

«DIIA CITY IT LAW» IN UKRAINE

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The Ukrainian IT sector has been growing for approximately 25%/year for few years now and currently there are approximately 150 000 IT professionals working in this sector. Most of whom are registered as individual entrepreneurs and work according to contractual agreements.

On 15 July, the Ukrainian parliament passed the Draft Law No. 4303 «On stimulating the Development of the Digital Economy in Ukraine» («Diia City Law») after a second reading.

Diia City – a virtual digital country with no limits for new investments, jobs and cutting edge technological development. This is a place, where the state regulation is minimal, and which will thrive with the creation of

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innovative products and multinational companies of any size. Where Ukrainian and foreign entrepreneurs have the opportunity to bring to life the most ambitious and innovative business ideas.

The goals of Diia City Regime: to stimulate the development of the digital economy in Ukraine within the Diia City special legal regime favorable conditions will be created for at least 25 years to: Diia City goals run a technological and innovative business attract investments develop digital infrastructure attract talented workers from all over the world stimulate the creation of domestic innovative products (startups and product companies) shape a knowledge economy in Ukraine develop IT education.

Responsibilities of Diia City: residents continuously and fully meet all the criteria of residency provide a record of compliance with the criteria for the first three months of residence (initial report on compliance) provide and independent audit conclusion on the results of the initial compliance report verification annually provide an annual compliance report and independent audit conclusion fulfill other obligations specified by special legislation on Diia City.

Diia City tax regime

The tax regime applicable to Diia City residents and their workforce will be regulated by a standalone law. The draft law «On Amendments to the Tax Code of Ukraine regarding the Stimulation of the Development of Digital Economy in Ukraine» No. 5376 («Diia City Tax Draft Law») was adopted in the first reading on 2 June 2021. The date of the second reading is not yet known.

The Diia City Tax Draft Law introduces the following tax benefits. Diia City residents (i.e., legal entities) may choose one of two tax regimes that may be applicable to them. In particular, they may opt to be subject to the currently existing corporate income tax («CIT») at a standard rate of 18% based on profits (subject to tax adjustments if applicable), or switch to the new regime providing for CIT at a rate of 9% on volumes of certain transactions with non-payers of CIT (which is a sort of exit capital tax).

In the event of a switch to the special taxation regime, the tax base of the Diia City resident would include, inter alia, the following payments to non-payers of CIT:

- service fees payable to private entrepreneurs over a certain limit**;
- the import and export of goods and services under certain conditions provided by law;
- payment of royalty/interest/dividends under certain conditions provided by law; and
- payments to not-for-profit organisations and zero-interest loans under certain conditions provided by law.

Employees / gig workers engaged by Diia City residents will be subject to:

- a decreased 5% personal income tax on salary/remuneration;
- a 1.5% military levy on salary/remuneration; and
- a 22% unified social contribution («USC») on:
 - the salary of employees of Diia City residents – in the amount of the minimum USC; and
 - remuneration for the performance of work under gig contracts (limited in between (i) the maximum cap calculated as 22% USCx15 minimum wages and (ii) minimum USC).

Main criteria for joining the Diia City regime:

Performance of special types of economic activities prescribed by the law (predominantly creative/R&D/IT activities);

Net income from special activities amounts to at least 90% of the total income.

Additional criteria for the existing companies:

Average monthly remuneration for employees/gig specialists is not less than EUR 1,200;

Availability of at least 9 employees/gig specialists at the end of each calendar month.

Additional criteria for newly established companies / start-ups:

The amount of income should not exceed the maximum amount of income set for business entities of the third group of single tax payers;

Average monthly remuneration must reach at least EUR 1,200 per month at the latest from the first day of the seventh month following the calendar month in which the status of a Diia City resident was obtained.

The draft law contains a list of constraints prohibiting residence in the Diia City (non-residents, non-for-profit organizations or entities that violate the AML regulations, etc.). Compliance with the criteria is subject to annual verification and auditor's confirmation.

The draft law provides for establishing the Diia City Residents Register and a Self-regulating organization (SRO) of the Diia City residents; however, participation in SRO will not be mandatory.

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Term and stability guarantees of Diia City

The legal framework Diia City in Ukraine is established for an indefinite period, but not less than 25 years from the date of the first resident record entry in the Diia City Register. The following guarantees apply during this period:

- stability guarantee of legal framework conditions, including Diia City residents taxation terms;
- if the Ukrainian legislation establishes more favorable tax conditions, they will apply to Diia City residents and specialists involved by them;
- All Diia City residents and their members (shareholders) are subject to the state guarantees of investment protection provided by the legislation on investment activities and foreign investment regime.

GIG-contracts: GIG-contracts as a new form of interaction with IT specialists will be introduced in Diia City GIG specialists will receive the benefits of freelancing, as well as additional social guarantees Diia City residents will be able to select and hire employees on the basis of employment agreements (contracts), cooperate with GIG specialists or involve contractors,

including individual entrepreneurs. GIG-contracts are not employment relationships, so they are not subject to the outdated Labor Code. This is the form of civil contract, the parties will settle relations and fix the arrangements in the contract. GIG-contracts include the flexibility of the individual entrepreneur (FOP) model adding several social guarantees.