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Victorian SRO guidance clarifies issue around fund manager performance fees

The Victorian State Revenue Office (SRO) has just released guidance around performance fees which will interest all property fund managers.

The guidance follows changes to Victoria's stamp duty rules, particularly changes to the "economic entitlement provisions" which took the property industry by surprise earlier this year.

Property funds will be relieved to know guidance has clarified that performance fees will not be considered an "economic entitlement" where the fees relate to holding and maintaining property – rather, they will be considered a fee for service.

This is a welcome clarification, as it brings standard performance fee arrangements (that do not involve development of property by a person associated with the fund manager) in line with other "fee for service" arrangements. In such circumstances, fund managers do not need to lodge service agreements with the SRO provided they are in the business of being a fund manager, their fees are within industry parameters, and they are not an associated person of any other person who has an economic entitlement in relation to the relevant land.

Here's what the SRO has to say about property fund manager fees in its updated guidance:

Fund managers can be entitled to performance fees calculated on a percentage of returns from property under management above a benchmark (i.e. out performance fee) and disposal fees calculated as a percentage of the sale price of property disposed of by the fund.

Where these fees relate to holding and maintaining property for the fund, the fees will be considered a fee for service and therefore not an economic entitlement.

For the above to apply, the fees must be within industry parameters and the property cannot have been developed for the fund by a person associated with the fund manager.

Source: Victorian State Revenue Office