



NPO Tax Exemption

Applying for 2(36) Tax Exemption

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SECTION 2(36)



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Why PCP Guide Series (I)?

The Pakistan Centre for Philanthropy (PCP) is an authorized agency evaluating Non-Profit Organisations (NPOs) and recommending them for tax exemption to the Federal Board of Revenue (FBR). PCP is in constant interaction with NPOs seeking tax exempt status, philanthropists who contribute to NPOs seeking tax exemption / credits and government functionaries i.e. FBR, Economic Affairs Division (EAD) etc. who form an important link in the chain. PCP is often asked to answer all kind of questions related with requirements / process of tax exemption for NPOs, tax liabilities of NPOs and related benefits of tax exemption.

In order to help its stakeholders, PCP has undertaken an exercise to compile PCP guide series, for information on tax exemption pertinent to NPOs. It is expected that this will ease access to references and in apply for 2(36) Status.

One of the major stakeholders in national development is civil society. Thousands of NPOs are working with communities throughout the country. They are contributing enormously towards poverty alleviation and other sectors i.e. health, education etc. It is therefore, in the interest of the national development agenda that NPOs are developed, strengthened and made financially viable. Generally an NPO is entitled to certain benefits and concessions across the board whether or not it is approved by the tax authorities for exemption.

NPOs approved by the tax authorities at various levels have an entitlement to some additional benefits i.e. tax credits / exemptions on different utility bills, custom duties etc. In fact, the exemption for an NPOs is a voluntary process. In Pakistan, the tax exemption regime is provided in the Income Tax Ordinance (ITO), 2001 and Income Tax Rules (ITR), 2002. It has provided an elaborate system whereby the NPOs get tax exemption with reference to their defined activities. From the attainment of NPO status against the defined activities of an NPO, the taxation system of Pakistan has provided detailed process for tax exemption.

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What are major steps/areas for availing tax exemption?

The objective of this guide series for tax exemption is to present an overall picture of the tax exemption provisions provided in Pakistan's income tax law. It encapsulates mainly tax benefits of an NPO in terms of following steps/areas:

- 1. NPO status under section 2(36) of the (ITO) 2001(1st step for availing tax exemption).**
2. Tax credit equal to one hundred percent on income under section 100 C of ITO 2001
3. Entitlement of tax credit to persons for charitable donations under section 61 of the ITO 2001
4. Exemptions related with withholding transactions of NPOs in section 159 of the ITO, 2001.

An NPO adopts various courses for availing tax exemption. An NPO approaches RTO/LTU offices for availing tax benefits relating to exemptions (as listed above). These include : getting the status of an NPO; tax credit on income of NPO; donor's getting benefits for the donations paid to NPO and receiving exemption or a lower rate certificate related with advance payment of tax.

PCP guide series (I) will now guide you step by step for availing tax exemption for the Point 1 as listed above. After NPO has received 2(36) status its case can be further processed for Section 61, Section 100 C and Section 159 of Income Tax Ordinance,2001 as listed above.

Why apply for 2 (36)?

The Income Tax Ordinance (ITO), 2001 has for the first time introduced the term, non-profit organization (NPO). One major distinction between the 1979 and 2001 Ordinance is that the former exempted income through a process granting such exemption. The latter, on the other hand, recognizes the organization as an NPO and the exemption accrues automatically. This recognition not only exempts the income of the organizations, but also the donation given by any taxpayer to such organizations.

Section 2 (36) states that:

NPO means any person other than an individual, which is established for –

- religious,
- educational,
- charitable,
- welfare or
- development purposes, or
- the promotion of an amateur sport;
- formed and registered under any law as an NPO
- approved by the Commissioner for specified period,
- on an application made by such person
- in the prescribed form and manner,
- accompanied by the prescribed documents and,
- on requisition, such other documents as may be required by the Commissioner; and
- None of the assets of such person confers, or may confer, a private benefit to any other person.

Since the term "**charitable purposes**" had not been defined in the 2001 Ordinance, this was introduced through an amendment contained in the Finance Ordinance 2002 by the addition of clause 11(A) in Section 2 which reads – "charitable purposes" includes

- relief of the poor,
- medical relief and
- the advancement of any other object of general public utility.

Section 80 of ITO, 2001 treats **NPO as Company** for tax purpose.

What is procedure for applying 2(36)?

NPOs can attain the approved status of an NPO either from the income tax commissioner or from the FBR i.e. tax policy section deals with it. There are variations in procedures for availing approval, conditions of compliance for **essential documents** and nature of benefits and concessions. The authorized officers of the income tax department examine the application and the attached documents for the processing of a tax exemption case. The tax authorities may make such inquiries or call for such further information as deemed necessary and after completion of the formalities may grant approval.

The commissioner **may relax or modify any of the requirements or conditions in any individual case** if he is satisfied that the requirements or conditions could not be fulfilled by the applicant due to a reasonable cause. The approval granted is notified in the official Gazette and is subject to such conditions as the commissioner may specify in the approval. All tax exemptions so granted have a specified validity and are renewed after the expiry of their validity period i.e. three years.

Rule 211 of the Income Tax Rules (ITR) 2002 prescribes the **procedure for the processing of an application** for the approval of an NPO under section 2(36). It means that approval is accorded in accordance with the clause (36) of section 2 of the ITO 2001 and Rules 211 to 220 of ITR 2002. This 'category of charity' for the purposes of ITO 2001 is referred to as "NPO". Rule 211 sub rule (1) states:

- An institution,
- fund,
- trust,
- society or
- any other NPO (hereinafter referred to in this Chapter (XVII of ITR 2002) as organisation) established in Pakistan for:
 - religious,
 - educational,
 - charitable,
 - welfare or
 - development purposes or
- the promotion of an amateur sport requiring approval of the Commissioner under clause (36) of section 2 of the Ordinance, shall make an application to the Commissioner in the following form, namely: -



What is the format of application form for 2(36)?

Application Form

To,
The Commissioner of Inland Revenue,
_____ Zone,
_____ (City)

1. With reference to clause (36) of section 2 of the Income Tax Ordinance, 2001 (XLIX of 2001), I the undersigned, hereby apply, on behalf of _____ (name of the organization) for its approval for the purposes of the said clause for the tax year ending on _____.
2. Necessary particulars are set out below, and in the schedule to this application.
3. The following documents required under sub-rule (2) of rule 211 of the Income Tax Rules, 2002, are enclosed.

- (i) _____
- (ii) _____
- (iii) _____
- (iv) _____
- (v) _____

Signature _____
Name(in block letters) _____
Designation _____

Application must be signed either by the President or the Secretary of the organization or by a Trustee, of the trust.

SCHEDULE PARTICULARS

- Name of the organization (in block letters) _____
- Full address of the organization (in block letters) _____
- Date of registration of the organization _____
- Its aims and objects.
 - (a) _____
 - (b) _____
 - (c) _____
 - (d) _____
- Whether the organisation has been registered under:
 - the Companies Ordinance, 1984,
 - the Societies Registration Act, 1860 (XXI of 1860), or
 - the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (XLVI of 1961), or
 - any other law in substitution thereof relating to the registration of welfare organisation or
 - established in pursuance of a Trust Deed.
 - Please give/state the law and the number and date of registration _____.
- Whether constitution,
 - memorandum and articles of association,
 - trust deed,
 - rules and regulations or
 - bye-laws, as the case may be, conform(s) to the provisions of sub-rule (1) of rule 213. If so, please give the number of Article/ Clause/ Rule etc., for each provision.
- Whether the organization ensures for the benefit of:
 - the general public or a particular community or class of persons only (give full details).
 - The number of members /trustees of the organization on the date of application.
 - Accounting year of the organisation commences on _____ and ends on _____.



- The following books of accounts are being regularly maintained by the organization and are open for inspection without any hindrance to the general public.

- i) _____
- ii) _____
- iii) _____

Signature _____

Name (in block letters) _____

Designation _____

2(36)

What Documents should be attached along with application for 2 (36) [Rule 211(1) provides]?

Duly attested copies of:

- the constitution,
- memorandum and articles of association,
- rules and regulations or
- bye laws, as the case may be, of the organisation specifying the aims and objects for which it is established;
- details of Members / Trustees of the organization on the date of application; Name, CNIC, Income Declared and Tax Year;
- a certified copy of the registered trust deed, in case of a Trust;
- a certified copy of certificate of registration in the case of an organisation registered under: the Companies Ordinance 1984,
- the Societies Registration Act, 1860 (XXI of 1860),
- the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (XLVI of 1961), or
- under any other law in substitution thereof relating to the registration of welfare organisation as applicable;
- duly attested copies of the balance sheet and of revenue accounts of the organisation as audited by a "qualified accountant" for the year immediately preceding the year in which the application is made;
- the names, CNIC / NTN , last income declared, tax year and addresses of the promoters, directors, trustees, president, secretary, treasurer, manager and other office bearers, as the case may be, of the organisation, and indicating clearly their family relationships, if any, with each other;
- "qualified accountant" means, -
 - a retired audit, accounts, treasury or taxation officer of the Government not below BPS-17 or a bank manager, where the annual receipts of the organisation do not exceed Rs. 0.5 million;
 - in other cases, a Chartered Accountant as defined under the Chartered Accountants Ordinance, 1960 (X of 1960) or

- a Cost and Management accountant as defined under the Cost and Management Accountants Act, 1966 (XIV of 1966) or
- a firm of Chartered Accountants as defined under the Chartered Accountants Ordinance, 1960 (X of 1960) or
- a firm of Cost and Management Accountants as defined under the Cost and Management Accountants Act, 1966 (XIV of 1966);]
- a detailed report with regard to the performance of the organisation for achieving its aims and objects during the **preceding financial year** preceding the date on which application is made, duly evaluated and certified by **an independent certification agency** approved by an authority designated by the Government of Pakistan for this purpose or, till that authority is established, under arrangements made by the Federal Board of Revenue (Commissioner).

The proviso states that till the approval of two such agencies, the applicant organization shall have an option to get its performance appraised by Chief Commissioner, Regional Tax Office or Large Taxpayers Unit.

The second proviso states that further that Chief Commissioner or Officers of Regional Tax Office or Large Taxpayer Unit, shall apply the same parameters on applicant organizations for the purpose of aforesaid evaluation as are approved by the FBR to be applied by the certification agency.

In addition to above mentioned information given in the application, **under rule 212**, ITR 2002, on receipt of an application under rule 211, the Commissioner **may make such inquiries or call for such further information** as the Commissioner may deem necessary and after completion of formalities may approve the organization for the purpose of clause (36) of section 2 of the Ordinance. The approval granted shall be –

- (a)** notified in the official Gazette; and
- (b)** subject to such conditions as the Commissioner may specify in the approval.

What are basis of refusal of approval under 2 (36)? [Rule 213 Explains]

The approval shall not be granted if:

- constitution,
- memorandum and articles of association,
- trust deed,
- rules and regulations or bye-laws, as the case may be, specifying the aims and objects of the organization does not provide:
 - for the audit of the annual accounts of the organization every year by a "qualified accountant" as specified in clause (f) of sub-rule (2) of rule 211;
 - where the organisation is registered under the the Companies Ordinance, 1984, Societies Registration Act, 1860 (XXI of 1860), the Voluntary Social Welfare (Registration Control) Ordinance, 1961 (XLVI of 1961), or any other law in substitution thereof relating to the registration of welfare organisation, for the **quorum** of a meeting of the members of the body in which the control of the affairs of the organisation vests, being not less than **four or one-third of the total number** of the members of such body, **whichever is greater**;
 - where the organisation is a Trust as defined in the Trust Act, 1882 (II of 1882), for the **quorum** of a meeting of the members of the body in which the control of the affairs of the trust vests, being not less than **three or one-third** of the total number of the members of such a body, **whichever is greater**;
 - for the transfer of its assets, in the event of its dissolution, after meeting all liabilities, if any, to another organisation which is an approved NPO, within **three months of the dissolution** under intimation to the Commissioner;
 - for the utilisation of its money, property or income or any part thereof solely for promoting its objects;

- for prohibiting any portion of its money, property or income being paid or transferred directly by way of **dividend, bonus or profit** to any of its members or the relative or relatives of a member or members;
- for the maintenance of accounts of the organization being kept in a **scheduled bank or in a post office or national savings organisation, National Bank of Pakistan or nationalised commercial banks**;
- **for prohibiting the making of any changes** in the constitution, memorandum and articles of association, trust deed, rules and regulations or bye-laws, as the case may be, without the **prior approval of the Commissioner**: Provided this clause will have effect only in cases where the approval is granted; and
- for restricting the surpluses or monies validly set apart, excluding restricted funds, **upto twenty-five per cent** of the total income of the year:

The proviso states that such surpluses or monies set apart are invested in Government securities, NIT units, a collective investment scheme authorized or registered under the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003, mutual fund, a real estate investment trust approved and authorized under the Real Estate Investment Trust Rules, 2006, or scheduled banks:

Explanation: For the purpose of this rule, "**restricted funds**" mean any fund received by the organization but could not be spent and treated as revenue during year due to any obligation placed by the donor year due to any obligation placed by the donor.

The Commissioner **may refuse to approve** the organisation if the Commissioner is satisfied that the organisation –

- has been or is being used for personal gain of any particular person or a group of persons;
- has been propagating the view of a particular political party or a religious sect;

- has been or is being managed in a manner calculated to personally benefit its members or their families; or
- has not been or will not be able to achieve its declared aims and objects in view of its set up, administration or otherwise as evaluated and certified by an independent certification agency or as evaluated by Chief Commissioner, Regional Tax Office or Large Taxpayer Unit under clause (g) of sub rule (2) of rule 211.
- has made expenditure on salaries exceeding 50% of the total receipts excluding restricted donations or funds received during a tax year.
- the names, CNIC /NTN, last income declared, tax year and addresses of the promoters, directors, trustees, president, secretary, treasurer, manager and other office bearers, as the case may be, of the organization and indicating clearly their family relationships, if any, with each other.

The Commissioner shall **notify the applicant**, in writing, the decision to refuse the approval and the notice shall include **a statement of reasons** for the refusal. The **rule 214** provides that approval granted under rule 212 will remain in force for the **subsequent three years** or **unless withdrawn** under rule 217 whichever is earlier.

What are reasons for withdrawal of Tax Exemption under 2 (36)? (Explained in Rule 217 of ITR, 2002)

The sub rule of rule 217 states that the Commissioner can at any time withdraw approval granted under **rule 212**, if he is satisfied that-

- the constitution,
- memorandum and articles of association,
- trust deed,
- rules and regulations or bye-laws,
- as the case may be, specifying the aims and objects of the organization do(es) not provide for prohibiting the making of any changes in the constitution, memorandum and articles of association, trust deed, rules, regulations and bye-laws without prior approval of the Commissioner;
- the organization has-
 - been or is **being used for personal gain** of any particular person or a group of persons as specified in clause (a) of sub-rule (2) of rule 213;
 - been **propagating the view of a particular political party** or a religious sect as specified in clause (b) of sub-rule (2) of rule 213;
 - been or is being managed in a manner calculated to **personally benefit its members** or their families as specified in clause (c) of sub-rule (2) of rule 213; or
 - not been or will not be able to achieve its declared aims and objects in view of its set up, administration or otherwise as evaluated and certified by an independent certification agency as specified in clause (d) of sub-rule (2) of rule 213;
 - failed to give valid reasons for setting apart, or not utilizing, or accumulating surpluses, excluding restricted funds, in excess of twenty five percent of the income for the year.
 - failed to file statements of deduction of income tax under section 165 read with rule 144.

- the names, CNIC /NTN, last income declared, tax year and addresses of the **promoters, directors, trustees, president, secretary, treasurer, manager and other office bearers**, as the case may be, of the organization and indicating clearly their family relationships, if any, with each other.
- failed to file the **return of income** supported with following documents;
 - **statement** of audited balance sheet and statement of accounts as mentioned in clause of sub-rule (2) of rule 211;
 - **statement** showing names and addresses of the persons from whom donations, contributions, subscriptions etc exceeding Rs. 5,000/- have been received during the tax year;
 - **statement** showing the names and addresses of donees and beneficiaries etc to whom payments, services etc exceeding Rs. 5,000/- have been made during the tax year; and
 - **statement** showing the money set apart or kept un-utilize with reasons thereof;
- failed to provide **a detailed performance evaluation report** in terms of clause (g) of sub-rule (2) of rule 211, **after every three years**;

Provided that where such detailed performance evaluation report is not submitted on or before 30th of September following every three years, the Commissioner shall issue a show cause notice for withdrawal of approval to the concerned organization as required under sub-rule 2 of the rule 217.

Approval shall not be withdrawn under sub-rule (1) rule 217 unless the organization has had **an opportunity to show cause** against the action proposed to be taken. Where the Commissioner decides to withdraw approval under sub-rule (1) rule 217, he shall intimate the organization, in writing, of the decision including **a statement of reasons for the decision**.



How to appeal against the decision of Commissioner under 2 (36)? (Appeal under Rule 218 of the ITR 2002)

When an approval of an NPO is refused or withdrawn by the Commissioner, the NPO can lodge an appeal to the Chief Commissioner, Regional tax Office (RTO) or Large Taxpayer Unit (LTU) concerned in a prescribed standard form.

Rule 218 states:

An organization dissatisfied with –

- (a) a decision to refuse an application made under rule 211; or
- (b) a decision to withdraw an approval under rule 217, may lodge an appeal within sixty days of receipt of order from the Commissioner in the following form with the Chief Commissioner, Regional Tax Office or Large Taxpayer Unit concerned, namely: -

GROUND(S) OF APPEAL

- (i) _____
- (ii) _____
- (iii) _____
- (iv) _____
- (v) _____

We / I _____ the appellant(s) named in the above appeal do declare that what is stated therein is true to the best of our/my information and belief.

Dated.....20____

Signature _____

Name _____

Address _____

PARTICULARS

1.Name of the organization (in block letters)_____

2.Full address of the organization (in block letters)_____

3.Date of establishment of the organization _____

4.Its aims and objects

- (a) _____
- (b) _____
- (c) _____
- (d) _____

5.Whether the organisation has been registered under

- the Companies Ordinance, 1984, or
- the Societies Registration Act, 1860 (XXI of 1860), or
- the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (XLVI of 1961), or
- any other law in substitution thereof relating to the registration of welfare organisation or established in pursuance of a Trust Deed.
- (Please give/state the law and the number and date of registration)

6.Whether

- constitution,
- memorandum and articles of association,
- trust deed,

- rules and regulations or bye-laws, as the case may be, conform(s) to the provisions of sub-rule (1) of rule 213. If so, (The details may be provided along with number of Article/ Clause/ Rule etc., for each provision)

7. Whether the organization ensures for the benefit of the **general public** or a particular community or class of persons only (give full details).

8. The number of members/ trustees of the organization on the date of application.

Signature _____
Name (in block letters) _____
Designation _____

Disposal of Appeal: Rule 218 (2) states that the Chief Commissioner, RTO or LTU shall make a decision on the appeal of the NPO **within sixty days of its filing.**

Rule 220 states that the Commissioner **may relax or modify any of the requirements or conditions** of the (Chapter XVII) of ITR 2002 in any individual case. If the Commissioner is satisfied that the requirements or conditions could not be fulfilled by the applicant for reasonable cause.