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BHP PRIVATE CLIENT TAX

Case Review

Issue 3

Five decisions on trusts, estates, EIS and shareholder finance



October 2026 | Decisions selected for their practical implications for private clients, trustees, personal representatives, shareholders and advisers.

This issue examines the point at which legal form, enforceable rights and contemporaneous evidence determine the outcome. It is a working guide to decisions—not a substitute for advice on particular facts.

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Bell Howley Perrotton | Specialist tax advisory firm

BHP provides independent, partner-led written tax opinions on complex property and private-client tax matters. We work alongside clients and their existing professional advisers, with a clearly defined scope that preserves the referring firm's wider client relationship.

Follow Simon Howley and BHP for our continuing SDLT, LTT and LBTT Case Reports, BHP Private Client Tax Case Review and Beyond Tax: Property Law Developments. Together, these series provide clear, practical analysis of new decisions affecting property transaction taxes, private-client taxation, trusts and estates, and wider property-law issues.

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Why these decisions matter

Private-client disputes are often resolved by questions that arise before the tax calculation: did a trust validly exist; was a loan still legally outstanding; what did a will actually oblige the recipient to do; and what contemporaneous evidence demonstrates the claimed trading activity?

The five decisions selected here span the Court of Appeal, High Court and First-tier Tribunal. We distinguish what the court actually decided from the broader advisory lessons. High Court probate and trust decisions are included because legal ownership and administration often determine subsequent private-client tax treatment.

EDITORIAL PRINCIPLE	Legal rights first; tax treatment second. Documents and the evidence of what happened are more reliable than descriptions adopted after the event.

How BHP works

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CASE 01 | PERSONAL REPRESENTATIVES

When family conflict prevents an estate from being administered

Gulbahar Begg v Emma Wood & Ors [2026] EWHC 2622 (BP)

Court	High Court, Property, Trusts and Probate List
Date	14 October 2026
Issue	Personal representative replacement, estate indemnity claims and property appropriation
Outcome	Indemnity and occupation-related claims dismissed; widow reappointed personal representative
Client focus	Personal representatives, beneficiaries, probate litigators, private-client advisers

Background and context

Mr Begg died intestate in 2016. A long-running family dispute centred on two properties which earlier proceedings had determined were beneficially owned by him notwithstanding registration in other family members' names.

His widow initially administered the estate. In 2022 an independent professional administrator was appointed, but progress remained limited. The High Court was asked to resolve outstanding claims and decide who should administer the estate.

What the court decided

The Court dismissed the trustee indemnity claims advanced by family members, rejected the widow's separate indemnity claim and dismissed competing occupation-related estate claims. It removed the professional administrator and appointed the widow as replacement personal representative.

The Court directed the transfer of one property into the estate administration and contemplated the statutory appropriation of the other to the widow under section 41 Administration of Estates Act 1925, subject to proper valuation and protection of other beneficiaries' entitlements.

WHY IT MATTERS	A family's title documents, internal accounts and long-standing assumptions cannot substitute for establishing beneficial ownership and the personal representative's duties. The court's practical directions demonstrate how an otherwise modest estate can be consumed by administration disputes.

Practical implications

- Separate the title/beneficial ownership question from the calculation of beneficiaries' interests.
- Obtain updated independent valuations and complete estate accounts before proposing appropriation.
- Record occupation, expenditure and alleged reimbursement claims contemporaneously.
- Avoid appointing a professional administrator without a workable plan for resolving underlying disputes.

Limitations and watch points

This was a fact-specific estate administration judgment, not an IHT ruling. It does not establish a general entitlement to occupy estate property rent-free.

KEY TAKEAWAY	The efficient administration of an estate depends on resolving beneficial ownership, evidential disputes and the identity of the decision-maker—not simply replacing the personal representative.

Source: https://casenode.ai/case/uk.ewhc.bp.2026.2622/gulbahar-begg-v-emma-wood-ors-2026-ewhc-2622-bp

CASE 02 | EIS INVESTORS

EIS relief requires evidence of a continuing qualifying trade

My Club Web Services Ltd v HMRC [2026] UKFTT 1417 (TC)

Court	First-tier Tribunal (Tax Chamber)
Date	9 October 2026
Issue	EIS trading requirement under sections 181 and 183 Income Tax Act 2007
Outcome	Company appeal dismissed; withdrawal of EIS relief upheld
Client focus	EIS investors, directors, venture advisers and tax practitioners

Background and context

The issuing company challenged HMRC's withdrawal of EIS relief on shares issued in two tranches. The relevant qualifying periods extended beyond the point at which the evidence of active commercial steps became thin.

The question was not merely whether the company once carried on or intended to carry on a qualifying trade, but whether the statutory requirement was met throughout the relevant periods.

What the court decided

The FTT found that contemporaneous evidence of concrete steps directed towards continuing the trade did not extend beyond 26 March 2021. Later evidence, including material generated after HMRC enquiries, did not adequately establish what the company was doing in the intervening period.

The company failed to show that it continued to exist wholly for the purpose of carrying on one or more qualifying trades under section 181. Having decided the appeal on that basis, the FTT expressly did not determine the separate arguments under section 183.

WHY IT MATTERS	Obtaining EIS approval or successfully issuing shares is not the end of the compliance story. The evidence must support the continuing conditions across the full statutory holding/qualifying period.

Practical implications

- Maintain dated board minutes, contracts, business-development records, budgets and operational activity evidence.
- Document genuine trading steps during interruptions, pivots or periods without revenue.
- Review each share tranche and its own relevant qualifying period.
- Do not treat this decision as resolving the section 183 subsidiary-activity issue.

Limitations and watch points

An FTT decision on its evidence. The tribunal did not find that a period of low revenue automatically defeats EIS; the failure was to prove the continuing statutory purpose.

KEY TAKEAWAY	For EIS, contemporaneous evidence of continuing qualifying activity is as important as the original investment documentation.

Source: https://www.bailii.org/uk/cases/UKFTT/TC/2026/1417.html

CASE 03 | OWNER-MANAGERS

A worthless share swap can destroy loan-loss relief

Timothy Bunting v HMRC [2026] EWCA Civ 1331

Court	Court of Appeal (Civil Division)
Date	16 October 2026
Issue	Section 253 Taxation of Chargeable Gains Act 1992 — irrecoverable loans to traders
Outcome	Taxpayer appeal dismissed; no section 253 relief for extinguished £2.2m debt
Client focus	Owner-managers, private investors, trustees and advisers restructuring shareholder debt

Background and context

Mr Bunting advanced approximately £3.45m in unsecured, interest-free loans to a trading company. In January 2013 he agreed to release £2.2m of the indebtedness in return for 2.2 million fully paid shares. The shares had no market value.

He initially expected an income-tax share-loss claim, but later accepted that the shares were worthless on issue and had not become of negligible value. He then claimed CGT relief under section 253. The FTT allowed the claim; the UT reversed that result.

What the court decided

The Court of Appeal unanimously dismissed the appeal. An "outstanding amount" for section 253(3) requires a continuing legal right to pursue the debt at the time of the claim. The release given in exchange for the fully paid shares extinguished that part of the debt.

The economic fact that Mr Bunting received worthless shares did not preserve a legal entitlement to repayment. The Court distinguished the statutory rules for guarantees and considered the earlier Special Commissioners decision in Crosby to have adopted an incorrect construction.

WHY IT MATTERS	A commercial rescue, capitalisation or tidying-up exercise can eliminate an otherwise potentially available CGT loss claim. The timing and precise legal effect of documents are critical.

Practical implications

- Test section 253 eligibility before any loan waiver, conversion, assignment or release.
- Record whether the loan remains legally enforceable and whether it has genuinely become irrecoverable.
- Consider the permitted claim timing and earlier-time election under section 253(3A).
- Coordinate company-law capital maintenance, insolvency advice and tax analysis before signing.

Limitations and watch points

The judgment does not decide every insolvency or guarantor fact pattern. Nor does it establish that all loans to connected trading companies qualify; statutory conditions and exclusions remain essential.

KEY TAKEAWAY	If the debt is extinguished before a section 253 claim, worthless consideration does not make it "outstanding" again.

Source: https://caselaw.nationalarchives.gov.uk/ewca/civ/2026/1331

CASE 04 | PROFESSIONAL TRUSTEES

A trust structure cannot stand on invalid authority

Zedra Trust Company (UK) Ltd v Tustain [2026] EWHC 2578 (BP); related [2026] EWHC 2576 (BP)

Court	High Court, Business and Property Courts
Date	9 October 2026
Issue	Validity of discretionary settlements and associated loans; trustee relief under section 61
Outcome	Six purported settlements and related loan arrangements held void ab initio; separate section 61 issues considered
Client focus	Professional trustees, deputies, families and advisers to vulnerable clients

Background and context

The proceedings concerned six purported discretionary settlements created in November and December 2011 and associated loan arrangements. The case was brought by a professional trust company against Mr Tustain, acting through his litigation friend and deputies.

The Court examined the legal basis on which the arrangements had been put in place and their consequences. The related judgment addressed issues under section 61 of the Trustee Act 1925.

What the court decided

Chief Master Shuman concluded that the six purported discretionary settlements were void from the outset. The associated loans formed part of the same ineffective arrangements and were likewise void ab initio.

A separate section 61 judgment illustrates that questions about a trustee's personal responsibility and possible relief require distinct consideration after determining whether the underlying arrangements were legally effective.

WHY IT MATTERS	A polished trust deed and extensive administrative history do not cure an absence of authority or legal capacity to create the arrangement. Invalidity can affect ownership, accounting and the tax analysis built upon the purported settlements.

Practical implications

- Verify the settlor's capacity and the source and limits of any deputy or attorney authority before execution.
- Keep court orders, authorities, advice and trustee acceptance records together.
- Review loan documentation as part of the same structure, not as isolated instruments.
- If validity is challenged, analyse legal ownership and possible tax corrections before assuming historic trust treatment.

Limitations and watch points

The two judgments concern a specific set of arrangements. This review does not assert a universal rule that every deputy-related trust is invalid or a final tax outcome; those require separate analysis.

KEY TAKEAWAY	Test legal authority and the validity of the settlement before analysing its tax benefits or trustee protections.

Source: https://vlex.co.uk/vid/zedra-trust-company-uk-1136708854

CASE 05 | WILL DRAFTERS

A testator's wishes do not automatically impose a trust

Exeter City Council v Macklin & Anor [2026] EWHC 2636 (BP)

Court	High Court, Property, Trusts and Probate List
Date	16 October 2026
Issue	Construction of a conditional testamentary gift and memorandum of wishes
Outcome	Council held to take beneficially; no enforceable trust requiring museum use
Client focus	Will drafters, charity advisers, executors, local authorities and beneficiaries

Background and context

A 1980 will left a historic property in Topsham to Exeter City Council subject to conditions concerning acceptance and an intention to use it consistently with a memorandum of wishes. The property had operated as a museum for decades.

Substantial repair costs prompted the Council to seek clarity as to whether it held the property beneficially or on enforceable trust terms, affecting its options to borrow, sell or lease.

What the court decided

HHJ Paul Matthews concluded that the devise was a conditional beneficial gift. Once the stated conditions were satisfied, the Council owned the property beneficially. The testatrix's expressions of hope in an unwitnessed memorandum were not equivalent to an enforceable obligation to maintain museum use.

The Court distinguished the language of binding conditions from precatory wishes. It rejected a constructive-trust basis on the facts, noting the Council had honoured the museum use for more than forty years.

WHY IT MATTERS	In will drafting, "wishes", "conditions" and "trusts" have different legal consequences. Ambiguity can frustrate property management, borrowing and charitable objectives decades after the testator's death.

Practical implications

- Use explicit trust language and identify trustees, beneficiaries and enforceable purposes if a trust is intended.
- Where an outright gift is intended, state whether conditions attach only to initial acceptance.
- Review memoranda of wishes for consistency with the executed will.
- Consider long-term maintenance, funding and alternative use or sale mechanisms for heritage property.

Limitations and watch points

The decision is a construction of this particular will. It does not prevent a properly drafted charitable or other trust from binding a recipient, nor remove separate lease, planning or charity-law obligations.

KEY TAKEAWAY	Precatory wishes do not, without more, transform a conditional beneficial gift into a trust.

Source: https://kohenavocats.com/jurisprudences/exeter-city-council-v-david-macklin-anor/

Recurring themes & adviser checklist

01 Legal substance before tax labels

The legal existence of a trust or debt must be tested before applying tax rules to it. Bunting and Zedra demonstrate how an otherwise plausible economic or administrative narrative can fail on legal rights.

02 Evidence throughout the relevant period

My Club shows why contemporaneous records are indispensable when relief depends on continuing conduct or purpose, rather than a single transaction date.

03 Drafting must match intended obligations

Exeter City Council illustrates the distinction between an aspiration and a binding legal duty; that distinction should be made express at drafting stage.

04 Estate disputes need a route to completion

Begg shows the importance of settling ownership, valuation, indemnity and administration questions in a coordinated plan.

BHP POSITION	The common lesson is not to add complexity. It is to make the relevant legal rights, commercial purpose and contemporaneous evidence explicit before tax or succession consequences are assumed.

Sources and status

The five case articles cite judgments or accessible full-text reproductions. The Court of Appeal judgment in Bunting was checked against the official National Archives publication. Where a primary judgment was not accessible in full through the available search interface, the analysis is confined to supported findings and the linked full-text or specialist report; practitioners should review the full judgment before relying on a particular proposition.

1. Gulbahar Begg v Emma Wood & Ors [2026] EWHC 2622 (BP)

https://casenode.ai/case/uk.ewhc.bp.2026.2622/gulbahar-begg-v-emma-wood-ors-2026-ewhc-2622-bp

2. My Club Web Services Ltd v HMRC [2026] UKFTT 1417 (TC)

https://www.bailii.org/uk/cases/UKFTT/TC/2026/1417.html

3. Timothy Bunting v HMRC [2026] EWCA Civ 1331

https://caselaw.nationalarchives.gov.uk/ewca/civ/2026/1331

4. Zedra Trust Company (UK) Ltd v Tustain [2026] EWHC 2578 (BP); related [2026] EWHC 2576 (BP)

https://vlex.co.uk/vid/zedra-trust-company-uk-1136708854

5. Exeter City Council v Macklin & Anor [2026] EWHC 2636 (BP)

https://kohenavocats.com/jurisprudences/exeter-city-council-v-david-macklin-anor/

Publication note

Status checked 28 October 2026. The material reflects the decisions and information available at that date. Later appeals, corrections, further judgments or legislative changes may affect the position. FTT judgments are persuasive, not binding precedents; High Court and Court of Appeal decisions must be read in context and within the applicable hierarchy.

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