ECLIPSE ADVISORY
Chartered Accountants

2022: The year ahead

2021 was to be the year we returned to a post-COVID normal however the pandemic has fundamentally changed the way many of us operate in our personal and work lives. Here is some of what we can expect in 2022:

Federal Election

The Federal election will be held between March and May 2022. Annoying text messages, robo messages and advertising are on their way!

Federal Budget in March

The timing of the election will bring the Federal Budget forward to March 2022. It's an election year; expect many of the productivity based tax concessions to be extended.

Lock-in digital gains

McKinsey & Company reports that consumer digital adoption rates accelerated dramatically during the pandemic.

- Many sectors will lock in the digital gains they made. Some, however, will see a decline in digital sales as consumers are no longer forced to shop online – groceries for example.
- To lock in the gains of digitalisation, consumers expect trust, end-to-end digital service (from start to after sales service), and an improved online experience.
- Forced online adoption has changed the consumption habits of an older and wealthier portion of the market. The average age of online users in the McKinsey Global Sentiment Survey increased by around 3 years and spend around 4% more.
- Coming off a lower base, developing nations have experienced a much higher growth in digital adoption than developed nations, evening out global access.

Going green

Business and consumers will be expected to be mindful of their carbon footprint. A wasteful process is likely to diminish consumer appeal.

Business e-invoicing move ‘step in right direction’

The government’s move towards business e-invoicing has been commended by those in the profession.

The Morrison government released new proposals on the development of the Business eInvoicing Right (BER).

The development of the BER would mean businesses are legally obliged to adopt and send e-invoices if one is requested by an e-invoicing-enabled trading partner. If adopted, this change will accelerate e-invoicing by ensuring when businesses invest in e-invoicing, they will be able to use it with their trading partners.

“It is estimated that every time an e-invoice replaces a paper or emailed PDF invoice, the businesses involved in the transaction can share more than $20 in cost savings per invoice,” superannuation and Financial Services Minister Jane Hume said at the time.

Matt Lewis, DSPANZ’s e-invoicing spokesperson, offered his thoughts on the developments, calling them a "step in the right direction".

“DSPANZ supports the announcement from Senator Jane Hume on the creation of a Business eInvoicing Right (BER) which will assist in increasing the uptake of e-invoicing across Australia," Mr Lewis said.

"E-invoicing is transformational for Australian businesses, particularly small business, as it is good for cash flow and facilitates five-day payment terms. It's also more secure and reduces the chance of invoice fraud. The BER will improve the e-invoicing system by allowing those enabled to be discoverable.

"This announcement sends a strong message that the government is serious about supporting e-invoicing and the multiple benefits e-invoicing brings to businesses."

Mr Lewis noted DSPANZ also supports the proposed phrased approach to the introduction of BER that begins with large businesses.

"We will be providing a detailed response to the government's consultation paper with input from our members," he added.

ATO provides further guidance on SuperStream issues

The ATO has released further guidance on SuperStream rollovers along with updated tips on how to minimise delays when rolling super to or from an SMSF.

The ATO has recently updated guidance for SMSF trustees and members who wish to transfer their super to or from another fund, as well as those who wish to release money for Division 293, CCAPS or FHSS purposes.

From 1 October 2021, SMSFs are required to transact in the Superannuation data and payment standard (the SuperStream standards) for rollovers. This means individuals will need to use SuperStream to process rollovers (other than in-specie rollovers) to or from the SMSF.

To minimise delays when rolling super to or from an SMSF, the ATO said that funds must ensure the SMSF details provided to the transferring fund match the details it holds. SMSFs also need to ensure the member details, such as a surname, held by the transferring fund match those of the receiving fund. Sometimes these need to be updated with the transferring fund prior to requesting a rollover.

“When rolling super out of the SMSF, be aware your financial institution may have a daily limit on the amount that can be transferred which may impact the amount being rolled out,” the ATO said.

“You will need to confirm this with your financial institution before initiating the rollover and then determine if you need to increase the transfer limit with them, change the rollover amount to an amount below your limit and repeat as required along with changing to a different financial institution.”

The ATO noted that the transferring fund might request further information such as proof of identity (POI) documents and bank account details for fraud prevention reasons.

"If they do, they must request this information within five business days of receiving your request, and then complete that rollover within three business days of receiving the information," the ATO explained.

"When transferring super from an APRA fund to an SMSF, contact your APRA fund to discuss your specific POI requirements and submit the documents in a timely manner.
"Use the Fund Validation Service to obtain the APRA fund's current banking details."
The ATO also warned that SMSFs should not submit multiple rollover requests when there is a delay.

SMSFs should make sure it is ready to roll over the amounts before submitting the request, such as confirming that the SMSF has sufficient liquid assets.
"Ensure the ESA of your SMSF provides rollover services, as not all ESAs can be used to process a rollover," the ATO added.

"When rolling out of your SMSF, ensure the payment reference number (PRN) on the message and payment match and send the message and payment to the receiving fund at the same.

Tips on dealing with release authorities

A release authority (RA) is a document the ATO gives to a fund to authorise the release of their member's super.

Upon receipt of an electronic RA, the ATO noted the SMSF must, within 10 business days from the date of release authority, electronically pay the ATO the lesser of the amount stated in the release authority, or the total amount of the super interest that could be paid at that time.

"The SMSF must then send the ATO a release authority statement (RAS) message via SuperStream advising the amount that was released and for partial releases, whether any super benefits remain in the account," the ATO explained.

"Funds should also send the ATO a release authority error message (RAER) via SuperStream if the SMSF is unable to action the release authority."

To effectively manage the RA process, the ATO said that the RAS must be returned via the same channel the RA was received.

"Send one response for each RA (either RAS or RAER)," the ATO explained. "Each RAS message must be accompanied by one payment – do not send a bulk payment for multiple RAS messages," the ATO added.

"Funds need to make the payment to the SuperStream bank account and ensure the PRN of the payment matches the PRN advised within the RAS message."

The 'Backpacker Tax' and the High Court

The High Court has ruled that the 'backpacker tax' is discriminatory. We look at the impact.

Since 2017, the 'backpacker tax' has taxed the first dollar of income a backpacker earns in Australia - regardless of their residency status - at the working holiday maker tax rate of 15% up to:

- $37,000 in an income year for 2019-20 and earlier income years
- $45,000 for 2020–21 and later income years.

When the tax was introduced in 2017, a backpacker would pay a maximum of $5,500 in tax on the first $37,000 of income. However, an Australian national performing the same work would have a maximum tax liability of $3,572.

In this case, Catherine Addy, a UK national working in Australia since 2015, contested her 2017 amended income tax assessment which imposed the backpacker tax on the grounds that it contravened the Double Tax Agreement (DTA) with the United Kingdom. Article 25(1) of the DTA seeks to ensure that nationals of the UK are not subject to "other or more burdensome" taxation than is imposed on Australian nationals "in the same circumstances, in particular with respect to residence". Ms Addy was a tax resident of Australia.

The ATO did not accept Ms Addy's argument and she launched action in the Federal Court. The Federal Court initially upheld the Tax Commissioner's position. However, Ms Addy appealed the decision and the High Court overturned the Federal Court's decision. The question for the Court was whether a more burdensome tax was imposed on Ms Addy owing to her nationality. The short answer was "yes".

The High Court decision found that the backpacker tax is inconsistent with the non-discrimination clause in the UK DTA. That is, the flat working holiday maker tax rate is not valid in some situations. Non-discrimination clauses that are similar to the one in the UK DTA can also be found in the DTAs with Chile, Finland, Japan, Norway, Turkey, Germany and Israel.

So, what does this mean?

Some individuals who have been taxed under the backpacker tax rules may be able to obtain a tax refund from the ATO. However, there are a couple of key points to bear in mind:

- The decision only impacts those classified as an Australian tax resident. Many individuals who are living or working in Australia on a working holiday visa will be classified as non-residents, in which case this decision will be less relevant.
- The decision is only likely to be relevant to individuals who are a citizen/national of a country that has a DTA with Australia containing a non-discrimination clause similar to the clause found in the UK DTA.