made various amendments to that claim, some of which were rejected by the respondents and some of which were accepted. I shall describe the matters still in dispute as “the Amended Claim”.

2. There is no issue on this appeal as to Mr Workman’s entitlement to make the Amended Claim. The question is whether Mr Workman can establish that Mossweald overpaid VAT in the Period in excess of repayments which have already been made.

3. The issues in respect of which the Amended Claim is made arise from the way in which Mossweald accounted for manufacturer bonuses and for sales of demonstrator vehicles. The parties invited me to give a decision in principle, and once I have made my findings of fact the parties should be in a position to agree the quantum of any further repayment. That is broadly the approach I shall take, although I shall treat the factual issues as preliminary issues.

### BACKGROUND TO CLAIMS BY MOTOR TRADERS

4. In the light of decisions of the European Court of Justice in *Elida Gibbs Ltd v Customs & Excise Commissioners* C-317/94 (“Elida Gibbs”) and *Commission v Italy* C-45/95 (“Italian Republic”) it became apparent that motor traders had been incorrectly accounting for VAT on manufacturer bonuses and sales of demonstrator vehicles respectively. The effect of *Elida Gibbs* was that output tax was not due in relation to manufacturer bonuses paid in respect of demonstrator vehicles whereas in some cases HM Customs & Excise (“HMCE”) policy had required output tax to be accounted for. The effect of *Italian Republic* was that sales of vehicles used as demonstrators should have been treated as exempt whereas UK domestic law had required output tax to be accounted for on the profit margin.

5. There was the potential for motor traders to make claims for repayment of VAT going back many years. HMCE as it then was recognised that due to the passage of time it was unlikely that evidence to support such claims would still be held. HMCE worked with trade bodies, industry representatives, manufacturers, and dealerships and prepared what are known as the “Elida Tables” and the “Italian Tables” (“the Tables”).

6. The Tables were based on industry-wide averages relating to the level of manufacturers bonuses and the number of sales of demonstrators to be expected by motor traders operating various types of franchises. The Tables provided a template pursuant to which traders who wished to make claims for overpaid VAT were able to lodge what HMCE and latterly HMRC would consider to be fair and reasonable claims. Claims could therefore be made without much of the supporting documentary material which would otherwise be expected to establish such claims. Where a trader considered that it had a higher claim than the Tables would suggest it was open to the trader to make a higher claim and to support it by reference to specific evidence justifying the higher claim. In such cases, and on this appeal the burden is with the trader to

establish whether and to what extent VAT has been overpaid (see *Why Pay More For Cars Limited v HM Revenue & Customs* [2015] UKUT 468 (TCC)).

#### **FINDINGS OF FACT**

7. I heard evidence from Mr Workman himself, and on behalf of the respondents from Officer Samantha Horsley. Both witnesses had made witness statements and gave oral evidence, in the case of Mr Workman via video link. I also had evidence from Mr Rob McCann, a VAT consultant who has been involved in Mr Workman's claim since the original claim in 2003. Based on the oral and documentary evidence before me I make the following findings of fact.

8. HMRC accept that the Amended Claim can include not just vehicles used as demonstrators, but also other vehicles used in the business such as staff vehicles, courtesy cars and hire cars. Staff vehicles were also used as demonstrators. I shall describe vehicles which may properly be included in the Amended Claim as "eligible vehicles".

9. It is common ground that the burden of proof rests on Mr Workman as the appellant to establish on the balance of probabilities that Mossweald is entitled to a greater level of repayment than that which has been made by HMRC. The factual issues which I shall treat as preliminary issues are as follows:

(1) How many eligible vehicles did Mossweald purchase for use in its business and thereafter supply to customers during the Period.

(2) What level of manufacturer bonuses did Mossweald receive in relation to those vehicles.

10. Mossweald registered for VAT and commenced trading with effect from 1 September 1979. It was dissolved on 5 October 2004. On 16 April 2002 Mossweald assigned to Mr Workman its right to make claims for repayment of overpaid VAT.

11. A claim for repayment of overpaid VAT in the sum of £310,563 was made on 22 April 2008 and covered the Period. The claim was based on the Tables. It is not necessary for me to describe in detail how the claim progressed, save to note that the decision under appeal was dated 14 March 2013. There was a request for a review dated 9 April 2013. For present purposes, Mr Workman took issue with the number of eligible vehicles used in the business at any one time, the number of times each year eligible vehicles would be replaced and sold and the rate at which manufacturers bonuses were paid.

12. I was told, and it appeared to be common ground, that the Tables assume that eligible vehicles will be changed every four months rather than every three months as contended for by Mr Workman. The assumed bonus percentage paid on demonstrators is 5-7%, depending on manufacturer rather than the 10% contended for by Mr Workman.

13. Various payments were made to Mr Workman in connection with the claim and at various stages the claim was amended to seek higher repayments than would be indicated by the Tables. The notice of appeal in respect of the Amended Claim was lodged with the Tribunal in August 2013. The ground of appeal is essentially that the repayments which have been made by HMRC by reference to the Tables understate the amount of VAT which Mossweald overpaid during the Period. In particular, it is alleged that HMRC have underestimated the volume of eligible vehicles sold by Mossweald in the Period, and the level of manufacturer bonuses received in relation to purchases of eligible vehicles.

14. Mossweald was originally called IGW Services Limited and it traded under various names incorporating the initials IGW. In describing the business as a whole I shall use the

description IGW Group. At various times in the Period, IGW Group operated 4 franchised dealerships selling new and used cars as follows:

<b>Franchise</b>	<b>Period Operated</b>
Mitsubishi	1979 – 1996
Suzuki	1981 – 1996
Hyundai	1983 – 1996
Reliant Scimitar	1982 – 1989

15. Mr Workman was the managing director of IGW Group and was in overall control of the business throughout the Period. IGW Group was based in Bolton. It was one of the largest Suzuki and Mitsubishi franchises in the UK. It also operated servicing, bodyshop repair and car hire businesses. It traded under the names IGW Northway, IGW Clyde, IGW Rescue and Grafton Car and Van Hire.

16. The evidence included a brochure for IGW Group which is likely to date from about 1995. The brochure describes the history of the business “from humble beginnings as a used car plot” in 1976 to having a staff of over 100 and a turnover of £15m. IGW Northway was acquired in October 1978 and transformed to house a full workshop, the Suzuki showroom and the company’s head office. IGW Clyde was acquired in July 1982. Its site in Halliwell Road was redeveloped to house the Mitsubishi showroom and a multi-franchise parts division. That site also housed a Reliant Scimitar dealership. In August 1988 a new site was acquired when the business expanded into vehicle rescue and recovery under the name IGW Rescue. The brochure records that in some cases a substitute vehicle could be provided free of charge. In January 1994 a new site was purchased with plans to develop a “multi-franchise operation”.

17. The brochure is consistent with Mr Workman’s evidence, which I accept, that IGW Group was a very progressive and forward-thinking motor trader operating various franchises and businesses.

18. IGW Northway was based at Belmont Road, Bolton. IGW Clyde was based at Halliwell Road Bolton. Grafton Car and Van Hire was based at a Service Station on Chorley Old Road, Bolton. IGW Rescue was based initially at Moss Bank Way. Later it was combined with a body shop at Croasdale Street and later still moved to Blackburn. The evidence included adverts in local newspapers for the various businesses which I was taken to as follows:

- (1) One advert referred to servicing and bodyshop services and contained a reference to car and van hire. Other adverts contained references to self-drive car and van hire.
- (2) Adverts for the Mitsubishi franchise at Halliwell Road, Bolton referred to a free courtesy car available on servicing and one advert showed 10 Mitsubishi demonstrators advertised for sale.
- (3) An advert for IGW Northway offered complete garage services with a “free loan car”.

19. Mr Workman’s case was that IGW Group had a substantial fleet of demonstrator and other eligible vehicles in 1979 and throughout the Period. I accept that is the case. The question is, how many?

20. Mr Workman contends that in each year IGW Group incorrectly accounted for output tax in respect of 316 eligible vehicles as follows:

<b>Description</b>	<b>Number</b>
Employee vehicles (24 changed 4x a year)	96
Directors vehicles (3 changed 4x a year)	12
Demonstrators (11 changed 4x a year)	44
Service courtesy vehicles (11 changed 4x a year)	44
Bodyshop courtesy vehicles (20 changed 4x a year)	80
Hire vehicles (10 changed 4x a year)	40
<b>Total:</b>	<b>316</b>

21. HMRC accept that IGW Group was a large business and operated a large number of demonstrators, courtesy cars and hire cars. They accept that there were 76 eligible vehicles where output tax was likely to have been overpaid. This appears to have been a figure put forward by Mr Workman for years 1990 and 1991 in a letter expressed to be without prejudice dated 14 August 2013, and on the basis that 76 vehicles was an underestimate. Mr Workman had analysed that figure as follows:

<b>Description</b>	<b>Number</b>
Employee vehicles	24
Directors vehicles (3 changed 3x a year)	9
Demonstrators (6 changed 3x a year)	18
Courtesy/Bodyshop vehicles (5 changed 3x a year)	15
Hire vehicles (5 changed 2x a year)	10
<b>Total:</b>	<b>76</b>

22. In August 2013, Mr Workman was claiming overpaid output tax in relation to sales of 66 demonstrators in 1995-96, with varying numbers for other years in the Period. HMRC's approach by reference to the Tables for claims unsupported by evidence suggested that in 1995-96 a dealer selling 66 demonstrators at an average selling price of £12,633 would have an estimated turnover from demonstrators of £833,778. HMRC were also prepared to accept that in general, sales of demonstrators would be approximately 6% of total sales for a typical motor trader. This would suggest that a dealer selling 66 demonstrators would have a total turnover of £13,896,300. Officer Horsley suggested that this was consistent with the IGW brochure which in about 1995 said that turnover was £15m.

23. Mr Workman does not accept this calculation. In particular, he now says that some 316 demonstrators were sold every year and that demonstrators would account for some 10% of total sales in the business. Even then, on Mr Workman's figures there would be 316 demonstrators sold at an average price of £12,633 giving total sales of £3,992,028 from demonstrators. If that was 10% of total sales then total sales in 1995-96 would have been £39,920,280 which is wholly inconsistent with the brochure.

24. Mr Brown submitted that the evidence supported at least 24 demonstrators being used by employees in 1994-95 with demonstrators being replaced and sold every 3 months. That would give rise to sales of 96 demonstrators in 1994-95, before even considering courtesy cars and hire cars. He cautioned me against using HMRC's average figures, whether derived from the

Tables or otherwise. In particular, their figures as to the expected number of demonstrators sold in a year, average selling prices or the proportion of demonstrator sales to total sales.

25. I consider Mr Brown is right to caution me against using the average figures used by HMRC. I have no way of knowing on what they are based and I have heard no evidence to support those averages. I shall focus on the evidence before me, and whether it is sufficient to satisfy me as to the following matters in each year of the Period on the balance of probabilities:

- (1) The total number of eligible vehicles being used at any one time by the IGW Group,
- (2) The period over which such vehicles would be used prior to being sold, and
- (3) The level of manufacturer bonus paid in relation to demonstrators.

26. Both parties appear to have approached the evidence and their submissions on the basis that the number of eligible vehicles used in the business was consistent throughout the Period. It does not seem to me that this is a realistic assumption, in light of the description of how the business had developed in the 1995 brochure referred to above. The beginning of the Period is 1979, prior to the purchase of IGW Clyde and the setting up of IGW Rescue. None of the evidence I heard sought to establish how the number of eligible vehicles had increased over time. All the evidence appeared to have been directed to the various businesses at their peak, towards the end of the Period.

27. I shall consider the evidence as to how the businesses operated in more detail below. I do so by reference to the IGW Group as a whole, and where appropriate the individual businesses.

28. Mr Workman's evidence is that IGW Group had 24 employees who were entitled to the use of a company car. Employees were provided with demonstrator vehicles and were able to take them home in the evenings and at weekends. However, they were still used as demonstrator vehicles. Additional demonstrators were also purchased by IGW Group for each franchise for use as such. Mr Workman told me that all demonstrator vehicles were replaced on a quarterly basis and sold through the dealerships, except for Scimitars which would only have been replaced every four months.

29. There was evidence before me that the business paid Class 1A national insurance contributions for 1994-95 based on 24 cars available to employees of the business. The Inland Revenue's practice at this time for employees in the motor industry permitted, although it did not require local inspectors to agree an average charge to benefit where an employee had the use of more than one car in the tax year. This means that the evidence is at least consistent with a number of possibilities, including:

- (1) 24 individuals each being provided with 1 car in the course of the year.
- (2) 24 individuals each being provided with 1 car at any one time during the course of the year but changing that car a number of times during the year.
- (3) 6 individuals being provided with 1 car at any one time during the course of the year but changing that car every quarter.

30. Mr Workman told me that prior to 1990 there were 24 employees with cars, and 3 directors. The number of directors reduced to 2 in 1990. Cars were provided to employees according to status. Those cars would have been purchased and treated as demonstrators.

31. Mr Workman was adamant that there were more than 6 demonstrators used as company cars at any one time, given the size of the business. IGW Group operated 4 franchises with an accountant, senior administrative personnel, departmental managers for the sales, parts, bodyshop and recovery businesses and senior sales people.

32. Each franchise would of course sell a number of different models of vehicles from the relevant manufacturer. For example, there was evidence which I accept that in 1985 Mitsubishi had 6 models with manual and automatic options, 4x4 versions, and petrol or diesel options.

33. It is convenient to consider at this stage evidence as to the number of eligible vehicles used in the 4 franchise dealerships at any one time.

34. There was evidence that in 1995 IGW Clyde won the Mitsubishi “Group 3 Overall Dealer of the Year Award”. A letter dated 27 January 1997 from Mitsubishi Finance referred to an increase in the business’ stock facility from £250,000 to £500,000 and in a Shogun demonstrator facility from £105,000 to £250,000. A document from Mitsubishi described as “Dealer Plan Quarter One 2000” and headed “Mandatory Demonstrators” referred to a requirement to register 5 demonstrators in January 2000, to be operated for a maximum of 3 months or 6,000 miles, whichever was sooner. A dealer bulletin dated 20 October 1998 congratulated the business on achieving various sales levels in quarter 3 for the purposes of the Mitsubishi “Quarterly Unit Stocking Bonus”. This entitled IGW to 180 days “free” stock. A Mitsubishi dealer services bulletin dated 15 December 2000 gave details of the quarterly unit stocking bonus for 2001, but no information to indicate the number of demonstrators IGW Group had purchased.

35. The evidence included correspondence from Suzuki Financial Services dated 9 June 1998 describing the business’ additional funding facility for Suzuki vehicles to be held as retail stock and for additional demonstrators because of an anticipated seasonal increase in sales. The funding for demonstrators was increased temporarily by £130,000 on top of the existing limit of £65,000 until 30 September 1998. Mr Workman told me that at that time a new Suzuki might cost between £5-15,000 net of VAT, but there was no documentary evidence to that effect. Further, there is no evidence as to how long the temporary increase in funding might have lasted.

36. I note that much of this documentary evidence is outside the Period. There is little or no documentary evidence as to the Mitsubishi or Suzuki demonstrators operated in the Period, or how often they were replaced.

37. Mr Workman’s oral evidence was that each franchise would have what he described as “pure demonstrators” which I took to mean demonstrators in addition to employee and director vehicles. He said that the Mitsubishi, Suzuki and Hyundai franchises would each have 3 “pure demonstrators.

38. It is not only the number of eligible vehicles at any one time which is in issue, but also the frequency with which they were replaced and the old vehicles sold.

39. Mr Workman’s oral evidence was that Mitsubishi, Suzuki and Hyundai demonstrators were replaced every 3 months and the old demonstrators were sold. Scimitar demonstrators were replaced every 4 months. The salesforce were tasked to find customers in advance of demonstrators coming to the end of their 3-month life. Mr Workman said that everything, by which he meant targets, were set on a quarterly basis, and that this would include replacement of demonstrators. There was an incentive to take further demonstrators because bonuses were paid partly by reference to the number of demonstrators purchased.

40. Mr Workman relied on a number of emails as evidence as to frequency demonstrators purchased from Suzuki and Mitsubishi were changed. The emails also refer to the level of manufacturer bonus:

- (1) An email from Mr Trevor Jones of ASE Plc dated 3 December 2012. Mr Jones confirmed that “during that period it was Suzuki’s policy to insist that the dealers change their demonstration fleet 4 times per annum on average”.

(2) An email from Mr Mark Kenworthy of Aston Martin dated 28 November 2012 stating “from my memory: 1. Demo stock turn once a quarter. 2. Margin + 10% count and earn”.

(3) An email from Mr David Norwood dated 7 December 2012 stating “whilst working as a Sales Manager within the Mitsubishi franchise during the eighties I can confirm that each quarter we frequently changed our demonstration fleet. The additional discount from memory was around 10%”.

41. ASE Plc were a firm of chartered accountants, previously known as Trevor Jones Associates. I was told that they specialised in the motor industry and were “Business Management Partners” for Suzuki and Mitsubishi which involved collecting data from motor dealers on behalf of those manufacturers. Mr Jones does not state the period to which he is referring, although it appears to refer to a period after 1990. Further, he says nothing in relation to Mitsubishi.

42. Mr Kenworthy was a sales director for a group holding Suzuki and Mitsubishi franchises and at some stage he was employed as a sales manager for Suzuki then Mitsubishi. I was told that as such, he was responsible for setting bonus payment strategies. Mr Workman said that the reference to “count and earn” was to the fact that all demonstrators counted for all bonuses (quarterly and annual) and earned bonus payments. The email does not say to which manufacturer his brief email refers to, and I do not know how reliable his memory might be. Mr Workman said he was referring to Suzuki and Mitsubishi, but all I have is Mr Workman’s oral evidence in that regard.

43. Mr Norwood was a sales manager for Mitsubishi in the 1980s and 1990s. He does not say that in his experience demonstrator fleets were changed every quarter, but that each quarter the fleet was frequently changed.

44. Mr Golder on behalf of HMRC submitted I should give these emails little if any weight because the individuals had not worked for IGW and were not present to give evidence. I agree. Additionally, I do not know what questions the authors were asked and whether they were aware how their responses would be used.

45. In relation to service centres, Mr Workman told me that the business operated two service centres covering the 4 franchises. Each site would have 3 Mitsubishi cars, 3 Suzuki, 2 Hyundai and 1 Scimitar for use as courtesy cars. I was told that in the service centres, each bay may be dealing with 3 or 4 vehicles in a day, with each customer having a courtesy car.

46. I turn now to the rescue and recovery business which commenced in 1988. Mr Workman’s witness statement said that IGW Rescue operated a 21-bay vehicle workshop and bodyshop for vehicles of any make. In his oral evidence Mr Workman referred to “30 working bays” in the early 1990s. He said that customers were always provided with courtesy vehicles whilst their own vehicles were being serviced or repaired and this was a big selling point. It gave an opportunity for a potential new vehicle customer to test drive a Mitsubishi or Suzuki vehicle. Where a vehicle was being repaired in the bodyshop, this could entail a customer being provided with a courtesy vehicle for a number of days. Hence, IGW Group operated a large fleet of courtesy vehicles which were purchased as demonstrators from the manufacturers where it had a franchise.

47. Mr Workman said that in the early 1990s the business had various contacts with the police, AA and RAC. Where a vehicle was not driveable following an accident they would be able to estimate the repair costs and if a recovery was likely to be made against the other party then they would be able to offer a free courtesy car whilst the repair was undertaken. There was a greater level of courtesy cars in the bodyshop than in the rest of the business.



48. There was a letter in evidence from a Mr S Catterall addressed “To Whom It May Concern” and unsigned. Mr Catterall was a member of the local Vehicle Builders and Repairers Association and designed and installed body repair centres. He described how in 1985 IGW Northway fitted out a new vehicle repair centre with a 12-bay workshop designed with the latest equipment. He also described how there was a fleet of courtesy cars available to all customers and states his belief that they were replaced at regular intervals. Mr Catterall describes completing “30 plus working bays” at Croasdale Street Bolton in the 1990s and in 1998/99 a purpose built bodyshop in Blackburn which by 2000 had 45 plus working bays.

49. There was also a letter in evidence from Mr David Parry to Mr Workman’s son, in response to an email dated 26 July 2019. Mr Parry was a vehicle assessor on behalf of insurance companies in the Bolton area between 1980 and 1999. He describes his dealings with the IGW Group, in particular growth of the vehicle recovery business. He says it was one of the first in the area to offer a courtesy car to non-fault insured drivers involved in accidents. He estimates that at least 30 courtesy cars would have been required.

50. Mr Golder was content for me to admit these letters as evidence but he did not accept the number of working bays described by Mr Catterall or the estimate of 30 courtesy cars given by Mr Parry. He submitted that I should not give much weight to this evidence.

51. Mr Workman’s evidence was that IGW Group also operated a car hire fleet of more than 10 vehicles between 1979 and 1992. In his witness statement, Mr Workman said that at least 5 of those vehicles would have been demonstrators. In his oral evidence he told me that at least 10 of the hire vehicles would have been part of IGW Group’s demonstrator fleet, but that they also had to have some Ford vehicles as hire cars because of demand.

52. Mr Workman asks me to find that the level of demonstrator bonus was 10% of the value of demonstrator vehicles purchased from manufacturers. His evidence was that the bonus was in fact more than 10%. Apart from Mr Workman’s evidence, the only evidence as to bonus rates came from the emails of Mr Kenworthy and Mr Norwood. I place very little reliance on the emails from Mr Kenworthy and Mr Norwood for the reasons stated above.

53. Mr Golder submitted that much of the documentary evidence before me simply went to show that this was a large motor dealer with associated businesses, but that it did not establish the number of eligible vehicles sold in the Period. I agree with that submission. I cannot say on the balance of probability based on the documentary evidence how many demonstrator vehicles IGW Group might have had at any one time. Nor does the documentary evidence establish on the balance of probabilities that Mitsubishi, Suzuki and Hyundai demonstrator vehicles were always replaced every three months and Scimitar demonstrator vehicles every four months. Hence, I cannot say, based on that evidence how many such vehicles IGW Group supplied to retail customers.

54. It is not simply the documentary evidence before me. I also have the evidence of Mr Workman. I cannot accept Mr Workman’s evidence at face value. Not because there was any suggestion that he was being untruthful, but because of the fallibility of memory going back so many years, referred to recently by Chamberlain J in *BXB v Watch Tower* [2020] EWHC 156 (QB) at [13] to [16]. I acknowledge that this is not a commercial case as such, I am not concerned with two competing versions of events, and there is a duty on a court or Tribunal to strive to make a finding of fact if possible and to try and avoid falling back on the burden of proof in resolving an issue.

55. I am satisfied that Mr Workman was very knowledgeable about the business generally. That is to be expected, as he was the driving force behind IGW Group. However, the facts I am asked to find are specific details rather than generalities. Having said that, if I can find as a

fact a minimum number of eligible vehicles used in the various parts of the business then I should strive to do so.

56. Based on the evidence as a whole I am satisfied that in 1994-95 there were 24 employees and at least 2 directors who had use of demonstrator vehicles. Mr Workman referred to there being 3 directors until 1990 and 2 thereafter. The parties ought to be able to confirm the number of directors even after the time that has passed. I am satisfied from Mr Workman's evidence that these vehicles were used as demonstrators as well as being used by employees. On the basis that they were demonstrators it is likely that they would be changed frequently in the same way as other demonstrators. However, I cannot say on the evidence before me that they would be changed more often than every 4 months. Nor can I say on the evidence before me how many employee demonstrator vehicles were used by the business in any other years in the Period.

57. HMRC have accepted 6 "pure demonstrators" changed 3x a year in addition to those allocated to employees. I am not satisfied on the evidence before me that any more than this were used by the business at any one time.

58. HMRC have accepted 5 vehicles used as courtesy cars in the service centres and the bodyshop changed 3x a year. I am satisfied on the evidence before me that the bodyshop had 30 working bays by the mid-1990s. However, I do not know how many courtesy cars might be required for customers using the service centres and the bodyshop at any time in the period. I do not accept Mr Parry's estimate of a requirement for at least 30 courtesy cars at the bodyshop. No basis for that estimate has been provided, nor the period of time to which it relates. Based on the evidence as a whole it does seem to me that 5 courtesy cars for both the service centres and the bodyshop is a low estimate. However, any figure I might suggest would be nothing more than a guess. In the circumstances I cannot say what is the minimum of demonstrators that might have been used as courtesy cars for the service centres and the bodyshop.

59. Mr Workman's evidence as to the number of hire vehicles which were purchased as demonstrators was inconsistent. In his witness statement he said 5, in his oral evidence he said 10. This illustrates the difficulties of relying on the memory of a witness. I am satisfied from Mr Workman's evidence that the hire business used at least 5 vehicles at any one time which were purchased and replaced as demonstrators. I am also satisfied that those vehicles that were purchased as demonstrators would have been replaced at the same frequency as other demonstrators, namely at least 3x a year.

60. The only evidence as to the rate at which manufacturers bonuses were paid in relation to demonstrators is the emails from Mr Kenworthy and Mr Norwood and Mr Workman's recollection. For the reasons given above I am not satisfied that evidence is reliable. In the circumstances I cannot be satisfied that bonuses in the Period were paid at a greater rate than the 6% used by HMRC in agreeing previous repayments.

**CONCLUSION**

61. In answer to the preliminary issues identified at [9] above:

(1) For the reasons given above I am satisfied that IGW Group operated at least 111 eligible vehicles at its peak in or about 1994-95 as follows:

<b>Description</b>	<b>Number</b>
Employee vehicles (24 changed 3x a year)	72
Directors vehicles (2 changed 3x a year)	6
Demonstrators (6 changed 3x a year)	18
Courtesy/Bodyshop vehicles (5 changed 3x a year)	15
<b>Total:</b>	<b>111</b>

(2) In relation to other years, I cannot be satisfied on the evidence before me how many demonstrators IGW Group used in its business, although I am satisfied that in 1991 or 1992 the hire business operated 5x vehicles purchased as demonstrators which it would replace at the same frequency as other demonstrators.

(3) I am not satisfied that manufacturers bonuses on demonstrators purchased by IGW Group in the Period were paid at the rate of 10%.

62. It will now be for the parties to agree what effect these findings have on the quantum of the Amended Claim. The parties should inform the Tribunal within 90 days of the date of release of this direction whether they have been able to agree quantum. If not, the parties shall provide to the Tribunal draft directions to progress the appeal in relation to quantum.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

63. This document contains full findings of fact and reasons for the preliminary decision. Any party dissatisfied with this preliminary decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. However, either party may apply for the 56 days to run instead from the date of the decision that disposes of all issues in the proceedings, but such an application should be made within 35 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**JONATHAN CANNAN  
TRIBUNAL JUDGE**

**RELEASE DATE: 10 FEBRUARY 2020**