



Family Tax Benefit (Studying Overseas Full-time) Determination 2011

A New Tax System (Family Assistance) Act 1999

I, JENNY MACKLIN, Minister for Families, Housing, Community Services and Indigenous Affairs, make this Determination under section 3C of the *A New Tax System (Family Assistance) Act 1999*.

Dated

17th July

2011

J Macklin

Minister for Families, Housing, Community Services and Indigenous Affairs

Part 1 Preliminary

1 Name of Determination

This Determination is the *Family Tax Benefit (Studying Overseas Full-time) Determination 2011*.

2 Commencement

This Determination commences on the day after it is registered.

3 Definitions

(1) In this Determination:

Act means the *A New Tax System (Family Assistance) Act 1999*.

approved foreign course of education or study has the meaning given by subsection (2).

first fortnight of classes, in relation to a study period, means the period that starts on the first day of classes in that study period and ends on the Friday of the second week of classes in that period.

foreign educational institution means:

- (a) an institution that is established by a law of a foreign country as an educational institution; or
- (b) an institution registered by the relevant education recognition authority of the foreign country as an educational institution.

required amount of study has the meaning given by section 4.

Secretary has the meaning given by subsection 3(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

(2) For this Determination, a course of education or study is an approved foreign course of education or study if:

- (a) the course is delivered by a foreign educational institution; and
- (b) the course is accredited under a law of a foreign country as a course of education or study for secondary or tertiary aged students; and
- (c) completion of the course results in a level of education that is broadly equivalent to that resulting from completion of a course determined under subsection 5D(1) of the *Student Assistance Act 1973* to be a secondary course or tertiary course for the purposes of that Act.

4 Required amount of study

- (1) For this Determination, and subject to subsection (2), an individual is undertaking the required amount of study in an approved foreign course of education or study, for the period for which the individual is enrolled in the course, if:
- (a) the individual is studying the course for at least three-quarters of the defined amount of full-time study in respect of the course for that period; or
 - (b) for an individual to whom subsection (3) applies — the individual is studying the course for at least two-thirds of the defined amount of full-time study in respect of the course for that period.

Note: For **defined amount of full-time study** see subsection (5).

- (2) An individual is taken to be undertaking the required amount of study in respect of an approved foreign course of education or study, during the first fortnight of classes in a particular study period, if the individual is enrolled in the course and undertakes study in the course on at least one day in the first fortnight of classes.
- (3) Subject to subsection (4), this subsection applies to an individual if the individual cannot undertake the defined amount of full-time study in respect of the approved foreign course of education or study for the particular study period, because of:
- (a) the usual requirements of the foreign educational institution in respect of the course; or
 - (b) a specific direction in writing to the individual from the academic registrar, or a person with an equivalent function, of the foreign educational institution; or
 - (c) a recommendation in writing from the academic registrar, or a person with an equivalent function, of the foreign educational institution, that the individual undertake the amount of study mentioned in paragraph 4(1)(b) in respect of the course for specified academic or vocational reasons.
- (4) During any academic year, subsection 4(3) can only apply to an individual because of paragraph 4(3)(c) for a maximum period of half of the academic year.

- (5) For this section, the ***defined amount of full-time study*** in respect of an approved foreign course of education or study is:
- (a) if the Secretary has determined the normal amount of full-time study for the individual under subsection 17B(3) of the Act — that amount; or
 - (b) if the Secretary has not made such a determination, either:
 - (i) if the foreign educational institution that delivers the course specifies an amount of full-time study that should typically be undertaken in respect of the course — that amount; or
 - (ii) otherwise — an amount of full-time study equivalent to the average amount of full-time study that an individual would have to undertake for the duration of the course in order to complete the course in the minimum amount of time needed to complete it.

Part 2 Family tax benefit — studying overseas full-time

5 Meaning of studying overseas full-time

For section 3C of the Act, an individual is ***studying overseas full-time*** if:

- (a) the individual:
 - (i) is enrolled in an approved foreign course of education or study; or
 - (ii) was enrolled in an approved foreign course of education or study and has (since no longer being enrolled) always intended to re-enrol in the course when re-enrolments in the course are next accepted; or
 - (iii) was enrolled in an approved foreign course of education or study and has (since no longer being enrolled) always intended to enrol in another approved foreign course of education or study (at the same or a different foreign educational institution) when enrolments in the other course are next accepted; and
- (b) in the particular study period (for example, a semester) in which the individual is or intends to be enrolled in the course, he or she is or intends to be undertaking the required amount of study in the course; and
- (c) the individual is making satisfactory progress towards completing the course.