

Energy Overview

India is the third largest energy consuming country in the world. India stands 4th globally in Renewable Energy Installed Capacity (including large hydro), 4th in wind power capacity and 5th in solar power capacity. Further, the country has set an enhanced target at the UN Climate Change Conference in Glasgow (COP26) of 500 GW of non-fossil fuel based energy by 2030, which is world's largest expansion plan in renewable energy.

India's installed non-fossil fuel capacity has increased 396% in the last 8.5 years and stands at more than 198.75 GW (including large hydro and nuclear), about 45% of the country's total capacity (as of March 2024). India saw the highest year-on-year growth in renewable energy additions of 9.83% in 2022. The installed solar energy capacity has increased by 30 times in the last 9 years and stands at 81.81 GW as of March 2024.

India's solar energy potential is estimated to be 748 GWp as estimated by National Institute of Solar Energy (NISE). The installed renewable energy capacity (including large hydro) has increased by around 128% since 2014.

Up to 100% Foreign Direct Investment (FDI) is allowed under the automatic route for renewable energy generation and distribution projects subject to provisions of the Electricity Act 2003.

Industry Scenario

India's combined installed capacity of renewable energy resources is 190.57 GW (as of March 2024). Following is the installed capacity for renewables:

- ❖ Wind Power: 45.88 GW
- ❖ Solar Power: 81.81 GW
- ❖ Biomass/Co-generation: 10.35 GW
- ❖ Small Hydro Power: 5 GW
- ❖ Waste to Energy: 0.58 GW
- ❖ Large Hydro: 46.92 GW.

India has set a target to reduce the carbon intensity of the nation's economy by less than 45% by the end of the decade, achieve 50% cumulative electric power installed by 2030 from renewables and achieve net-zero carbon emissions by 2070.

India aims for 500 GW of renewable energy installed capacity by 2030 and aims to produce 5 million tonnes of green hydrogen by 2030. This will be supported by 125 GW of renewable energy capacity.

50 solar parks with an aggregate capacity of 37.49 GW have been approved in India. Wind energy has an off-shore target of 30 GW by 2030, with potential sites identified.

Recent Industry Trends...

- ❖ 100 smart city projects: Provision of rooftop solar and 10% renewable energy is mandatory
- ❖ Upgrade and Modernization: Upgrade watermills and micro hydro projects
- ❖ Solar Pumps: 100,000 solar pumps required for agriculture
- ❖ Green Energy Corridor: Plans to set up 10753 circuit km of inter-state and intra-state transmission lines and 27546 MVA capacity of substations having an estimated project cost of US \$ 1451 million.

Federal Policies and Incentives

Production Linked Incentive ("PLI") Scheme:

The Ministry of New and Renewable Energy ("MNRE"), Government of India has implemented the PLI Scheme under "National Programme" on "High Efficiency Solar PV Modules" for achieving manufacturing capacity of GW scale in High Efficiency Solar PV modules with an outlay of **US \$ 2.92 billion**.

Solar PV manufacturers are selected through a transparent selection process. This Scheme has provision for PLI to the selected solar PV module manufacturers **for five years** post commissioning, on manufacture and sale of High Efficiency Solar PV modules.

Objective of the PLI Scheme:

- ❖ To build up solar PV manufacturing capacity of high efficiency modules
- ❖ To bring cutting-edge technology to India for manufacturing high efficiency modules. The scheme will be technology agnostic in that it will allow all technologies. However, technologies which yield better module performance will be incentivized
- ❖ To promote setting up integrated plants for better quality control and competitiveness
- ❖ To develop an ecosystem for sourcing local material in solar manufacturing
- ❖ Employment generation and technological self-sufficiency.



Other Policies including State level policies

- ❖ **National Green Hydrogen Mission** – The Union Cabinet approved the National Green Hydrogen Mission with a total initial outlay of US \$ 2,381 million, including an outlay of US \$ 2,109 million for the SIGHT Programme, INR US \$ 176 million for pilot projects, and other related outlays.
- ❖ **National Policy on Biofuels** – The objective of the policy is to enable availability of biofuels in the market, thereby increasing its blending percentage.
- ❖ **National Electricity Plan 2022-32** – Amongst other things, this includes different technologies available for efficient generation, transmission and distribution, fuel choices based on economy, energy security and environmental considerations.
- ❖ **Development of Micro & Mini Hydro Power Projects** – The objective is to promote micro/mini hydro power projects in the states such as Uttarakhand by providing a favorable environment.
- ❖ Additionally, various State level Renewable Energy Policies are also published in order to provide an impetus to the overall national strategy with respect to the renewable energy.

Tax Overview

Goods and Services Tax (GST) was implemented on July 1 2017, by replacing almost all indirect taxes as a comprehensive single, pan-India indirect tax ranging from 5%-28%. With its implementation, the cascading effect of taxes impacting the cost of goods has been removed and the taxation system has become more efficient. Further, the Income Tax structure has also undergone some milestone reforms which have regulated the unorganized sectors, reduced tax evasion, and improved compliance.

Taxation of Energy Projects

With respect to renewable energy, the following tax reforms are important to be taken into consideration:

Separate Scheme for Solar Sector under GST:

A separate mechanism was introduced for solar sector projects wherein 30% of value is deemed as 'supply of service' and 70% as 'supply of goods'.

Import duty changes

An increased Basic Customs Duty (BCD) of 40% applicable on import of solar modules and 25% applicable on import of solar cells (effective from April 1 2022), has resulted surge in indigenous manufacturing.

Reduced Corporate Tax Rates:

- ❖ A reduced tax rate of 22% is applicable to any new domestic manufacturing company (certain deductions including depreciation may not be available if company opts for the reduced rate).
- ❖ A new company which is registered on or after October 1 2019 where manufacturing is commenced before March 31 2024, is eligible for 15% tax rate – likely to be extended.

Accelerated depreciation on renewable energy devices:

A benefit in terms of a higher depreciation rate at 40% for initial years is available on specific renewable energy devices.

Other Regulatory Compliance:

Additionally, certain other regulatory compliances which may be applicable for renewable energy sector are listed hereunder:

- ❖ **Bureau of Indian Standards (BIS) certification** – The BIS Certification is obligatory for specific products, so that they can be introduced and sold on the Indian market. BIS Certification India or BIS Registration issued by the BIS ensure the quality, safety and reliability of products in accordance with Indian Standards (IS).
- ❖ **Consent to Operate (CTO) from Pollution Control Board for solar plant** – Once the industry or process plant is established along the required pollution control systems, the entity is required to obtain consent to operate the said unit.



Relevant Experience

ELP (Taxand India) has worked on many large and innovative projects. Set out below is a representative sample of some of our work in this sector:

- ❖ Advised a large group with respect to due diligence, structuring of the transaction and drafting and negotiating transaction documents with respect to private equity investment which currently owns and operates 130 MW of grid connected solar power projects in India.
- ❖ Advised a client in relation to the Jangi – Thopan and Thopan – Powari Hydro-electric Power Projects (480x2 MW), Himachal Pradesh. We advised them in relation to the bidding process for the Projects and reviewed the bid documents, the Pre-implementation Agreement, the Development Loan, the appointment of Consultants for conducting feasibility studies, Implementation Agreement, the Power Purchase Agreements with the State Electricity Board and the EPC Contract.
- ❖ Advised on the tax and contractual aspects of an EPC Contract for setting up a Wind Energy Project in Andhra Pradesh.
- ❖ Advised a major energy company on various benefits under the Foreign Trade Policy (FTP) for setting up a nuclear power project in India.
- ❖ ELP have been indirect tax advisors to clients in the infrastructure sector, including power, in respect of its various projects in the Power Sector including India's largest project in Vemagiri.
- ❖ ELP has represented clients in their proposed contractual arrangements with foreign nuclear equipment suppliers for development of nuclear power projects in India.
- ❖ ELP has advised a client in setting up a coal-based power plant in an Indian state and supply of the entire power to an overseas power distribution company through transmission lines up to the border connecting to the overseas grid. It has further assisted in the drafting, review and negotiation of a power purchase agreement for cross border supply of power to a neighboring country.
- ❖ Advised a client on selling its solar power plant projects in Telangana, Karnataka and Tamil Nadu to two global investors for over INR 700 crore, making it completely debt-free with additional cash to boost its next phase of green energy development.



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