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22 December, 1999

RE: APPLICATION OF GST ON ORTHOPAEDIC SURGEONS

Mr S Milgate
Australian Society of Orthopaedic Surgeons
PO Box 12
ARNCLIFFE NSW 2205

Dear Stephen,

RE: GOODS AND SERVICES TAX

We refer to your correspondence dated 7 October, 1999 with respect to the application of the Goods and Services Tax ("GST") Legislation on Orthopaedic Surgeons.

We apologise for the delay in our reply however, as you may be aware, several amendments have recently been made to the initial legislation, which received Royal Assent on 8 July, 1999.

We note that your initial correspondence and subsequent facsimile dated 11 October, 1999 requests our advice on specific issues or questions that are applicable to Orthopaedic Surgeons. This advice will provide a general overview of the legislation and its application to the Health and Medical industries. Appendix A will address the specific queries raised.

Overview

The GST legislation will come into effect on 1 July 2000 and will apply to the domestic consumption of all goods and services.

While the GST is generally collected at every stage of production, most Australian enterprises will be able to claim a credit for GST paid on their business inputs. This means that it is ultimately the consumer who pays the GST.

The GST rate is currently 10%.

There are three different types of transactions for GST assessment purposes. Every supply will fall into one of these categories.

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Taxable supplies - 10% GST on sales
 - Full credit for GST paid on inputs

GST free supplies - No GST on sales (GST of 0%)
 - Full credit for GST paid on inputs

Input taxed supplies - No GST on sales
 - No credit for GST paid on inputs

Health related services are one of the major categories of GST free supplies.

Subject to certain conditions, the supply of **most** medical and health services are GST free. The legislation and the recent amendments exempt specific types of supplies from GST.

There is no general exemption concession, as currently exists under the sales tax provisions, for institutions such as public hospitals. Only specifically defined supplies by these and other health service providers are GST-free.

We note that it is the supply of goods and services that are considered GST free, not the actual suppliers of the goods and services. It is important to understand that all goods and services supplied by Orthopaedic Surgeons will not necessarily be GST free, only activities that are specifically provided for in the legislation as being GST free, will be so classified.

Categories of GST Free Supplies

The GST legislation lists the following types of health related GST free supplies:-

- Medical services
- Other health services
- Ambulance services
- Other government funded health services
- Hospital treatment
- Residential care
- Community care
- Flexible care
- Specialist disability services
- Medical aids and appliances
- Other GST free health goods
- Drugs and medicinal preparations
- Private health insurance.

For the purposes of this advice we will only analyse the first two types of health related supplies, medical services and other health services.

Medical Services

The GST legislation, (Section 38-7) states that medical services will be GST free if supplied by, or on behalf of, a medical practitioner or an approved pathology practitioner. The service must be generally accepted in the medical profession as being necessary for the appropriate treatment of the recipient patient.

Medical services that are provided in relation to cosmetic surgery or other cosmetic procedures will not be GST free unless a Medicare benefit is payable for such a service, eg a cosmetic procedure to alleviate a medical condition or following an accident would be GST free.

Where goods are supplied in the course of a medical service, these will also be considered GST free, eg bandages, dressings, antiseptics etc.

Medical Practitioners

The definition of a medical practitioner in the GST legislation relies on the meaning in the Health Insurance Act, 1973, which in turn, relies on registration under various State and Territory legislation.

A medical practitioner means a person registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners, but does not include:-

- a) a person whose registration or licence to practice has been suspended, or cancelled in any State or Territory, following an inquiry relating to his or her conduct; and
- b) who has not, after that suspension or cancellation, again been authorised to register or practice as a medical practitioner in **that** State or Territory.

However, a person who:-

- is not an Australian citizen or permanent resident; and
- entered Australia under a temporary visa for the principal purpose of either practising as a medical practitioner and/or undertaking specialist medical training;

is not a medical practitioner for the purposes of the Act, unless:-

- the person has qualifications of a kind the Minister has determined in writing to be appropriate for the purposes of this section; and
- an exemption has been granted by the Minister in writing applies to the person.

Based on our understanding an Orthopaedic Surgeon would be considered to be a Medical Practitioner under the GST legislation.

Other Health Services

Eligible health services are specifically listed in the GST legislation (Section 38-10). Health services that are not listed in the legislation are **not** considered to be GST free. The GST free services include:-

1. Aboriginal or Torres Strait Islander health
2. Acupuncture
3. Audiology, audiometry
4. Chiropody
5. Chiropractic
6. Dental
7. Dietary
8. Herbal medicine (including traditional Chinese herbal medicine)
9. Naturopathy
10. Nursing
11. Occupational therapy
12. Optical
13. Osteopathy
14. Paramedical
15. Pharmacy
16. Psychology
17. Physiotherapy
18. Podiatry
19. Speech pathology
20. Speech therapy
21. Social work

Similar to the above provisions relating to Medical services, other health services must be supplied by a recognised professional and be generally accepted in the applicable profession as being necessary for the appropriate treatment of the recipient patient.

Recognised Professional

The table below, lists the circumstances in which a person will be a recognised professional:-

Regulations applying to the supply	Conditions to be satisfied to be classed as a recognised professional
The service is supplied in a State or Territory, which prohibited the supply of services of that kind without the granting of permission, approval or registration, under the State or Territory law.	The person must have been granted such permission, approval or registration.

The service is supplied in a State or Territory in which there is no law requiring such permission, approval or registration.	The person must be a member of a professional association that has uniform national registration requirements relating to the supply of services of that kind.
In the case of audiology / audiometry services.	The person must be an accredited service provider within the meaning of Section 4 of the Hearing Services Administration Act, 1997.

The practitioner must basically be a member of a relevant professional body subject to State government professional registration, or uniform national professional self-regulation.

Specific GST issues relating to Orthopaedic Surgeons

We refer to Appendix A wherein we have addressed specific queries raised by the Australian Society of Orthopaedic Surgeons.

Other GST Issues

Most businesses will need to review their operations before 1 July, 2000 to ensure that all GST related issues are considered. These issues will depend on the nature of an Orthopaedic Surgeons practice and relevant structure but should include the following:-

- Pricing of services;
- GST training;
- Business stationery and documentation;
- Transitional rules relating to contracts, time of supply, trading stocks on hand and phase in of input tax credits;
- Property transactions;
- Transactions with associates;
- GST grouping provisions;
- Cash flow considerations;
- GST adjustments;
- Employment issues; and
- Accounting and internal control systems;

We refer to our previous correspondence dated 7 October, 1999 wherein we detailed five (5) major points that should be considered by Orthopaedic Surgeons leading up to the start date of GST on 1 July, 2000.

Legislative Amendments

We note that due to the very nature of the GST legislation, additional amendments and Australian Taxation Office interpretation rulings are an ongoing issue. Accordingly, we will continue to monitor the development of the GST legislation as it applies to Orthopaedic Surgeons and our advice in relation thereto.

We trust the above is of assistance and look forward to assisting ASOS and its members with any GST matters in the future.

Should you have any queries please do not hesitate to contact either myself or Mr Kurt Baker of this office.

Yours sincerely

EINFELD SYMONDS – BDV

**GRAHAM EINFELD
PARTNER**

Encl.

AUSTRALIAN SOCIETY OF ORTHOPAEDIC SURGEONS

GST ADVICE (22 December, 1999) Appendix A

Specific GST issues relating to Orthopaedic Surgeons

Question 1

We are told that health is GST free. What is the definition of health and what does GST free actually mean ie does it mean that you will never be charged GST by anyone or that you will never have to pay GST or you will never have to charge GST yourself on any service or product?

Answer 1

In general, the supplier does not charge GST to the recipient, but can claim credits for the GST on things that he or she acquires to make the supplies. The main GST free items are exports, international travel, health, education, food and certain charitable activities.

The GST legislation (Subdivision 38-B) lists the following types of health related GST free supplies:-

- Medical services
- Other health services
- Ambulance services
- Other government funded health services
- Hospital treatment
- Residential care
- Community care
- Flexible care
- Specialist disability services
- Medical aids and appliances
- Other GST free health goods
- Drugs and medicinal preparations
- Private health insurance.

The GST legislation (Section 38-1) states that if a supply is GST free, then:-

- no GST is payable on the supply; and
- an entitlement to an input tax credit for anything acquired or imported to make the supply is not affected.

An enterprise making a GST free supply will still be liable to pay GST on any expenses incurred by him or her in the course of their business operation, depending on the nature / classification of the expense for GST purposes (ie taxable GST free or input taxed).

An enterprise may be entitled to a refund of the amount of GST paid on the business expenses (ie an input tax credit). An enterprise will be entitled to input tax credits for acquisitions if;

- it is registered for GST;
- GST is included in the expense incurred; and
- the expense is incurred for a creditable purpose (ie used in the enterprise and is not for private use or intended for use in making input taxed supplies).

We note that the test for determining whether an acquisition has been acquired for the purposes of an enterprise is broader than the test for income tax deductibility. For example, input tax credits may be available for the acquisition of capital items that are not deductible for income tax, such as the acquisition of a computer system.

We also note that the amount of input tax credit is reduced if the acquisition is only partly for a creditable purpose.

The input tax credit is required to be included in the GST return and may be offset against GST that is collected on any taxable supplies made.

Question 2

What is a medical service, and more importantly what is not a medical service, in terms of the GST?

Answer 2

The GST legislation, (Section 195-1) defines medical services as being a service supplied by, or on behalf of, a medical practitioner or an approved pathology practitioner that is generally accepted in the medical profession as being necessary for the appropriate treatment of the recipient of the supply.

The definition of a medical practitioner in the GST legislation relies on the meaning in the Health Insurance Act, 1973, which in turn, relies on registration under various State and Territory legislation.

Based on our understanding an Orthopaedic Surgeon would be considered to be a medical practitioner under the GST legislation.

Any services provided by an Orthopaedic Surgeon that would **not** generally be considered as being necessary for the appropriate treatment of the patient would **not** be a GST free supply. Accordingly, an additional 10% GST would be required to be charged by the Orthopaedic Surgeon and subsequently remitted to the ATO.

Question 3

Considering the following specific services offered by Orthopaedic Surgeons what are the GST issues that relate to each of them:

- General consultations;
- Surgical procedures conducted in public or private hospitals;
- Services that are directly invoiced to third parties eg WorkCover, Veteran's Affairs and Motor Vehicle Accidents;
- Medico-legal services (consultations and subsequent reports); and
- Any other specific income areas for Orthopaedic Surgeons.

Answer 3

Orthopaedic Surgeons will need to review all supplies of goods and services that they undertake as part of their business operations. In general, where the supply does not fall into the health GST free exclusions (ie medical services, other health services and ancillary goods used in treatment) the services rendered to the recipient will be a normal taxable GST transaction and subject to the additional 10% GST component.

In our opinion the specific services listed would be classified as follows:-

Service	GST Treatment
General consultations (assuming generally accepted as being necessary for the appropriate treatment of the patient)	GST free
Surgical procedures conducted in public or private hospitals (assuming generally accepted as being necessary for the appropriate treatment of the patient)	GST free
Services that are directly invoiced to third parties (assuming generally accepted as being necessary for the appropriate treatment of the patient)	GST free
Medico-legal services (consultations and subsequent reports) (assuming such services are not necessary for the appropriate treatment of the patient or are rendered for the benefit of persons other than the patient)	Taxable (GST at 10%)

We note that it is important to consider the definition of medical services under the GST legislation. Specifically the service must be:-

- a) supplied by, or on behalf of, a medical practitioner or an approved pathology practitioner; and
- b) generally be accepted in the medical profession as being necessary for the appropriate treatment of the recipient patient.

We believe that whether the patient or another party is ultimately invoiced for the medical services is irrelevant to the nature of the services supplied by the Orthopaedic Surgeon. Notwithstanding, to be GST free, the medical services, ie consultation, surgery procedure or otherwise, must actually be “supplied” to and on behalf of the patient.

Question 4

Where an Orthopaedic Surgeon has entered into a billing agency arrangement with a third party, eg UniBill or hospital billing agent or EzyClaim in South Australia, what are the GST implications for these arrangements?

Answer 4

In general, the fee charged by the third party agent will be considered a taxable supply of services and accordingly will be subject to GST. The Orthopaedic Surgeon will be charged an additional 10% GST component for the agency services.

The agency services would be considered a creditable acquisition under the legislation, and accordingly the Orthopaedic Surgeon would be able to claim an input tax credit for the GST amount paid.

We note that the collection of patient fees by the applicable third party should not effect the nature of the services initially supplied to the patient ie, whether the supply is GST free or taxable.

Notwithstanding, there are certain transitional provisions of the GST legislation, which should be addressed by Orthopaedic Surgeons who have entered into such third party billing arrangements. These provisions look at the application of GST on contract arrangements entered into before 2 December, 1998 or 8 July, 1999.

Any contracts that are entered into by Orthopaedic Surgeons after 8 July, 1999 will be treated in accordance with the normal GST provisions, ie GST is required to be charged on any sales or fees rendered under the contract after 30 June, 2000, as applicable.

The following table is provided as a guide:-

	Contracts made before 2 December, 1998	Contracts made on or after 2 December, 1998 and before 8 July, 1999	Contracts made on or after 8 July, 1999.
No opportunity to review. Recipient entitled to full input tax credit.	<ul style="list-style-type: none"> - Supplies are GST free until 1 July, 2005. - If consideration paid in full before 2 December, 1998, all GST free. 	Supplies are GST free until 1 July, 2005.	Not GST free for supplies made on or after 1 July, 2000.
Opportunity to review. Recipient entitled to full input tax credit.	<ul style="list-style-type: none"> - Supplies are GST free until earlier of first opportunity to review, or 1 July, 2005. - If consideration paid in full before 2 December, 1998, GST free until first opportunity to review. 	Supplies are GST free until earlier of the first opportunity to review, or 1 July, 2005.	Not GST free for supplies made on or after 1 July, 2000.
No opportunity to review. Recipient not entitled to full input tax credit.	<ul style="list-style-type: none"> - Supplies are GST free until 1 July, 2005. - If consideration paid in full before 2 December, 1998, all GST free. 	Not GST free for supplies made on or after 1 July, 2000.	Not GST free for supplies made on or after 1 July, 2000.
Opportunity to review. Recipient not entitled to full input tax credit.	<ul style="list-style-type: none"> - Supplies are GST free until earlier of first opportunity to review, or 1 July, 2005. - If consideration paid in full before 2 December, 1998, GST free until first opportunity to review. 	Not GST free for supplies made on or after 1 July, 2000.	Not GST free for supplies made on or after 1 July, 2000.

The aforesaid transitional provisions allow for existing contracts to be treated differently depending on whether they are “non-reviewable” or “reviewable”. A contract is considered “reviewable” if it includes provisions that provide for a variation, or an opportunity to vary the consideration payable under the contract. The following examples are provided as illustration:

<u>Example</u>	<u>Review Opportunity</u>
i) Market review of price	4
ii) CPI price increases	8
iii) Fixed percentage price increases	8
iv) Fixed percentage price increases, with a specific GST factor	4

We note that under the GST transitional provisions, the review of the contract does not actually need to take place for the contract to become liable for GST post 1 July, 2000. It is only a requirement under the legislation that an opportunity exists under the contract, rather than the exercising of that opportunity.

As can be seen from the above, it is important for Orthopaedic Surgeons to ensure that any contracts entered into have appropriate GST clauses to avoid confusion post 1 July, 2000.

Question 5

We are told that the GST will be payable on medical defence premiums ie and extra 10% will have to be paid across for GST. Is this correct?

Answer 5

Under the GST legislation, the supply of most types of general insurance is considered a taxable supply. Accordingly, insurance providers will be required to charge an additional 10% GST component on medical defence / professional indemnity insurance premiums.

In general, the Orthopaedic Surgeon would be charged GST on the insurance premium and, if considered a creditable acquisition under the legislation, would be able to claim an input tax credit for this amount.

Recent legislative amendments have ensured that any subsequent settlements made under an insurance policy will not have a GST liability for the insured.

However, insurers will have an adjustment on the payment of any insurance settlements if the insured party:

- is not entitled to an input tax credit on the acquisition of the policy; or
- is only entitled to a partial input tax credit.

The adjustment will effectively decrease the amount of the GST payable by the insurer to the ATO.

Question 6

What happens to those doctors who may have entered into a fixed fee arrangement of any kind? Who will pay the GST if they have already been involved in a contract which does not mention the GST?

Answer 6

We refer to Answer 4 above.

In general, if a contract is mute of the subject of GST we would be recommending that Orthopaedic Surgeons address the consequences of the GST legislation post 1 July, 2000 with the other contracting party. In most circumstances, if the recipient under the contract is registered for GST, any GST charged on top of the agreed fee can be claimed back via an input tax credit.

Accordingly, discussions with the appropriate parties may lead to a mutual variation of the contract to ensure that GST is adequately addressed prior to the introduction of GST on 1 July, 2000.

Question 7

What provisions should Orthopaedic Surgeons make now, in their cost structure, to allow for the GST cost impact ie 2%, 4%, 6% or 10%? Should this provision be made one off or built in for every year?

Answer 7

We refer to our correspondence dated 7 October, 1999 wherein we addressed certain pricing policy and inflationary expectations post 1 July, 2000.

In summary, The Reserve Bank of Australia has conducted various studies of inflationary expectations for the years ending 30 June, 2000 and 2001 (August, 1999 Bulletin). These studies have suggested that the median inflation forecasts per annum will be in the vicinity of 2.2% excluding GST and 4.2% including GST.

Whilst it is difficult to predict such economic factors, we believe that Orthopaedic Surgeons should be reviewing their anticipated practice costs, post 1 July, 2000 to ensure that existing profit margins are maintained by their business operations.

In particular it is important to consider the following factors:-

- a) Normal price movements (ie inflation excluding GST);
- b) Reduction in Wholesale Sales Tax;
- c) Input tax credits for creditable acquisitions of the business;
- d) Goods and services that are classified as GST free or input taxed (ie no input tax credit available to the business); and
- e) Additional compliance and administration costs.

We note that the Australian Competition and Consumer Commission (“ACCC”) will be monitoring prices from July, 1999 in an effort to ensure that there is no “price exploitation” or “price taking” by way of businesses inflating their prices or failing to fairly reflect indirect tax reductions in lower prices. The ACCC had issued pricing guidelines that principally focus on changes in prices resulting from the tax system changes, rather than the actual level of prices.

Accordingly, Orthopaedic Surgeons should consider the preparation and retention of adequate documentation in support of any pricing decisions made from July, 1999.

Question 8

Where an Orthopaedic Surgeon has entered into a leasing arrangement or hire purchase arrangement or rental agreement on premises what will be the impact of the GST?

Answer 8

The GST treatment of finance leasing and rental agreements is different to the treatment of assets, which are acquired under a hire purchase arrangement.

Finance & Commercial Premises Leases

In general, finance leases and leases of commercial premises will be considered a taxable supply and subject to GST after 1 July, 2000. The lessor will be required to charge the GST on each payment made under the particular lease agreement including any residual at the end of term.

Whether the Orthopaedic Surgeon is subsequently entitled to claim an input tax credit for the additional GST component charged by the lessor will depend of the applicable use of the asset or premises.

We note that the transitional provisions relating to pre 8 July, 1999 contracts are applicable when reviewing existing leases and the implications of the GST legislation. In most situations, a finance lease entered into before 8 July, 1999 should be considered “non-reviewable” and accordingly, will not be subject to GST post 1 July, 2000.

Hire Purchase

In contrast to leases, a hire purchase (“HP”) arrangement involves the financing of an assets acquisition over a set period of time. Under a HP, the Orthopaedic Surgeon is deemed to own the asset at the time of acquisition. Under the GST legislation, a HP arrangement will be considered to be a “financial supply” and accordingly is input taxed (ie no GST is payable by the recipient of the supply).

We note that it is a requirement that the interest charged under the HP arrangement must be separately identified and disclosed to the recipient. This is usually the case under relevant credit legislation however, if this requirement is not met, the total payments over the term of the HP could be subject to GST.

We also note that GST will be payable by the Orthopaedic Surgeon on acquisition of the asset which is subject to the HP arrangement. The entitlement to an input tax credit will depend on satisfying the creditable acquisition rules (ie asset is directly related to the Orthopaedic Surgeons business operations).

Question 9

When an Orthopaedic Surgeon goes overseas or within Australia to a conference or other professional related excursions will he or she have to pay GST on the air tickets, conference registration fees etc?

Answer 9

GST free supplies will include, the transport of passengers and goods (eg mail, goods etc) to, from or outside Australia, as well as the supply of domestic air travel which is directly associated with an international trip. No GST will be payable on the supply of these goods.

Domestic travel and associated costs (ie accommodation, conference registration fees etc) will be considered a taxable supply and accordingly will be subject to the GST. In general, Orthopaedic Surgeons will be entitled to input tax credits for the GST component of such business related expenditures.

Question 10

Will GST be payable on subscriptions to the AOA, ASOS, RACS, AMA etc?

Answer 10

The membership subscriptions paid to the above entities will be considered a taxable supply and subject to GST.

Special rules operate to deem the rights granted by the membership subscriptions to have been made continuously and uniformly throughout the applicable period. For example subscriptions covering the calendar year ending 31 December, 2000 will be subject to GST on 50% of the amount, ie applicable to the period 1 July, 2000 to 31 December, 2000.

We note that important transitional provisions also apply to life memberships, which are taken out before 1 July, 2000.

Question 11

Will the GST be payable on salaries and wages and in particular how will locums be treated?

Answer 11

GST is only payable on goods and services supplied by a registered enterprise. Under the GST legislation, the definition of an enterprise specifically excludes the following activities:-

- activities done as an employee or PAYE earner;
- activities done as a private recreational pursuit or hobby;
- activities done by an individual or partnership of individuals without reasonable expectation of profit or gain; and
- activities done as a member or a local governing body established under a State or Territory law.

Accordingly, salaries and wages will not be subject to GST.

The treatment of locums will depend on whether the locum is considered an employee or independent contractor. In general, locums will be considered independent contractors and accordingly, will be required to charge GST on the supply of their services.

We note that locums will need to satisfy the relevant registration criteria for the GST to be charged.

Question 12

How will expenses be treated by Orthopaedic practices who supply both GST free and GST taxable services?

Answer 12

There are no special requirements where an entity supplies both GST free and taxable goods or services. Under the GST legislation, an Orthopaedic practice undertaking both types of supplies will be entitled to full input tax credits on the expenses relating to the business operations.

Apportionment of input tax credits is only required where an entity is supplying mixed supplies of taxable and input taxed classifications (eg financial institutions).

Question 13

When an Orthopaedic practice purchases equipment or supplies, will the GST be payable? If it is, can it be claimed back and if so when?

Answer 13

GST will be payable on the purchase of all equipment and supplies that are not classified as GST free. The general provisions relating to creditable acquisitions will govern whether the Orthopaedic practice is entitled to claim an input tax credit for the GST paid.

The input tax credit is included in the Business Activity Statement which is required to be lodged with the ATO at the end of each tax period, ie monthly or quarterly. The statement will include the amount of GST collected and paid during the period, and is required to be lodged by the 21st day of the following month.

If an Orthopaedic practice is entitled to a refund of the “net GST” amount, the ATO will normally credit the amount to the nominated bank, building society or credit union account within 14 days. Business will be entitled to interest if the GST refund is paid late.

We note that Section 38-45 specifically exempts certain medical aids and appliances from the GST legislation. The section states that:-

(1) A supply is *GST-free* if:

- (a) it is covered by Schedule 3 (medical aids and appliances), or specified in the regulations; and
- (b) the thing supplied is specifically designed for people with an illness or disability, and is not widely used by people without an illness or disability.

- (2) A supply is *GST-free* if the thing supplied is supplied as a spare part for, and is specifically designed as a spare part for, another thing the supply of which would be GST-free under subsection (1).
- (3) However, a supply is *not* GST-free under subsection (1) or (2) if the supplier and the recipient have agreed that the supply, or supplies of a kind that include that supply, not be treated as GST-free supplies.

We are uncertain as to whether any items included under the GST free medical aids or appliances are applicable to the activities of Orthopaedic Surgeons, however, we refer to Appendix B that reproduces Schedule 3 for your information.

Question 14

We are told that the Wholesale Sales Tax will be abolished. How much of this tax do Orthopaedic Surgeons already pay, and will there be any price reductions because of it being abolished?

Answer 14

The level of Wholesale Sales Tax currently levied on Orthopaedic Surgeons generally depends on the nature of goods purchased. In some circumstances, some goods are actually exempt from Wholesale Sales Tax.

We note that the amount on which Wholesale Sales Tax is currently levied will also differ from that on which the GST will be levied. Wholesale Sales Tax is currently charged on the wholesale selling price of the goods, GST will be charged on the retail selling price of the goods.

In general, it is difficult to predict the level of any price reductions, which will result from the changes in taxation regimes. We would suggest that Orthopaedic Surgeons review their major expenditure items to ensure that any reduction in prices are taken advantage of. For example, defer acquisition of certain assets to post 1 July, 2000 to allow for the reduction in prices and / or input tax credit effect.

Notwithstanding the above, the introduction of the GST legislation has already seen a reduction in the Wholesale Sales Tax rates on 28 July, 1999 from 32% to 22%. The reduction primarily related to luxury type goods including fur skins, jewellery, watches, clocks, cameras etc.

We note that there are specific provisions relating to the reduction in Wholesale Sales Tax applicable to motor vehicles and the application GST post 1 July, 2000.

Transitional Provisions -	In order to avoid possible market fluctuations, GST input tax credits on motor vehicles will be phased in over a two year period. No input tax credit will be available for purchases before 1 July, 2001, a 50% input tax credit will be available for purchases made up to and including 30 June, 2002, thereafter normal GST provisions will apply.
Luxury Vehicles -	In accordance with existing Wholesale Sales Tax rates, the GST legislation will include a special retail tax of 25%. Entitlements to a GST input tax credit on luxury vehicles will also be limited to the current depreciation limit.

Question 15

Where an Orthopaedic Surgeon has already ordered or taken delivery of stock or supplies which have Wholesale Sales Tax on them will he or she be able to claim back the tax already paid after 1 July, 2000 when this tax is abolished, ie is there any credit for un-recovered Wholesale Sales Tax?

Answer 15

The GST Transitional provisions allow for a GST credit on certain trading stock items on which sales tax has been paid prior to 1 July, 2000. The provisions entitle a registered enterprise to claim a GST input tax credit for an amount equal to the Wholesale Sales Tax paid on the goods.

The GST input tax credit is allowed to be included in any tax period of choice before 1 January, 2001. The credit will be required to be separately identifiable in the Business Activity Statement for cross reference purposes.

The GST input tax credit applies only to goods on hand as at 1 July, 2000 that have been purchased or imported for the purposes of sale or exchange in the course of business operations. The sale of the goods may be either retail or wholesale.

The GST credit provisions do not apply to:-

- i) raw materials and other goods held for the purposes of manufacture;
- ii) second hand goods;
- iii) goods held for hire;
- iv) business consumables (eg stationery);
- v) capital equipment used in the business operations;
- vi) goods held for private or domestic use; or
- vii) beer, wine, spirits and similar drinks.

Based on our understanding, Orthopaedic Surgeons would not have any goods, which would be considered trading stock for the purposes of the above transitional provisions. Accordingly, no GST credits will be available.

Question 16

Many of our Orthopaedic Surgeons have service companies. Will the Service Company charge a GST on its services? Generally what will the relation between the Service Company and its doctor clients be?

Answer 16

In general, a Service Company is established to provide general administrative services to Orthopaedic Surgeons. Accordingly, the services would be considered a taxable supply and would be subject to GST.

The administration services would be considered a creditable acquisition under the legislation, and accordingly the Orthopaedic Surgeon would be able to claim an input tax credit for the GST amount paid.

Other than cash flow considerations, the net effect on the Service Company and the Orthopaedic Surgeon should be nil.

We note that the GST legislation specifically addresses the issues of related party grouping and transactions between related parties, which would be relevant in considering the GST implications for Orthopaedic Surgeons and their Service Company . We have commented on these provisions as follows.

GST Grouping Provisions

Technically entities cannot 'register' as a group or joint venture. However, they can apply to the ATO to be treated as a group. The ability to form a GST group (or joint venture) is aimed at reducing unnecessary administration costs. Companies within a group often supply things to other members of the group. This would result in the group basically charging itself GST and then claiming input tax credits on the same internal transactions. The GST grouping provisions ignore these intra-group transactions for GST purposes.

Once the Commissioner approves a GST group, the group is effectively treated as one entity for GST purposes. One entity, the 'representative member' becomes responsible for lodging the GST return on behalf of all members. The representative member is responsible for all the GST payable and is entitled to all input tax credits that the members of the GST group have that relate to supplies and acquisitions made outside the GST group. The representative member must be an Australian resident. Any transactions between members of a GST group are not treated as being taxable supplies or creditable acquisitions. These transactions are excluded from the GST system as a result of the GST group.

We note that the ATO is currently reviewing the application of the grouping provisions to entities such as partnerships and trusts. Under the existing GST legislation such entities may apply to be grouped provided that they satisfy certain criteria contained in the regulations. As at the date of this advice, the applicable regulations are yet to be finalised.

Transactions with Associates

The legislation contains a number of provisions dealing with transactions between associates. These rules ensure that supplies to associates without consideration are brought within the GST system and that supplies to associates of an entity for inadequate consideration are properly valued for GST purposes.

The GST law adopts the definition of associate as per the definition in the *Income Tax Assessment Act 1997*. This definition is extremely broad and includes relatives and closely connected trusts and companies.

There are three circumstances which are addressed in the GST legislation:-

1. supplies without consideration;
2. supplies for inadequate consideration; and
3. where the special rule does not apply (ie. If the acquirer is entitled to a full input tax credit).

In general, the supplies between associates are deemed to have been made at an appropriate market value, unless the associate would have been entitled to a full input tax credit.

Question 17

Will Orthopaedic Surgeons have to register for the GST anyway? And if so, when and how?

Answer 17

In most circumstances, Orthopaedic Surgeons will be required to register for GST. The legislation states that all entities and individuals carrying on an enterprise **must** register for GST if their annual turnover is at or above the turnover threshold of \$50,000 (\$100,000 or more for non profit organisations).

We refer to the requirements for registration under the GST legislation at Answer 22 below.

Question 18

We are told that the GST is not chargeable or payable on CMBS related items but what about the gap between the CMBS and the doctors' fee?

Answer 18

Whether or not GST is required to be charged by the Orthopaedic Surgeon will depend on the nature of the goods or services supplied by him or her to the recipient. The nature of any subsequent payment for the goods or services is irrelevant.

For example, where an Orthopaedic Surgeon provides a normal medical consultation service to a patient, the whole of the supply would be considered a GST free supply and not subject to an additional 10% GST charge. The subsequent recovery of the Orthopaedic Surgeon's costs (whether it is based on CMBS, gap insurance, patient payment or otherwise) is not taken into account.

Question 19

What records and accounting systems will be required for the GST?

Answer 19

In general, the record keeping and accounting system requirements should be the same as those applicable to existing business operations. It will be important for all businesses to keep accurate records of GST collected and paid in order for them to correctly prepare the required GST return.

Many small businesses may choose to continue using a simple manual system including a cashbook divided into receipts and payments. This system should be modified to include additional columns for any GST amount included in cash receipts (ie collected for ATO) as well as any GST amount included in applicable expenses (ie paid to the ATO).

Notwithstanding the above, we believe that the additional and regular reporting imposed on business by the introduction of the GST legislation will lead to greater computerisation of most accounting systems. A computerised accounting system should enable businesses to accurately maintain their GST records and allow for the timely completion of the GST return.

As with the Income Tax legislation, the ATO will have powers to require businesses to provide information or documents in relation to their GST return. All documents must be retained for at least five (5) years after the completion of the transaction.

The records must be in English, or easily accessible and convertible to English.

Documentation

Examples of the documents that should be retained include:-

- a) books of account (manual cash book or computerised system);

- b) petty cash book;
- c) receipts for goods or services rendered;
- d) invoices in relation to payments made;
- e) GST tax invoices and adjustment notes;
- f) bank statements, cheque books and deposit books;
- g) motor vehicle log books; and
- h) stock on hand records.

The requirements of the accounting system will depend on the complexity of the business operations and whether the business is registered for GST on a cash or accruals basis.

Points to Note

- ◆ Depending on reporting status (ie cash v accruals), the earlier of the date of issue of the invoice or the date of the receipt of consideration determines the tax period into which GST collected falls and remittance made to the ATO.
- ◆ Depending on reporting status, the earlier of the date of issue of the invoice or date of payment determines the tax period in which the input tax credit can be claimed from the ATO.
- ◆ Entities must keep adequate records of the names and addresses of customers.
- ◆ The Business Activity Statement may require splitting gross sales by GST category, for example, GST-free and taxable supplies.
- ◆ GST collected on cash receipt invoices is GST payable.
- ◆ GST paid on cash payments is GST refundable.
- ◆ The GST paid may be split between capital and other goods.
- ◆ GST on credit notes to customers, which relate to sales in a previous tax period, is a GST payable adjustment.
- ◆ GST on credit notes from suppliers, which relate to sales in a previous tax period, is an input tax credit adjustment.

Reconciliations

Like all accounting records, GST accounting records should be kept up to date and accurate. Accurate GST accounting and reporting means that a business will have to undertake certain reconciliations whenever it completes its Business Activity Statement.

The ultimate proof that GST has been calculated correctly at the time each BAS is completed is by way of a comparison with the general ledger GST control accounts (for computerised accounting systems) or the cash book GST column totals (for non-computerised accounting systems).

The amount payable to the Commissioner of Taxation, or the refund due, should equal the net of the GST payable, input tax credits and adjustment(s) control accounts at the end of the tax period.

Tax Invoices

We note that for an enterprise to claim input tax credits for GST paid on business acquisitions, they must hold a tax invoice (in the specific format prescribed by the GST legislation and the Commissioner) at the time the credit is claimed in the Business Activity Statement.

Suppliers are required, if requested by the recipient, to issue a tax invoice for all taxable supplies with a GST exclusive value of \$50 or more, within 28 days of the request.

Question 20

Some of our senior members have stopped operating and confine themselves to medico-legal report writing type activities. Should they be registering for the GST? If not what should they be doing?

Answer 20

Entities and Individuals carrying on an enterprise **must** register for GST if their annual turnover is at or above the turnover threshold of \$50,000 (\$100,000 or more for non profit organisations).

Accordingly, if senior Orthopaedic Surgeons have an annual turnover of \$50,000 or more from the medico-legal activities they will be required to register for GST. If they are below this threshold, they may choose to register for GST.

If senior Orthopaedic Surgeons are not required to be registered for GST they will not have to charge the GST on their medico-legal fees nor will they be entitled to input tax credits on any business acquisitions.

Question 21

Should our members who are full time staff specialists at public hospitals be registering for GST?

Answer 21

Orthopaedic Surgeons who are employed as full time specialist at public hospitals will not be required to be registered for GST. Under the GST legislation the definition of an enterprise does not include activities carried as an employee.

We refer to the requirements for registration under the GST legislation at Answer 22 below.

Question 22

What does GST registration mean, what has to be done, when and where?

Answer 22

The following entities may register for GST purposes, individuals, body corporates, a company, partnerships, any other unincorporated association or body of persons, trusts and superannuation funds.

If these entities are “carrying on an enterprise”, they **must** register for GST if their annual turnover is \$50,000 or more (\$100,000 for non-profit bodies). Below these thresholds, the entity may choose to register. However, if entities choose not to register they will not charge GST on their supplies or claim input tax credits on their business related acquisitions. Entities may also choose to register if they are not currently carrying on an enterprise but intend to do so in the future.

Registered entities must remit GST quarterly or monthly, depending on their annual turnover.

An entity must apply for GST registration in the approved form within 21 days of becoming required to be registered. That is within 21 days after commencing an enterprise with a projected turnover at or over \$50,000) or if later, within 21 days after an enterprise first meets the \$50,000 registration turnover threshold.

The Australian Taxation Office has recently begun issuing “Applications to Register for The New Tax System”. The applications cover registration for the Australian Business Number (“ABN”), the GST and other related accounts (eg luxury car tax, wine equalisation tax and diesel fuel rebate and grants).

All entities, which currently satisfy the registration requirements, must apply to be registered by 31 May, 2000 (ie to enable processing of the application by 1 July, 2000).

Question 23

Will accountants be needed to do the GST administration or can it be done in-house, ie what are the compliance requirements? Does it have to be audited etc?

Answer 23

In addition to the normal record keeping requirements, the introduction of the GST will see a change in the method and timing of reporting to the Australian Taxation Office. The form of reporting will cover a number of taxes including GST and the new Pay-As-You-Go (“PAYG”) tax.

A Business Activity Statement will be required to be lodged with the Australian Taxation Office for each tax period. The tax period will depend on the annual turnover of the enterprise but will either be monthly or quarterly.

The Business Activity Statement is a new single form which will be used to report on businesses tax entitlements and obligations, including the amount of GST payable on taxable supplies and the amount of input tax credits for GST included in business acquisitions. The Business Activity Statement will need to be lodged on or before the 21st day of the month following the end of each tax period.

Whether the GST administration requirements will be handled by accountants or in-house will depend on the individual business and their existing structure. We would suggest that in the first twelve (12) months following the introduction of the GST legislation and PAYG regime it will be important to ensure that business systems and the actual Business Activity Statements are correct. Accordingly, businesses may need additional accounting services to monitor these areas.

There is no requirement for the GST Returns to be audited or reviewed.

Question 24

If an Orthopaedic Surgeon is entering into any contract with GST implications what are the clauses or terms and conditions that he or she should insist on?

Answer 24

Where a GST clause has been included in a contract the nature of such a clause will depend on a number of factors including the extent to which the GST affects the Orthopaedic Surgeon and the other party.

In general, a supplier will try to ensure that they are able to pass on any GST component applicable to the supply under contract, without affecting his or her net profit margin.

General factors that should be considered when entering into contracts subject to GST include:-

- i) a supplier will need to recover the full amount of the GST component, without regard to any entitlements that they may have to input tax credits;

- ii) a supplier will need to ensure payment of the GST component by the time remittance to the Australian Taxation Office is required;
- iii) a supplier will need to ensure that where later adjustments are made to the GST component, whether by error or otherwise, corresponding adjustments under the contract are allowed;
- iv) a recipient will require the supplier to provide a tax invoice to enable claiming of any GST input tax credits; and
- v) a recipient will require that any savings in the overall costs of the supplier is passed on. This may be in the form of outgoings or disburseable expenses.

We note that in most cases legal representatives assisting in the drafting of contracts will already be aware of the GST implications and will have available several versions of applicable GST clauses for inclusion in the documentation. Alternatively, we would be pleased to provide specific advice in this regard.

Question 25

Are medical consultations GST free or input taxed?

Answer 25

In general medical consultations will be GST free if they satisfy the criteria of a medical service. (ie a service supplied by, or on behalf of, a medical practitioner or an approved pathology practitioner that is generally accepted in the medical profession as being necessary for the appropriate treatment of the recipient of the supply.)

The classification “input-taxed” would generally not apply to the business activities of Orthopaedic Surgeons.

Input taxed supplies relate to financial services (eg loans, dealings in monies or securities etc), residential rent, sales of residential premises (other than new homes or commercial premises), certain transactions involving precious metals.

Question 26

Are reports provided to solicitors and insurance companies subject to GST?

Answer 26

Yes, an Orthopaedic Surgeon would be required to charge 10% GST on the supply of a report or opinion to a third party such as a solicitor or insurance company.

In our opinion, the supply of the report would not be classified as a GST free medical or other health services pursuant to the definitions contained in the GST legislation. That is, the report is **not** a service supplied by, or on behalf of, a medical practitioner or an approved pathology practitioner that is generally accepted in the medical profession as being necessary for the appropriate treatment of the recipient of the supply.

We refer to question 3 above for further details.

We note that the ATO have issued GST Ruling 1999/1, Goods and Services Tax: the GST rulings system. In this ruling the ATO have advised that taxpayers may seek private GST rulings on the interpretation and application of the GST legislation to their specific circumstances. We would recommend that any “uncertain transactions” be addressed via the ATO private ruling process to ensure the correct treatment under the GST legislation.

Question 27

Are medico-legal consultations subject to GST?

Answer 27

Yes, an Orthopaedic Surgeon would be required to charge 10% GST in relation to a medico-legal consultations.

In our opinion, the consultation would not be classified as a GST free medical or other health services pursuant to the definitions contained in the GST legislation. That is, the consultation is **not** a service supplied by, or on behalf of, a medical practitioner or an approved pathology practitioner that is generally accepted in the medical profession as being necessary for the appropriate treatment of the recipient of the supply.

We refer to question 3 above for further details.

AUSTRALIAN SOCIETY OF ORTHOPAEDIC SURGEONS

GST ADVICE (22 December, 1999) Appendix B

Schedule 3—Medical aids and appliances

Note: GST-free supplies of medical aids and appliances are dealt with in section 38-45.

Medical aids and appliances		
Item	Category	Medical aids or appliances
1	Cardiovascular	heart monitors
2		pacemakers
3		surgical stockings
4	Communication aids for people with disabilities	communication boards and voice output devices
5		communication cards
6		page turners
7		eye pointing frames
8		software programs specifically designed for people with disabilities
9		printers and scanners specifically designed for software and hardware used by people with disabilities
10		switches and switch interfaces
11		mouth/head sticks/pointers
12		alternative keyboards
13		electrolarynx replacements
14		speech amplification/clarification aids
15	Continence	urine/faecal drainage/collection devices
16		waterproof covers or mattress protectors
17		absorbent pads for beds and chairs
18		disposable/reusable continence pads, pants and nappies required for continence use (excluding nappies for babies, sanitary pads or tampons)
19		enuresis alarms
20		incontinence appliances
21		hospital/medical/continence deodorising products
22		waterproof protection for beds and chairs
23		sterile plastic bags
24		electric bag emptiers
25		enemas, suppositories and applicators
26		urinals and bedpans
27		penile clamps
28	Daily living for people with disabilities	customised eating equipment for people with disabilities
29		customised toothbrushes for people with disabilities
30		dentures and artificial teeth

31		environmental control units designed for the disability of a particular person
32		computer modifications required for people with disabilities
33		"medical alert" devices
34	Diabetes	finger prickers
35		alcohol skin wipes
36		test strips
37		needles and syringes
38		glucose monitors
39	Dialysis	home dialysis machines
40	Enteral nutrition	enteral nutrition and associated delivery equipment
41	Footwear for people with disabilities	surgical shoes, boots, braces and irons
42		orthotics
43	Hearing/speech	hearing aids
44		visual display units specifically designed for deaf people, or for people with a speech impairment, to communicate with others
45		telephone communication devices specifically designed to allow deaf people to send and receive messages by telephone
46		batteries specifically designed specifically for use with hearing aids
47		visual/tactile alerting devices
48		interactive and broadcast videotext systems
49		closed caption decoding devices
50		external processors for cochlear implants
51	Home modifications for people with disabilities	bidet/bidet toilet attachments
52		special door fittings relating to the disability of a particular person
53	Mobility of people with disabilities—motor vehicles	special purpose car seats
54		car seat harness specifically designed for people with disabilities
55		wheelchair and occupant restraint
56		wheelchair ramp
57		electric/hydraulic wheelchair lifting device
58		motor vehicle modifications
59	Mobility of people with disabilities—physical: bedding for people with disabilities	manually operated adjustable beds
60		electronically operated adjustable beds
61		hospital-type beds
62		customised bed rails for people with disabilities
63		bed cradles
64		bed restraints
65		bed poles and sticks
66		pressure management mattresses and overlays

67		backrests, leg rests and footboards for bed use
68	Mobility of people with disabilities—physical: orthoses	spinal orthoses
69		lower limb orthoses
70		upper limb orthoses
71		pressure management garments and lymphoedema pumps
72		callipers
73		corsets (surgical)
74		handsplints and cervical collars
75		mandibular advancement splints
76	Mobility of people with disabilities—physical: positioning aids	alternative positional seating corner chairs
77		alternative positional seating abduction cushions or long leg wedges
78		alternative positional seating modifications
79		standing frames
80		standing frames or tilt table modifications
81		side lying boards
82		night-time positioning equipment modifications
83	Mobility of people with disabilities—physical: prostheses	artificial limbs and associated supplements and aids
84		mammary
85	Mobility of people with disabilities—physical: seating aids	postural support seating trays
86		electrically operated therapeutic lounge/recliner chairs specifically designed for people with disabilities
87		cushions specifically designed for people with disabilities
88	Mobility of people with disabilities—physical: transfer aids	manual, electric, ceiling track or pool hoists specifically designed for people with disabilities
89		hoist slings
90		goosenecks
91		transfer boards
92		transfer sheets, mats or belts
93		stairlifts
94		portable stair climbers
95		monkey rings for people with disabilities
96	Mobility of people with disabilities—physical: walking aids	crutches
97		walking sticks—specialised
98		walking frames—standard adult
99		walking frames—standard child
100		walking frames—specialised
101		walking frame modifications
102		specialised ambulatory orthoses
103		specialised ambulatory orthosis modifications

104		quadrapod and tripod walking aids
105	Mobility of people with disabilities—physical: wheelchairs and accessories	wheelchairs, motorised wheelchairs, scooters, tricycles, spinal carriages and other goods for the carriage of people with disabilities
106		accessories associated with wheelchairs, motorised wheelchairs, scooters, tricycles, spinal carriages and other goods for the carriage of people with disabilities
107		battery chargers for wheelchairs, scooters, tricycles, spinal carriages and other goods for the carriage of people with disabilities
108		stair-aid apparatuses designed for carrying people with disabilities in wheelchairs up or down stairs
109	Pain relief delivery systems	syringe drivers
110		patient control analgesia
111	Personal hygiene for people with disabilities	bathboards or toilet seats for people with disabilities
112		bath supports
113		shower chairs or stools
114		shower supports
115		shower trolleys
116		mobile shower chairs
117		commodes
118		commode cushions
119		commode pans
120		toilet frames
121		toilet supports
122		self-help poles
123	Respiratory appliances	ventilators
124		continuous positive airway pressure (CPAP) appliances
125		respiratory appliance mask assemblies—complete
126		respiratory appliance mask assemblies—components
127		respiratory appliance accessories
128		sleep apnoea machines
129	Respiratory appliances—other products for those with breathing difficulties:	peak flow meters
130		nebulisers
131		spacers
132		vaporisers
133		respirators
134		air pumps
135		bottled oxygen and associated hardware
136		oxygen concentrators
137		breathing monitors
138		ventilators
139	Safety helmets specifically designed for people with disabilities	safety helmets specifically designed for people with disabilities
140	Skin	jobst suits
141		transcutaneous nerve stimulator machines
142	Stoma	stoma products including all bags and related equipment for patients with colostomies and ileostomies

143	Vision	tactile or Braille books, magazines or newspapers
144		electronic reading aids
145		talking book machines (and parts) specifically designed for people with a vision impairment
146		enlarged text computer monitors for people with a visual impairment
147		Braille note takers
148		Braille printers and paper
149		Braille translators (hardware and software)
150		money identification equipment
151		auditory/tactile alerting devices
152		sonar canes
153		reading magnification devices (excluding magnifying glasses)
154		artificial eyes
155		lenses for prescription spectacles
156		prescription contact lenses
157		ultrasonic sensing devices specifically designed for use by people with a vision impairment
158		viewscan apparatus specifically designed for use by people with a vision impairment

Extracted from Schedule 3 to A New Tax System (Goods and Services Tax) Act, 1999.