

Diia City Legal Framework in Ukraine

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On 14 August 2021, the Law On Stimulating the Development of the Digital Economy in Ukraine came into force. The law defines the organizational, legal, and financial principles of the legal framework Diia City operation, which is introduced to stimulate the digital economy in Ukraine by creating favorable conditions for innovative business, digital infrastructure development, attracting investment, and talented professionals.

Related article: Diia City in Ukraine: tax aspects

1. General provisions of the Diia City legal framework

- voluntary residency in Diia City;
- activity freedom;
- non-interference by the state;
- presumption of Diia City residents activity legality;
- stability guaranteed by the state;
- the formal nature of the procedure for acquiring the status of a Diia City resident.

Related article: Simplification in the Diia City regime under martial law in Ukraine

2. 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.

3. Requirements for Diia City residents

A legal entity registered in Ukraine in the manner prescribed by the Ukrainian legislation, regardless of its location and place of business, may be a resident of Diia City if it meets all the following requirements:

- performs one or more activity types stimulated by the creation of Diia City legal framework, which is specified in the charter and/or information about this legal entity contained in the Unified State Register;
- an average monthly salary of involved employees and gig specialists is not less than the equivalent of EUR 1,200;
- an average number of a legal entity's employees and gig specialists (in case of involvement) is not less than 9 people;
- an amount of a legal entity's qualified income is not less than 90% of the amount of its total income (if any);

- there are no circumstances, under which a legal entity cannot be a resident of Diia City.

A Diia City resident is obliged to ensure continuous and full compliance with all these requirements throughout the period of residence.

4. Requirements for the start-ups residence

A legal entity that failed the requirements for an average monthly salary of EUR 1,200 and an average number of employees and gig specialists of 9 people is entitled to be a Diia City resident subject to the following requirements, but not longer than by 31 December of the calendar year following the calendar year in which it has acquired the Diia City resident status:

- a legal entity's state registration was performed not earlier than 24 calendar months before the date of the application submission for Diia City resident status;
- a legal entity's income amount does not exceed the maximum income amount set for business entities that are single tax payers of the third group (1,167 minimum wages, which amounts to UAH 7,000,200), in each of the following calendar years: the one preceding the year of application's filing for acquiring the Diia City resident status; the year of application; the year of acquiring the Diia City resident status, and the following year.

5. Activity types

Activity types that are stimulated by the creation of Diia City legal framework:

- computer programming, informatization consulting, computer equipment management activities;
- computer games and other software publishing;
- online provision of software products, including computer games, and provision of web services for the software applications delivery;
- educational activities in the field of information technology;
- data processing and related activities, other than the provision of infrastructure for data processing and hosting, and hosting services, and web portal operation;
- research and experimental development in the field of natural and technical sciences on information and communication technologies;
- marketing campaigns performance and advertising services provision on using software developed with the participation of a Diia City resident, on the Internet and/or on users' devices;
- organizers' activities on e-sports competitions, e-sports teams, specialized computer centers and/or clubs designed for e-sports competitions, as well as studios for e-sports competitions broadcasts;
- service providers' activities related to the circulation of virtual assets;
- ensuring the cybersecurity of information and communication systems, software products, and information processed by them;

- activities for the design (development), research, testing of technologies, devices, and systems of robotics using computerized control systems;
- other activity types determined by the Cabinet of Ministers of Ukraine following the procedure established by the Law of Ukraine On Principles of State Regulatory Policy in the Sphere of Economic Activity.

6. Ineligible entities for a residency in Diia City

A legal entity ineligible to be a resident of Diia City:

- a legal entity registered in the territory and/or under the legislation of a foreign state;
- a legal entity with 25 or more percent of the authorized capital belonging directly or indirectly to the state of Ukraine or the territorial community;
- a legal entity violated the requirements of the legislation on the disclosure of the ultimate beneficial owners' information and/or the submission of the legal entity's ownership structure information;
- a legal entity whose direct or indirect owner of shares in the authorized (share) capital is the state recognized by the Verkhovna Rada of Ukraine as the aggressor state, or a legal entity registered under the legislation of such state, or an individual permanently (mainly) residing in such state;a
- legal entity with 25 or more percent of the authorized capital belonging directly or indirectly to the legal entities registered in the states included by The Financial Action Task Force (FATF) to the list of the countries that do not cooperate in the fight against money laundering;
- a legal entity in respect of which special economic or other restrictive measures (sanctions) have been applied under the legislation of Ukraine or international sanctions recognized by Ukraine, or a legal entity that is a related person of a person against who such restrictive measures (sanctions) have been applied;
- a legal entity recognised as bankrupt; in the process of termination (except for transformation); with a tax debt in total of more than 10 minimum wages for more than 30 days;
- a provider of services dealing with the circulation of virtual assets and has not complied with the requirements of the law on inclusion in a certain register, registration, obtaining a license or other permit;
- a legal entity performing activities for the organization and/or implementation of gambling, except for activities for the provision of the services in the field of gambling.

7. Application for the acquisition of resident status

Documents for the acquisition of Diia city resident status:

- an application for the acquisition of Diia city resident status following the established requirements, submitted by an applicant to an

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- authorized body,
- an applicant may attach to the application a statement on choosing the taxation system as a taxpayer of income tax for Diia City residents under the Tax Code of Ukraine.

Documents can be submitted in electronic form (the procedure has not yet been developed).

The decision on the applicant to acquire the status of a Diia City resident is made within 10 working days from the date of the application receipt if there are no grounds for returning the application without consideration and/or refusal.

Information on residents is entered in Diia City Register, which is published on the official website of the authorized body on the Internet.

8. Employees

When hiring an employee, a resident of Diia City may enter into a contract with him/her as a special form of an employment agreement, which may establish the term of the employment contract, rights, obligations, and responsibilities of the parties (including material), material security and labor organization, termination of the employment contract (including early termination) and other conditions.

The loss by the employer of Diia City resident status does not lead to the termination of employment under the employment contract and does not affect its validity, including some of the provisions.

9. Gig specialists

The legal relationship between Diia City resident and specialists (gig specialists) will be formalized by a Gig contract. A Gig contract is a civil contract under which:

- a gig specialist undertakes to perform works and/or provide services following the tasks of a Diia City resident as a customer, and
- a Diia City resident undertakes to pay for the work performed and/or services provided and to provide a gig specialist with appropriate conditions for the performance of works and/or provision of services, as well as social guarantees.

10. Intellectual property rights

The law provides for the regulation of intellectual property rights to intellectual property objects created under a Gig contract/employment contract/service contract, in particular, under what conditions the property rights to such objects will belong to a Diia City resident.

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A Diia City resident acquires intellectual property rights to a work created under a gig contract, employment contract, or service contract at the time following the creation of such work, unless otherwise provided by the Gig contract/employment contract/service contract.

11. Refraining from non-competitive actions

The law provides for the possibility of concluding non-disclosure and non-compete agreements between a Diia City resident and a specialist.

A specialist may be an employee or gig-specialist of a Diia City resident or an individual (private entrepreneur) engaged by a Diia City resident with another civil or commercial contract for the performance of works (services provision) within the statutory activities.

A non-disclosure agreement is concluded in writing, may be free of charge, and provides for penalties in case of a breach, must specify the term of the obligations and the information to which the non-disclosure obligations apply.

The agreement under which the specialist undertakes to refrain from competing against a Diia City resident is repayable and is executed in writing. The contract must specify: the term of the obligation (at least 12 months from the date of the contractual relationship termination between the specialist and the Diia City resident), the coverage territory, a full list of competing activities and/or persons, material benefits that the specialist receives in return for the obligation to refrain from competing.

Refusal to enter into a non-competitive agreement may not be the reason for termination of the employment agreement (contract) or Gig contract.

Another important bill on amendments to the Tax Code of Ukraine to stimulate the development of the digital economy in Ukraine is also expected to be adopted. It will determine the tax regulation of the Diia City framework.