The Model Texts of Data Circulation and Transaction Contracts Should Retain the Clause of "Invoice Before Payment"

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Abstract: The drafts for comments of the three Model Texts of Data Circulation and Transaction Contracts all included provisions requiring the issuance of a special value-added tax (VAT) invoice prior to payment. However, this "Invoice Before Payment" clause was omitted in the finalized versions of the three model texts. The draft of the Data Integration Development Contract (Model Text)—also a data circulation contract—did not include this clause from the outset, a decision that lacks sufficient justification. The exclusion of the "Invoice Before Payment" clause from all four model texts is open to question. The four Model Texts of Data Circulation and Transaction Contracts should retain the "Invoice Before Payment" clause, as this position is supported not only by comparative legal reasoning but also by the provisions found in Chinese tax law and civil law. In particular, the clause compels data circulation entities in China to proactively determine the price of data circulation, which in turn facilitates the efficient and lawful use of data in practice. Moreover, the clause serves an important normative function by helping to resolve the tensions between Chinese tax law and civil law, as well as between normative expectations and institutional realities. The proposed approaches, both in the short term and in the long term, are realistic and capable of effective implementation.

Keywords: Data circulation contracts; Model texts; Invoice before payment

Introduction

On July 2, 2025, the General Office of the National Data Administration and the General Office of the State Administration for Market Regulation jointly issued the *Notice on the Issuance of the Model Texts of Data Circulation and Transaction Contracts* (No. 78 [2025]) (hereinafter referred to as the "Model Texts Notice"). The Notice released four Model Texts of Data Circulation and Transaction Contracts, namely the *Data Supply Contract (Model Text)*, the *Entrusted Data Processing Service Contract (Model Text)*, the *Data Integration Development Contract (Model Text)*, and *the Data Intermediary Service Contract (Model Text)*.

The four Model Texts of Data Circulation and Transaction Contracts were developed under the leadership of the National Data Administration, with the participation of legal experts and data practitioners. They were formulated in response to practical issues, such as advancing the construction of foundational data systems, safeguarding fair competition, reducing the costs of data circulation and transactions, and promoting the compliant and efficient circulation and use of data. Based on the systematic extraction of common contractual elements among data circulation institutions, leading industry enterprises, and data companies, a set of draft texts for comments was initially prepared. After extensive consultation with relevant departments, local authorities, and various sectors of society, the finalized four Model Texts of Data Circulation and Transaction Contracts were ultimately released.

Article 6.3 of the draft for comments of the *Data Supply Contract (Model Text)*, [1]Article 9.3 of the draft for comments of the *Entrusted Data Processing Service Contract (Model Text)*,[2] and Article 4.4 of the draft for comments of the *Data Intermediary Service Contract (Model Text)*[3] each provide that Party B (the data provider, data processor, or data intermediary, respectively) shall issue a valid special (or general) value-added tax (hereinafter referred to as the "VAT") invoice in the same amount to Party A (the data recipient or data entrusting party) prior to each payment made by Party A. The applicable VAT rate shall be specified as ______. If Party A delays payment due to Party B's failure to provide the invoice as agreed, such delay shall not constitute a breach of contract by Party A. These provisions may be collectively referred to as the"Invoice Before Payment"clause.

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[1] Party B (the data provider) shall, prior to each payment by Party A (the data recipient), issue to Party A a valid value-added tax (VAT) invoice in the same amount, selecting either a special /general VAT invoice, with the applicable tax rate being ______. Any delay in payment by Party A (the data recipient) resulting from Party B's (the data provider's) failure to provide the invoice as agreed shall not be deemed a breach of contract by Party A.

[2] Party B (the entrusted party) shall, prior to each payment by Party A (the entrusting party), issue to Party A a valid value-added tax (VAT) invoice in the same amount, selecting either a special / general VAT invoice, with the applicable tax rate being ______. Any delay in payment by Party A (the entrusting party) resulting from Party B's (the entrusted party's) failure to provide the invoice as agreed shall not be deemed a breach of contract by Party A.

[3] Party B (the intermediary) shall, prior to each payment by Party A (the entrusting party), issue to Party A a valid value-added tax (VAT) invoice in the same amount, selecting either a special / general VAT invoice, with the applicable tax rate being ______. Any delay in payment by Party A (the entrusting party) resulting from Party B's (the intermediary's) failure to provide the invoice as agreed shall not be deemed a breach of contract by Party A.

The finalized and officially released versions of the *Data Supply Contract (Model Text)*, *the Entrusted Data Processing Service Contract (Model Text)*, and the *Data Intermediary Service Contract (Model Text)* did not retain the“Invoice Before Payment”clause. This gives rise to a series of questions: Why did the draft for comments of the *Data Integration Development Contract (Model Text)* omit the“Invoice Before Payment” clause in the first place? What are the reasons for excluding this clause from all four Model Texts of Data Circulation and Transaction Contracts? Why should the“Invoice Before Payment”clause be retained in the Model Texts, and what are the legal and practical grounds for doing so? In cases where such a clause ought to have been included but was omitted, what legal or regulatory pathways are available to address the resulting gap?

1. The draft for comments of the data integration development contract (model text) should include the“invoice before payment”clause

According to the definition of data circulation as the process by which data flows among different parties, the draft for comments of the *Data Supply Contract (Model Text)* and the *Entrusted Data Processing Service Contract (Model Text)* both included the“Invoice Before Payment”clause. On the same basis, the draft for comments of the *Data Integration Development Contract (Model Text)* should also include the“Invoice Before Payment”clause. This is because data integration and development is essentially a form of data circulation and incorporates elements of both data supply and entrusted data processing. In accordance with the principle of formal justice, which requires that similar cases be treated alike, it is only logical that the *Data Integration Development Contract (Model Text)* also include such a clause. The activities covered under data integration and development typically include data opening, data sharing, and entrusted data processing, as well as the joint creation of data platforms, data spaces, data pools, and derivative data.

However, the draft for comments of the *Data Integration Development Contract (Model Text)* not only failed to include the“Invoice Before Payment”clause, but also omitted any incorporation-by-reference provision. Specifically, it contains no clause stating that, where the contract involves matters governed by the *Data Supply Contract (Model Text)* or the *Entrusted Data Processing Service Contract (Model Text)*, the relevant provisions of those model texts shall apply mutatis mutandis.

The possible reasons why the draft for comments of the *Data Integration Development Contract (Model Text)* did not include the“Invoice Before Payment”clause may include the following. First, from the perspective of purpose and means: in data integration and development, data supply and entrusted data processing serve merely as means, while the ultimate purpose is to jointly create data platforms, data spaces, data pools, and to generate derivative data. These data platforms, spaces, pools, and derivative datasets generate income through both external and internal provision. Only when such data are provided externally or internally does the condition for incurring VAT liability arise.

Second, from the perspective of the direction of rights and obligations: the rights and obligations of parties to a data integration and development contract are generally aligned in the same direction. That is, multiple parties with a common goal jointly open, share, or entrust their respective datasets to a designated processor for the purpose of creating shared data platforms, data spaces, data pools, or derivative data. Typical scenarios include collaborative construction of specialized data zones for AI training, industry-specific data sharing and application platforms, or federated data resource pools formed through alliances. In contrast, the rights and obligations in data supply and entrusted data processing relationships are oppositional in nature. A data provider supplies data to a data recipient through means such as compensated transactions, gratuitous sharing, or licensed use. A data entrusting party delegates data it possesses or controls to a data processor, who is required to process the data in accordance with the instructions and requirements of the entrusting party.

Finally, from the perspective of the conditions under which VAT liability arises: where a party sells or gratuitously transfers data-related intangible assets or inventory, VAT liability arises on the date when payment is received or when a payment voucher is obtained. If an invoice is issued prior to either of these events, the date of invoice issuance shall be deemed the date on which VAT liability arises. In the context of data integration and development, the outcomes typically involve the collaborative creation of AI training data zones, industry data-sharing platforms, or alliance-based data resource pools. These activities do not constitute compensated sales or gratuitous transfers of data and therefore do not meet the statutory conditions for the occurrence of VAT liability.

However, none of the three reasons discussed above are valid. First, regardless of whether data supply and entrusted data processing are regarded as means or ends, as long as the conditions for incurring VAT liability are met, the obligation to pay VAT arises. The characterization of such acts as means does not exempt them from VAT liability. Second, the alignment of rights and obligations among the parties to a data integration and development contract is not a statutory ground for VAT exemption. Even when the parties share a common objective and mutually open, share, or entrust their respective datasets to a designated processor for the joint development of data platforms, data spaces, or data pools, such conduct essentially constitutes gratuitous use of data among different entities. According to Article 5, subparagraphs (2) and (3) of the *Value-Added Tax Law of the People's Republic of China*, adopted on December 25, 2024 and effective from January 1, 2026 (hereinafter referred to as the "VAT Law"), "entities or individual industrial and commercial households gratuitously transfer goods" and "entities or individuals gratuitously transfer intangible assets, immovables or financial commodities" shall be deemed as engaging in taxable transactions and shall pay VAT in accordance with the Law. Third, in both of the above situations, as long as the statutory conditions for VAT liability are satisfied, the obligation to pay VAT shall apply.

In summary, based on the principle of formal justice that requires similar issues to be treated alike, all four drafts for comments of the Model Texts of Data Circulation and Transaction Contracts should have included the "Invoice Before Payment" clause.

2. Possible reasons for the omission of the "invoice before payment" clause in the finalized model texts of data circulation and transaction contracts

First, the reasoning under the *Civil Code of the People's Republic of China* (hereinafter referred to as the "Civil Code"). The *Data Supply Contract (Model Text)* applies to scenarios in which the data provider supplies data to the data recipient through compensated transactions, gratuitous sharing, or licensed use. This model text is structured around data transactions as the typical form. A data transaction refers to an act of exchange between a data provider and a data recipient, whereby data in a specific form is transferred as the subject matter, and monetary payment or another form of equivalent consideration is provided in return. Such data transactions correspond to sales contracts under the *Civil Code*. Pursuant to Article 595 of the *Civil Code*, "A sales contract is a contract whereby the seller transfers the ownership of the subject matter to the buyer and the buyer pays the price for it." In this context, the primary obligation of the data provider is to deliver the rights of possession, use, and operation of the data, while the primary obligation of the data recipient is to acquire those rights and provide monetary or equivalent consideration. It follows that the obligation to issue a VAT invoice on the part of the data provider does not constitute a primary obligation.

The *Entrusted Data Processing Service Contract (Model Text)* applies to situations in which the data entrusting party entrusts data it possesses or controls to the data processor, who is required to process the data in accordance with the instructions and requirements of the entrusting party. Pursuant to Article 919 of the *Civil Code*, "A contract of mandate is a contract whereby the mandator and the mandatary agree that the mandatary handles the affairs of the mandator." According to Article 928 of the *Civil Code*, "Upon completion of the affair under the mandate by the mandatary, the mandator shall pay the remuneration thereto as agreed." In a compensated entrusted data processing service contract, the primary obligation of the data processor is to complete the data processing activities and deliver the resulting data in accordance with the instructions and requirements of the data entrusting party, while the primary obligation of the data entrusting party is to pay remuneration. In an uncompensated contract, the data processor's primary obligation is still to complete the processing and deliver the resulting data, while the entrusting party's primary obligation is to receive the result. It follows that, in both compensated and uncompensated entrusted data processing service contracts, the obligation of the data processor to issue a VAT invoice does not constitute a primary obligation.

The *Data Intermediary Service Contract (Model Text)* applies to scenarios in which the data intermediary provides intermediary services such as market promotion, information publication, client matching, transaction facilitation, and assistance in contract conclusion, with the aim of facilitating data circulation and transactions. According to Article 961 of the *Civil Code*, "An intermediary contract is a contract whereby the intermediary presents to the client an opportunity for entering into a contract or provides the client with intermediary services in connection with the conclusion thereof, and the client pays the remuneration." Under a data intermediary service contract, the primary obligation of the intermediary is to perform both information-reporting and matchmaking services. The former includes activities such as market promotion and information publication, while the latter includes transaction facilitation and assistance in contract conclusion. The primary obligation of the client is to pay remuneration. It follows that the obligation of the data intermediary to issue a VAT invoice does not constitute a primary obligation.

The *Data Integration Development Contract (Model Text)* applies to scenarios in which the parties to data integration jointly open and share the data they possess or collectively entrust such data to a designated processor for the purpose of collaboratively creating data platforms, data spaces, data pools, or derivative data. Typical use cases include the co-development of dedicated AI training data zones, industry-specific data sharing and application platforms, and federated data resource pools established through multi-party alliances.

In addition to incorporating elements of data supply and entrusted data processing contracts, the *Data Integration Development Contract (Model Text)* also contains characteristics of a partnership agreement when viewed from the perspective of the alignment of rights and obligations among the participating parties. According to Article 967 of the *Civil Code*, "A contract of partnership is an agreement between not less than two partners to share benefits at mutual risk for a joint enterprise."

For example, in the case of a general partnership, the primary obligation of a general partner is to open and share the data it holds with other partners and to bear unlimited joint and several liability for the debts of the partnership. The consideration for such data opening and sharing is the mutual benefit derived from jointly creating data platforms, data spaces, data pools, and generating derivative data. Such acts of data opening and sharing constitute capital contributions by partners and do not involve the issuance of VAT invoices. It is only when original data are processed into result data or products through the use of data platforms, data spaces, or data pools and then circulated externally that a VAT obligation may arise. However, such an obligation is not borne by the general partner, but rather by the data provider or data processor. In light of the earlier analysis concerning the Data Supply Contract and the Entrusted Data Processing Service Contract—in which the obligation to issue VAT invoices does not constitute a primary obligation of the data provider or the data processor—it follows that participants in the *Data Integration Development Contract (Model Text)* either do not incur VAT invoice obligations, or, if such obligations exist, they do not constitute primary obligations.

A second justification is grounded in judicial practice. The *Interpretation of the Supreme People's Court on Issues Concerning the Application of Law for the Trial of Cases of Disputes over Sales Contracts (No. 17 [2020] of the Supreme People's Court*, hereinafter referred to as the "Judicial Interpretation on Sales Contracts") explicitly provides in Article 4 that the obligation to issue a special VAT invoice constitutes an ancillary obligation.[4] This doctrinal position has been consistently reflected in judicial application. In several reference cases issued by the Supreme People's Court, the obligation to issue a special VAT invoice has been recognized as an accessory duty rather than a primary contractual obligation. For example, in Reference *Case No. 2023-10-2-227-001* (a dispute between a marine engineering company and a dredging company over a maritime salvage contract), as well as Reference *Case No. 2024-08-2-079-001* (Tianjin Materials Trading Co., Ltd. v. Huizhou Petrochemical Co., Ltd. and Shanghai Valve Co., Ltd., a dispute over assignment of claims) and Reference *Case No. 2024-08-2-141-001* (Guangzhou Cinema Company, Shenzhen Futian Branch v. an advertising company and Shanghai Information Technology Company, a dispute over an advertising contract), the Court uniformly held that the obligation to issue VAT invoices, while legally enforceable, operates as a supplementary obligation incidental to the core transactional duties of the parties.

3. Reasons why the four model texts of data circulation and transaction contracts should retain the "invoice before payment" clause

i. insights from comparative law. In the European Union, where the VAT system is widely implemented, a series of countermeasures have been developed in response to fraudulent practices in domestic business-to-business (hereinafter referred to as the "B2B") transactions, where suppliers receive VAT from purchasers but fail to remit it to the tax authorities. These countermeasures include the reverse charge mechanism,

[4] See also Article 7 of the *Judicial Interpretation (No. 8 [2012] of the Supreme People's Court)*, which adopts the same position regarding the legal nature of the obligation to issue special value-added tax (VAT) invoices. See further, Second Civil Division of the Supreme People's Court, *Understanding and Application of the Supreme People's Court's Judicial Interpretation on Sales Contracts*, People's Court Press, 2012 edition, p. 126.

the split-payment mechanism, and the source withholding regime. The application of these mechanisms has expanded over time, and their scope continues to increase.

A common characteristic of these countermeasures is the "Invoice Before Payment" model. Under the European Union's VAT regime, VAT invoices are required to include the VAT serial number, taxpayer identification number, customer information, description of goods or services, price, tax rate, VAT payable, transaction date, and tax representative. These requirements are expressly stipulated in the *Council Directive on the Common System of Value Added Tax*.[5] In the European Union, a VAT invoice serves not only as evidence of a commercial transaction but also as a key basis for VAT reporting and tax audit. The price refers to the amount agreed upon between the supplier and the purchaser for the sale of goods or services. It does not include VAT, but it constitutes the basis for VAT calculation. This is because VAT in the European Union is imposed on top of the net price.

The reverse charge mechanism is a typical example of the "Invoice Before Payment" model and serves as a primary measure against VAT fraud.[6] Under the reverse charge mechanism, the obligation to declare and pay VAT is shifted from the supplier to the purchaser, who is responsible for both declaring and paying VAT to the tax authority.[7] A necessary precondition for this mechanism is that the supplier issues an invoice to the purchaser clearly marked with the term "Reverse Charge," indicating an amount that does not include VAT. Upon receiving the invoice, the purchaser declares and pays the VAT to the domestic tax authority and then pays the supplier the invoiced amount exclusive of VAT.

The split-payment mechanism is also characterized by the "Invoice Before Payment" model and serves as a secondary measure against VAT fraud.[8] Under the split-payment mechanism, the supplier issues an invoice to the purchaser that includes both the price of the goods or services and the VAT amount. However, the payment made by the purchaser does not go directly to the supplier's account. Instead, it is transferred to an account managed by a financial institution, such as a bank, or by an online payment service provider. These institutions or service providers then divide the payment into two parts: the VAT amount and the net amount payable to the supplier. The VAT portion is subsequently transferred to the tax authority, while the

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[5] Council of the European Union. (2006, November 28). *Council Directive 2006/112/EC on the common system of value added tax*. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32006L0112.

[6] Zídková, H., & Šťastná, A. (2019). VAT collection methods. *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis*, 67(3), 883–895.

[7] The scope of application includes transactions such as the sale of electronic equipment, gas and electricity supply, construction services, waste and scrap recovery, gold sales, and the provision of carbon emission certificates.See Gong, T., & Guo, Y. (2024). Recent developments and prospects of value-added tax systems in major jurisdictions worldwide. *International Taxation*, (7), 28.

[8] At present, only three EU member states—Poland, the Czech Republic, and Italy—have adopted this method of VAT collection. See Gong, T., & Guo, Y. (2024). Recent developments and prospects of value-added tax systems in major jurisdictions worldwide. *International Taxation*, (7), 28, Note 25.

remaining amount corresponding to the price stated on the VAT invoice is transferred to the supplier.[9]

The source withholding regime also features the "Invoice Before Payment" model and serves as a secondary measure to combat VAT fraud. Under this regime, the supplier issues a VAT invoice to the purchaser and charges both the price and the VAT amount. The VAT paid by the purchaser may either be remitted directly to the tax authority or transferred to a dedicated VAT account held by the supplier.[10] The purchaser pays the price component stated on the VAT invoice to the supplier.

Only when a VAT invoice is issued in advance can the purchaser fulfill the function of declaring and paying VAT, which is essential to the effectiveness of countermeasures against fraud and to the proper operation of the VAT system.[11] Likewise, only when a VAT invoice has been issued can the purchaser make payment to the supplier based on the invoiced amount. Therefore, the "Invoice Before Payment" model represents an organic integration of VAT anti-fraud mechanisms and legitimate commercial transactions.

If the four Model Texts of Data Circulation and Transaction Contracts retain the "Invoice Before Payment" clause, they will provide useful guidance for countering potential VAT fraud in the performance of data circulation contracts in China. Moreover,[12] the clause will serve as a legal safeguard for ensuring the compliance of data circulation entities with tax and commercial regulations.

ii. the issuance of special VAT invoices constitutes a statutory obligation under tax law. Pursuant to the *Interim Regulations on Value-Added Tax* and the *Value-Added Tax Law of the People's Republic of China*, issuing special VAT invoices is a mandatory obligation imposed by tax law. The question arises as to why this tax obligation is recharacterized as an ancillary obligation under the *Civil Code*. Proponents of this interpretation commonly rely on Articles 598 and 599 of the *Civil Code*. Under Article 598, bills of lading and warehouse receipts constitute part of the seller's primary obligations in a sales contract. Article 599 further provides that, in addition to the documents required for taking delivery of the subject matter, the seller shall also deliver other relevant documents and materials, which are generally understood to include special VAT invoices. According to Article 4 of the *Judicial Interpretation on Sales Contracts*, the obligation to issue a special VAT invoice is classified as an ancillary obligation of the seller. Notably, this judicial interpretation is widely regarded as an explanation of the phrase "other relevant documents and

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[9] See Hu, T. (2021). The historical evolution and reform trends of value-added tax: A study based on international practice and domestic developments. *International Taxation*, (3), 6.

[10] Gong, T., & Guo, Y. (2024). Recent developments and prospects of value-added tax systems in major jurisdictions worldwide. *International Taxation*, (7), 28.

[11] Jin, F. (2024). A comparative study on the nature and functions of invoices in China and abroad and its implications. *International Taxation*, (9), 49.

[12] This is because China's value-added tax (VAT) system was developed by drawing on the European Union's VAT framework. See Yang, X. (2025). Improving the value-added tax system to support high-quality and sufficient employment from a comparative international perspective. *China Taxation*, (8), 31.

materials" found in Article 599 of the *Civil Code*, even though the statutory provision itself does not explicitly refer to the concept of "ancillary obligation."

The binary classification between primary obligations and ancillary obligations, [13]particularly the approach that treats all documents and materials other than bills of lading and warehouse receipts as ancillary obligations, remains open to academic debate. To begin with, the distinction between obligations of performance and accessory obligations has historically been contested in legal theory. For example, in the context of sales contracts, whether the buyer's obligation to take delivery of the subject matter constitutes an obligation of performance or merely an accessory obligation has long been debated.[14] This indicates that the dichotomy between obligations of performance and accessory obligations may not be exhaustive, and the possibility remains that other distinct types of obligations exist. Further, the distinction between ancillary obligations and accessory obligations is itself controversial. Some scholars—particularly within the German legal tradition—draw the line based on the criterion of whether the obligation can be independently claimed in litigation: those that can be independently enforced are deemed ancillary obligations, while those that cannot are categorized as accessory obligations. Others distinguish based on functional analysis: obligations that serve the performance interest are classified as ancillary, whereas those that serve the inherent interest of the counterparty are deemed accessory. These doctrinal disagreements suggest that the very boundary between ancillary and accessory obligations is itself contested. Even if such a boundary were clearly defined, it would not preclude the recognition of additional, as-yet-unnamed types of obligations. Therefore, the deductive reasoning employed in the earlier classification may lack logical completeness.

Article 599 of the *Civil Code* provides that in addition to the document for taking delivery of the subject matter, the seller shall deliver to the buyer the relevant documents and information in accordance with the agreement or usage of trade.. This implies that the seller's obligation to provide such documents arises only when there is either a contractual stipulation or an established trade custom. However, the obligation to issue a special VAT invoice arises from tax law and is mandatory in nature; it is not contingent upon any agreement between the parties or prevailing commercial practice. Therefore, the phrase "relevant documents and materials other than the document for taking delivery of the subject matter" in Article 599 should not

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[13] There is also ongoing debate concerning the distinction between primary obligations and ancillary obligations. For example, where the performance of an ancillary obligation directly affects the realization of the contract's purpose, such an obligation may be recharacterized as a primary obligation. However, determining the existence and extent of a direct relationship between the performance of an ancillary obligation and the contractual purpose remains a contested issue. In this context, the author's "step-by-step" approach has been acknowledged by the authors of the official commentary to the Supreme People's Court's Judicial Interpretation on Sales Contracts. See Sun Ruixi, *Contractual Obligations and the Right of Simultaneous Performance Defense*, published on the Peking University Legal Information Network. For detailed discussion, see Second Civil Division of the Supreme People's Court (2012), *Understanding and Application of the Supreme People's Court's Judicial Interpretation on Sales Contracts* (pp. 132–133). Beijing: People's Court Press.

[14] Wang, Z. (1993). *General principles of the law of obligations: Basic theories and formation of obligations* (Vol. 1). Taipei: Sanmin Book Co. (as cited in Cui, J. (Ed.). (2003). *Contract law* (3rd ed., p. 63, Note 1). Beijing: Law Press.)

be interpreted to include special VAT invoices. Consequently, the obligation to issue such invoices does not constitute an ancillary obligation, nor does it amount to an accessory obligation under civil law. It is not a civil obligation at all, but rather a statutory obligation imposed solely by tax law.

iii. the “Invoice Before Payment” arrangement has a clear legal basis under tax law. Pursuant to the relevant provisions of the *Interim Regulations on Value-Added Tax* and the *Value-Added Tax Law of the People’s Republic of China*, the timing relationship between the issuance of a special VAT invoice and the receipt of the corresponding payment gives rise to three recognized invoicing modes: simultaneous invoicing and payment, payment before invoicing, and invoicing before payment. “Simultaneous invoicing and payment” refers to the situation in which, upon the occurrence of a taxable sale, the seller issues a special VAT invoice to the buyer at the same time as receiving the payment. “Payment before invoicing” refers to the scenario in which the buyer pays the sale price in advance, and the seller issues the VAT invoice within the prescribed period thereafter. In contrast, “Invoice Before Payment” refers to the situation in which, after the taxable sale occurs, the seller issues a special VAT invoice first, and the buyer makes the payment at a later time. According to Article 28, Paragraph 1, Item (1) of the *Interim Regulations on Value-Added Tax*, where a seller issues a special VAT invoice before receiving payment, the date on which the invoice is issued is deemed the date on which VAT liability arises. The buyer subsequently pays the sale price upon receipt of the VAT invoice.

iv. the judicial rationale for denying the “Invoice Before Payment” clause is subject to debate. Diverging views exist between judicial interpretations and reference cases regarding the classification of the obligation to issue a special value-added tax (VAT) invoice. Article 4 of the *Judicial Interpretation on Sales Contracts* defines such obligation as an ancillary obligation, while multiple reference cases have treated it as an accessory obligation. Given that judicial interpretations carry legally binding force and must serve as the basis for adjudication, whereas reference cases merely provide persuasive reasoning that may be consulted but are not binding, judicial interpretations should prevail over reference cases. Accordingly, the issuance of a special VAT invoice should be deemed an ancillary, rather than an accessory, obligation. Moreover, the reference cases themselves are not internally consistent on this issue. Some cases recognize contractual clauses imposing an obligation to issue a special VAT invoice as valid, while others hold them invalid. For example, in Reference *Case No. 2023-10-2-123-002* (Shanghai Surveying Company v. Xi’an Surveying Company, M Company, and a third-party Group Company, a dispute over an intermediary contract) and Reference *Case No. 2023-08-2-084-010* (Shenzhen Technology Company v. a Technology Company, a dispute over a sales contract), the courts upheld such clauses as effective. In contrast, in Reference *Case No. 2023-10-2-227-001*, *No. 2024-08-2-079-001*, and *No. 2024-08-2-141-001*, the courts invalidated such clauses, reasoning that the obligation to issue a VAT invoice is merely an accessory obligation and thus cannot serve as a condition precedent to the buyer's primary obligation to pay.[15] However, the legal basis in the *Civil Code* for declaring such clauses invalid is not clearly articulated in those decisions. It is well established in civil law that a seller may unilaterally waive the buyer's payment obligation; therefore, imposing a seller's obligation to issue a VAT invoice as a condition precedent to the buyer's payment is clearly to the buyer's benefit. Why, then, should such a clause be considered invalid? By comparison, the reasoning supporting the validity of "Invoice Before Payment" clauses appears more cogent. Indeed, it was for these very reasons that, on May 18, 2025, the author submitted a written proposal to the Institutional Development Division of the National Data Administration, recommending the deletion of the "Invoice Before Payment" clause from the drafts of the three model texts. This recommendation was ultimately adopted in the finalized versions of the *Data Supply Contract (Model Text)*, the *Entrusted Data Processing Service Contract (Model Text)*, and the *Data Intermediary Service Contract (Model Text).*

v. the "Invoice Before Payment" clause serves as an effective mechanism for addressing the pricing difficulty of data circulation. At present, the challenge of accurately pricing data assets remains one of the principal obstacles to data circulation. Most enterprises that have formally recognized data assets on their balance sheets are state-owned enterprises, and their numbers remain limited. In addition, the lack of transparency in public transactions of data assets on data exchanges has further obscured the determination of cost and market price. By requiring the issuance of a special value-added tax (VAT) invoice prior to payment, the "Invoice Before Payment" clause imposes a structural incentive on data circulation participants to first negotiate and determine the price of the data asset. Without an agreed-upon price, the data asset cannot be circulated, as a VAT invoice cannot be issued in the absence of a specific transaction amount. Conversely, only upon issuing a special VAT invoice may the data circulation party lawfully collect payment. This pricing discipline embedded in the invoicing requirement helps promote the compliant, efficient, and market-oriented circulation and use of data.

4. Approaches to resolving the conflicts

There are both short-term and long-term approaches to resolving the conflicts between tax law and civil law, as well as between normative expectations and practical realities, in relation to the "Invoice Before Payment" clause. The short-term approach is to maintain the current status quo. In other words, the removal of the "Invoice Before Payment" clause from the four Model Texts of Data Circulation and

[15] For this reason, on May 18, 2025, the author submitted a written proposal titled *Suggestions on Amending the Drafts for Comments of the Four Model Texts of Data Circulation Contracts* to the Institutional Development Division of the National Data Administration, recommending the deletion of the "Invoice Before Payment" clause from the drafts of three of the model texts. This recommendation was subsequently adopted in the finalized versions of the *Data Supply Contract (Model Text)*, the *Entrusted Data Processing Service Contract (Model Text)*, and the *Data Intermediary Service Contract (Model Text)*.

Transaction Contracts does not prejudice the right of the paying party to request the issuance of a special value-added tax (VAT) invoice from the receiving party.

i. it is a statutory obligation for the receiving party to issue a special value-added tax (VAT) invoice to the paying party. Article 18 of the *Invoice Management Measures of the People's Republic of China* (2023 Revision) (hereinafter referred to as the "Invoice Management Measures") provides: "Where an entity or individual sells goods, provides services, or engages in other business activities, and receives payment in the course of such business operations, the payee shall issue an invoice to the payer."

ii. a payee who fails to issue a special value-added tax (VAT) invoice when required by law shall bear administrative liability. Article 33 of the *Invoice Management Measures* provides: "Where a party fails to issue an invoice when it shall do so, or fails to issue the invoice in accordance with the prescribed time limit, sequence, format, or number of copies, or fails to affix the special seal for invoices, the tax authority shall order correction and may impose a fine of not more than RMB 10,000; where there are illegal gains, such gains shall be confiscated."

iii. where a payee fails to issue a special value-added tax (VAT) invoice as required and causes losses to the payer, the payee shall bear civil liability for damages. In Reference *Case No. 2024-08-2-079-001* (Tianjin Materials Trading Co., Ltd. v. Huizhou Petrochemical Co., Ltd. and Shanghai Valve Co., Ltd., a dispute over an assignment of claims), the court reasoned that Huizhou Petrochemical Co., Ltd. had the right to request the issuance of a special VAT invoice from Shanghai Valve Co., Ltd. at any time, but was required to allow the latter a reasonable period for preparation. If Shanghai Valve Co., Ltd. failed to fulfill its invoicing obligation and thereby caused loss to Huizhou Petrochemical Co., Ltd., the latter would be entitled to file a separate claim for damages.

The long-term approach is to rely on the *Work Procedures for the Construction and Operation of the Case Base of the People's Courts (No. 92 [2024] of the Supreme People's Court)* to remove from the case base the following three reference cases, which have led to inconsistent treatment of the same legal issue: Reference *Case No. 2023-10-2-227-001* (Marine Engineering Company v. Dredging Engineering Company, a dispute over a maritime salvage contract); Reference *Case No. 2024-08-2-079-001* (Tianjin Materials Trading Co., Ltd. v. Huizhou Petrochemical Co., Ltd. and Shanghai Valve Co., Ltd., a dispute over an assignment of claims); and Reference *Case No. 2024-08-2-141-001* (Guangzhou Cinema Company, Shenzhen Futian Branch v. an advertising company and Shanghai Information Technology Company, a dispute over an advertising contract). This approach would eliminate the unfairness arising from the inconsistent classification of the same obligation across different cases. On this basis, the four Model Texts of Data Circulation and

Transaction Contracts could subsequently reintroduce the "Invoice Before Payment" clause through supplementary provisions.

5. Conclusion

The draft for comments of the *Data Integration Development Contract (Model Text)*, like the drafts of the other three Model Texts of Data Circulation and Transaction Contracts, should have included the "Invoice Before Payment" clause. The justifications for omitting this clause from all four model texts are unconvincing. By contrast, the reasons for retaining the clause are grounded not only in comparative legal analysis but also in domestic legal principles. The domestic legal rationale rests on a proper distinction between tax law obligations and civil law obligations, reconciliation of the divergence between civil legislation and judicial practice, and a practical response to the challenge of pricing data assets. Together, these elements reflect the innovative value of the clause. The proposed approaches to resolving the conflicts between Chinese tax law and civil law, as well as between normative expectations and institutional realities, range from short-term adjustments to long-term reforms, and are both realistic and feasible.