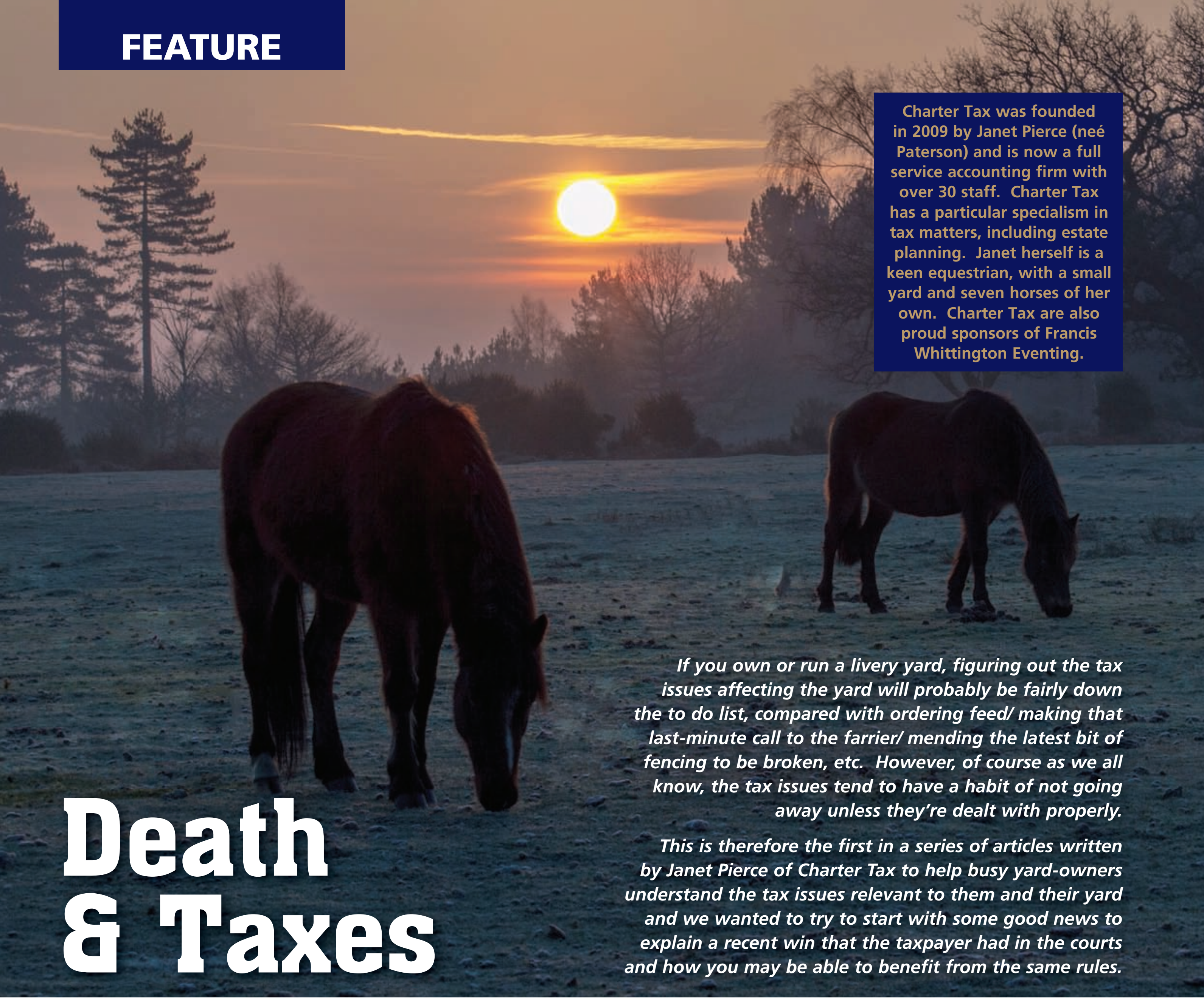

Charter Tax was founded in 2009 by Janet Pierce (neé Paterson) and is now a full service accounting firm with over 30 staff. Charter Tax has a particular specialism in tax matters, including estate planning. Janet herself is a keen equestrian, with a small yard and seven horses of her own. Charter Tax are also proud sponsors of Francis Whittington Eventing.

Death & Taxes

If you own or run a livery yard, figuring out the tax issues affecting the yard will probably be fairly down the to do list, compared with ordering feed/ making that last-minute call to the farrier/ mending the latest bit of fencing to be broken, etc. However, of course as we all know, the tax issues tend to have a habit of not going away unless they're dealt with properly.

This is therefore the first in a series of articles written by Janet Pierce of Charter Tax to help busy yard-owners understand the tax issues relevant to them and their yard and we wanted to try to start with some good news to explain a recent win that the taxpayer had in the courts and how you may be able to benefit from the same rules.

As we all know, there are only two certainties in life, death and taxes. Well, that means – particularly for a land-owner – that one of their biggest worries will be the impact of inheritance tax when they die.

In very general terms, when you die, your net assets in excess of £325,000 are charged to inheritance tax at a rate of 40%. There are then exceptions for this, most notably the spousal exemption (assets can generally be left to your spouse/civil partner inheritance tax free) and also in particular exceptions for assets that qualify for either agricultural property relief or business property relief.

Agricultural Property Relief

Agricultural property relief is an inheritance tax relief that will certainly help out the majority of farmers and their land value. However, for equestrians, land for horses will normally only manage to fall within the definition required for inheritance tax agricultural property relief if a stud farm is operated from the property – livery yards cannot qualify under this category of relief.

Business Property Relief

Fortunately, though, there is another category of relief under which we may find an exemption from inheritance tax, namely that of business property relief. The problem for livery yards, though, is that HMRC like to try to argue that livery yards fall within an exclusion from the business property relief regime, which applies to businesses which "consist wholly or mainly of one or more of … making or holding investments" (the investment exclusion).

The point here is that business property relief is supposed to be available for assets held as part of an activity which is carried out as a trade, rather than having an underlying intention to hold an investment (i.e. land) and it just so happens that you use that land for something else. For example, if you had a trade of carrying out horse transport, then your horse lorry will generally be regarded as an asset of that trade and, if you die, the value of the horse lorry would be part of your business value and that value would attract business property relief (assuming you don't also use the lorry personally). On the other hand, if you own a chunk of land and you let that out to someone, you're just getting rental income, which isn't considered a business (and even if it was, it would be a business that is then caught by the investment exclusion - effectively you have a land investment that you just happen to rent out, which the business property exemption for inheritance tax purposes isn't intended to cover.

Can Livery Businesses Claim Inheritance Tax Exemption?

So where does this leave livery businesses? Do HMRC view livery businesses as a business capable of qualifying for the inheritance tax exemption for business property, or are livery businesses caught by the exclusion for holding investments?

Where all a landowner does is to allow people to graze their land (e.g. just leasing the land or even charging on a "per horse" grass livery basis but otherwise having nothing to do with the land other than perhaps the occasional bit of perimeter fencing) then this would fall within the investment exclusion such that business property relief would not apply. In this sense, it is no different to a landlord renting out a property.

However, what about where the land-owner/yard-owner does more than this? Where do you draw the line between what is in effect a rental arrangement and what is a business?

Unfortunately the main case on this point historically, in relation to horses, has been a tax case back in 2009 *[McCall and another (personal representatives of McClean (deceased))v CRC [2009] STC 990]*, which concerned letting land for grazing. The court heard in that case that the owners spent about 100 hours a year tending the land, doing such things as weed control, fence maintenance, litter and damage control and drainage and water works but, importantly, not the sowing of fertiliser. Unfortunately for the taxpayer, the court held that the business consisted wholly or mainly of the making of investments and so the business property relief did not apply. Effectively, the court regarded the work of the land-owner, in this case, as being analogous to a rental property landlord who, OK, kept the property in good order but fundamentally was carrying out a rental activity from their land, rather than using their land for a full-on business.

This has often meant that livery businesses would have an uphill struggle in claiming their business property relief. However, happily this August HMRC's view on the application of business property relief to livery businesses received a serious blow, following a court decision in favour of the taxpayer and confirming that business property relief could indeed apply. This case concerned the late Mrs Maureen Vigne, who died on 29 May 2012. At that time she was the sole owner of approximately 30 acres of land, known as Gravelly Way livery stables, Buckinghamshire. She lived off-site.

The court heard that after the death of Mrs Vigne's husband, a decision was taken to let the entire land to Mr. John Lye. However, in 2008, Mr Lye ceased to occupy as a tenant/ licensee of the land and instead became the Yard Manager for the business which Mrs Vigne then decided to operate. Following the re-launch of the yard in 2008, it was decided that in a bid to give the business a competitive advantage, services over and above those which would usually be included in grass livery and/or DIY livery would be included in the package offered by the business.

Mrs Vigne's son gave evidence that the livery package offered by his late mother's business then included the following:

1 Worming – the yard would buy the wormer and would administer it where and when necessary (if an owner was unable and/or unwilling so to do), on a quarterly basis.

2 Providing the horses with hay feed during the winter months. A hay crop was grown on part of the land referred to as the hayfield. The provision of hay was sited in the cases as being over and above what a "normal" grass livery/ DIY livery yard owner would provide.

3 Removing horse manure from the fields. Again, this was sited as being over and above what would normally be provided in a grass livery/DIY livery package. Interestingly also the point was made to the court that this manure removal was in the interests of the horses, but not necessarily in the interests of the land (as the manure might otherwise have been used to fertilise the land).

4 Undertaking a daily check of the general health of each horse. The yard would let the owner know if any given horse required a vet, with the yard having permission to call the vet in case of emergency.

5 Re-organising the electric fencing to enable strip grazing.

6 Rugging where necessary.

Mr. Lye in fact didn't stay as Yard Manager all that long and there was a succession of different yard managers. The role was, though, taken to be a role that required about 20 hours work per week. Interestingly also the Yard Managers each had a qualification (at least BHS Stage 4, or equivalent), which again helped with the argument that there was more going on here than just the mere rental of land.

A Business Plan dated 20 August 2009 recorded that the business intended to expand so as to provide part livery (in the sense described above) as well as providing DIY livery for those who wished to care for their own horses. It records that although there were only 11 stables at that time, planning permission existed for further stables and storage rooms to be erected. In 2009 an application was also put in for yard managers accommodation – again with on-site security argued to be an add-on to the livery service.

Pic by Jon Stroud

The profits for the business were modest at best. However, even so the court did not feel that this meant the business fell foul of the investment exclusion. Interestingly, though, the case does refer to the payment of business rates by the yard, and noted that this was indicative of a business rather than an investment proposition.

The facts as described above in the case of Mrs Vigne were enough to convince HMRC that indeed the business carried on by her was a business over and above holding the land as an investment and, as such, her estate got the benefit of business property relief, and saved 40% inheritance tax on the value of the business (including the land value).

Of course, HMRC may well yet appeal the decision and we will have to watch that space but in the meantime, for many yard-owners/land-owners this prospect to obtain business property relief is, therefore, worth a very serious look. In reality it may not be hard to re-structure many grass livery/DIY livery businesses to fall within the above defined additional services required for the business to be sufficient to go beyond the holding of the land as an investment.

If you have found this article of interest and would like to find out more about Business Property Relief, then contact Janet Pierce at Charter Tax.