



LAND – EXEMPTIONS FOR AUSTRALIAN CITIZENS NOT ORDINARILY RESIDENT IN AUSTRALIA

Australian citizens who are not ordinarily resident in Australia are considered foreign persons under the *Foreign Acquisitions and Takeovers Act 1975*. However, they are exempt from the requirement to notify for direct acquisitions of interests in any type of land in Australia.

This Guidance Note sets out the circumstances in which the exemption for Australian citizens who are not ordinarily resident applies.

CIRCUMSTANCES WHERE THE EXEMPTION APPLIES

This exemption applies to any type of land in Australia – agricultural, commercial or residential.

This exemption also extends to circumstances where:

- The foreign person is an Australian corporation and would not be considered a foreign person if interests held directly in it by Australian citizens living abroad, or by a person to whom the next point applies, were disregarded.
- The foreign person is the trustee of a resident trust at the time of the acquisition and would not be a foreign person if interests directly held in it by Australian citizens living abroad, or by a person to whom the above point applies, were disregarded.

Example 1

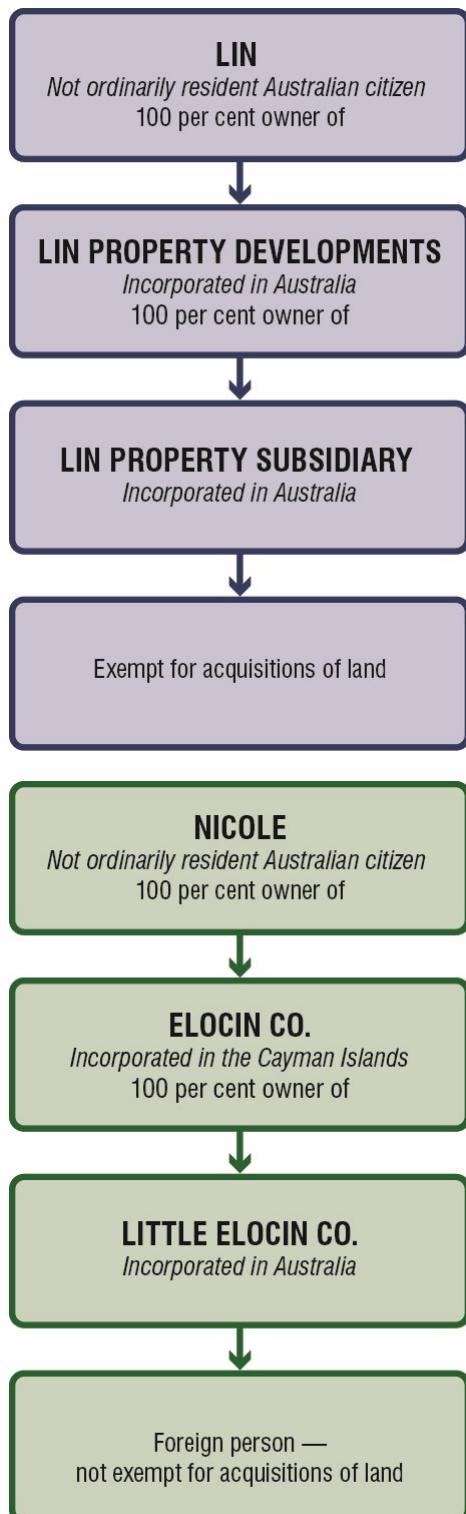
Liz is an Australian citizen who has been living in the United Kingdom for the past five years. Liz wants to buy a residential dwelling before she moves back to Australia.

While Liz is not ordinarily resident in Australia and so is a foreign person under the foreign investment framework, Liz is exempt when purchasing residential real estate in Australia because she is an Australian citizen. She does not need to apply for foreign investment approval.

CIRCUMSTANCES WHERE THE EXEMPTION DOES NOT APPLY

The exemption does not apply to acquisitions of interests that are not in land.

The exemption also does not apply where Australian citizens who are not ordinarily resident in Australia hold direct interests in foreign corporations or trusts. In those cases, those corporations and trusts are considered to be foreign persons for the purpose of Australia's foreign investment laws and therefore need to notify acquisitions of interests in land.



Example 2

Lin is an Australian citizen living in Singapore. Lin owns 100 per cent of her own company, Lin Property Developments Pty Ltd, which is incorporated in Australia. Lin is seeking to acquire vacant commercial land in Australia using a wholly owned subsidiary of Lin Property Developments, Lin's Property Subsidiary, which is also incorporated in Australia. Lin's Property Subsidiary would be exempt from the requirement to notify before acquiring an interest in the land.

Example 3

Nicole is an Australian citizen living in Germany. Nicole owns 100 per cent of her own company, Elocin Co., which is incorporated in the Cayman Islands. Little Elocin Co. is a subsidiary of Elocin Co. that is incorporated in Australia and proposing to acquire interests in residential land. Although incorporated in Australia and ultimately owned by an Australian citizen, Little Elocin Co. would be considered to be a foreign person and be required to notify proposed acquisitions of residential land in Australia.

FURTHER INFORMATION

Further information is available on the FIRB website at www.firb.gov.au or by contacting +61 2 6263 3795

Important notice: This Guidance Note provides a summary of the relevant law. As this Note tries to avoid legal language wherever possible it may include some generalisations about the law. Some provisions of the law referred to have exceptions or important qualifications, not all of which may be described here. The Commonwealth does not guarantee the accuracy, currency or completeness of any information contained in this document and will not accept responsibility for any loss caused by reliance on it. Your particular circumstances must be taken into account when determining how the law applies to you. This Guidance Note is therefore not a substitute for obtaining your own legal advice.