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Workforce Tax Risk and Opportunity

Turn it up

September 21, 2023

Agenda

1. Introduction
2. Employee Retention Credit
3. Independent Contractors/Employees
4. Remote Work
5. Thank you

Facilitator

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Employee Retention Credit

Employee Retention Credit

Overview of the Credit

	2020	2021 (Q1-Q3)
	Full or partial suspension of business operations due to government orders related to COVID-19 OR	
Eligibility	**50%+** decline in gross receipts compared to same calendar quarter in 2019	**20%+** decline in gross receipts in current quarter or prior quarter compared to the same quarter in calendar year 2019
Qualified wages generally include all wages* if company has fewer than	**100** full-time employees	**500** full-time employees
Maximum credit	**$5,000** 50% credit on up to $10,000 of wages for the calendar year	**$21,000** 70% credit on up to $10,000 of wages per calendar quarter

*Does not include wages considered for purposes of credits allowed under FFCRA, TCDRA Section 303 Disaster Relief Retention Credit, or sections 41, 45A, 45P, 45S, 51, and 1396. Further, a recipient of a PPP loan cannot claim loan forgiveness with respect to any payroll costs" treat as "qualified wages" for employee retention credit purposes.
*Based on 2019 average under section 4980H Affordable Care Act guidelines for determining full-time employees

Employee Retention Credit, cont.

Potential Opportunities for Small/Midsize Companies

2021 credit

- Fewer than 500 full-time US employees in 2019
- Up to $7,000 per quarter, per employee
- Most straightforward path to eligibility is a 20% decline in global revenue for any of the following quarters, compared back to 2019

Decline in:	Eligible for:
Q4 2020	Q1 2021
Q1 2021	Q1 2021 and Q2 2021
Q2 2021	Q2 2021 and Q3 2021
Q3 2021	Q3 2021

Deadlines

- Statute of limitations
    - April 15, 2024, for 2020 claims
    - April 15, 2025, for 2021 claims
- 2 years to claw back erroneous refunds after payment
- Payroll providers often have earlier deadlines

Independent contractor/Employee Classification

Independent Contractor/Employee

Treatment

Employee

- Tax withheld via payroll
- Year-end wage statement
  - W-2
- Employee benefits

Self-employed

- Individual personally responsible for taxes
- 1099 reporting in the US
- Not eligible for various employee benefits

Independent Contractor/Employee

US Classification

IRS created 3 categories of considerations:

1. Behavior control
2. Financial control
3. Relationship of the parties

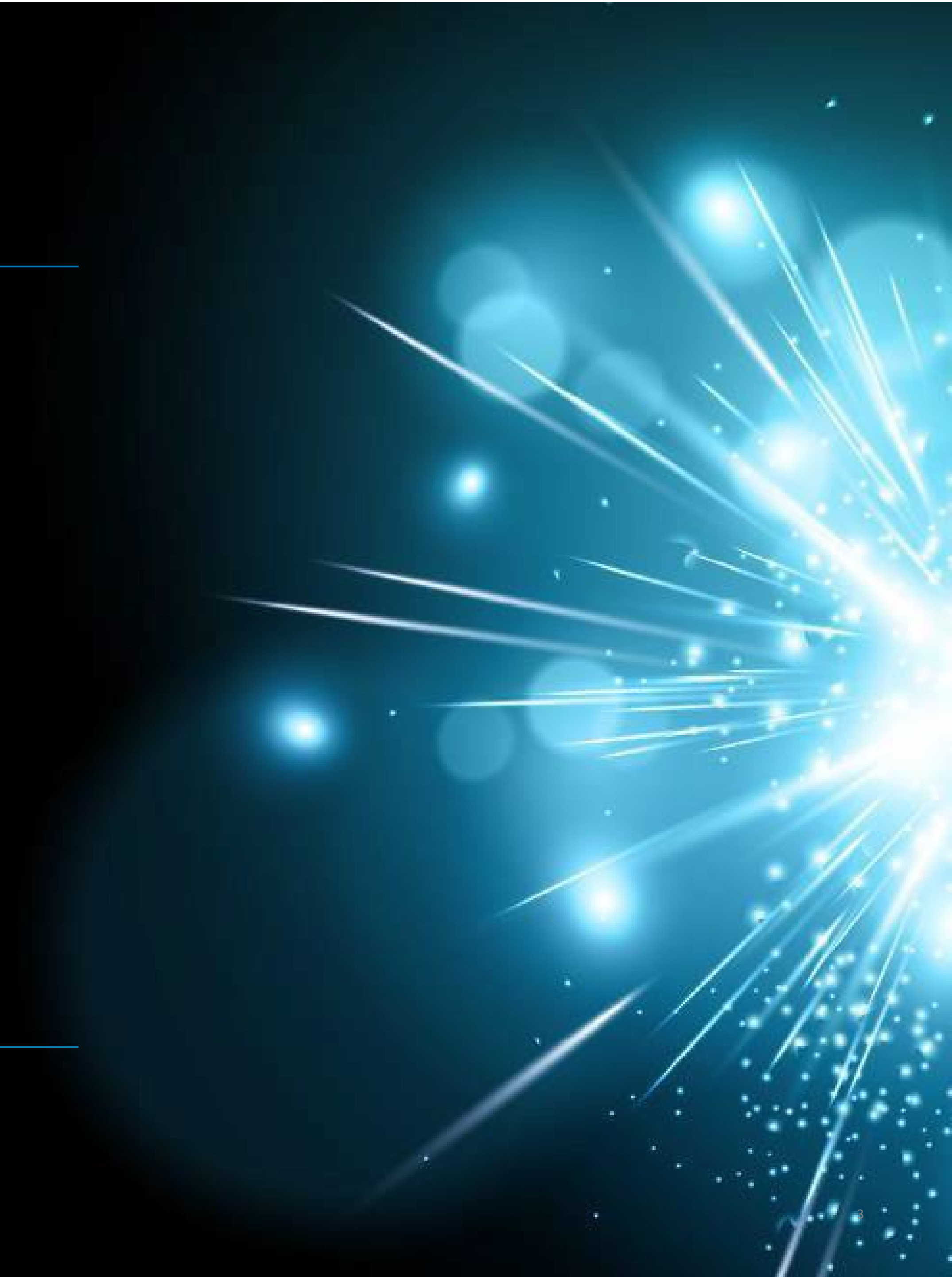
States Independent Contractor/Employee

State Classification

Divergence of state guidance:

- Common law
- ABC test
- Two prong test
- “Right to control” test

Remote Work



The tax implications of remote work

Many organizations are considering making remote work permanent for all, or parts of their workforce. What are the tax considerations of such a transition? And how can organizations address them?

Generally, any COVID-19 tax compliance relief for remote workers has been temporary in nature.

Companies will need to evaluate longer term remote working arrangements against existing regulatory rulesets, and assess and manage the impact of:

1

New filing requirements

New locations for corporate and employment tax filings

2

New withholding requirements

New employment tax requirements

3

Tax costs

Potential change in effective tax rates

4

Tax risk management

New compliance requirements

Tax and other departments will have a critical role to play in shaping remote work policy, but may also have a whole new stream of unforeseen work (retroactive corrections and ongoing compliance), requiring significant time and resources.

Remote work impacts for employers and employees

Key tax considerations

As organizations consider making remote work **more prevalent** for some of their workforce, what are the **tax considerations** for both employers and employees?

KEY CONSIDERATIONS

New withholding requirements	Analysis to determine if additional withholding is required both in the remote work location and COE rule state
Payroll registrations	May be required where employees are working remotely, and employer is not registered in the state/local payroll
Potential double taxation	Employees that work in states that do not recognize a tax credit for COE rules may be subject to double taxation
Tax risk management	New compliance requirements and expanded tracking
State Unemployment Insurance (SUI)	If the employee is localized to a new location, then the employer's SUI liability will likely change (could also be the case for remote work periods over 1 year)
Paid Family Leave (PFL) / State Disability Insurance (SDI)	New employer obligations may be triggered in relation to these obligations depending on which states an employee is working in
Travel and home working expense reimbursement	Careful attention is required to ensure tax exclusions can continue to operate for employee expenses incurred as a result of remote work
Tax reporting of deferred comp	Compensation sourcing and split payroll withholding may be required upon deferred compensation payout

State Income Tax Withholding – Requirements Overview

- For state withholding purposes, employers are typically subject to withholding/reporting based on where the employee is physically working, (unless a convenience of the employer test applies-see following slide for further details)
    - For example, an employee who lives in Illinois and works in Indiana is subject to Indiana withholding/reporting.
- However, as a result of COVID-19, many employees are now working remotely (i.e., outside their standard home office), either on a temporary or permanent basis.
    - Going back to our previous example, to the extent the Illinois resident begins working remotely from their home office, the employee is now subject to Illinois reporting/withholding.
- It’s the employer’s responsibility to track where each employee is performing services and failure to properly withhold/report creates a tax, penalty and interest obligation for the employer.
- To track employees, many employers will use a combination of time/expense systems, self-service Payroll/HR portals and employee pulse surveys.

State Income Tax Withholding – Reciprocity/Reverse Credits

- Currently, Arizona, California, Indiana, Oregon and Virginia are reverse credit states, which allow a personal income tax credit on the nonresident individual income tax return.
    - For example, a California resident who works in Arizona will claim a credit in Arizona for the income taxed by California. Thus, an employer can reduce the required Arizona withholding, to the extent California withholding is required.
- Many neighboring states have also entered into reciprocal agreements with one another, which allows employer to withhold/report only in the resident state (i.e., no work state withholding/reporting), assuming employees file the proper withholding certificates.

State Unemployment Insurance – Requirements

- State unemployment insurance (SUI) tax is normally reported to a single state, generally where the services are being performed by an employee.
- If there is reasonable expectation that an employee is working on a temporary basis (i.e., less than 1yr) in a state outside their regular work state, the employer should continue to report the SUI tax to the current state.
- Once there is a reasonable expectation that an employee is going to work remotely in a new state on a permanent basis, the SUI tax reporting should be changed to the new state.
- For any newly hired employees that are working exclusively remotely, the SUI tax should be reported to the remote work state.

‘Convenience of the employer’ rule and remote work

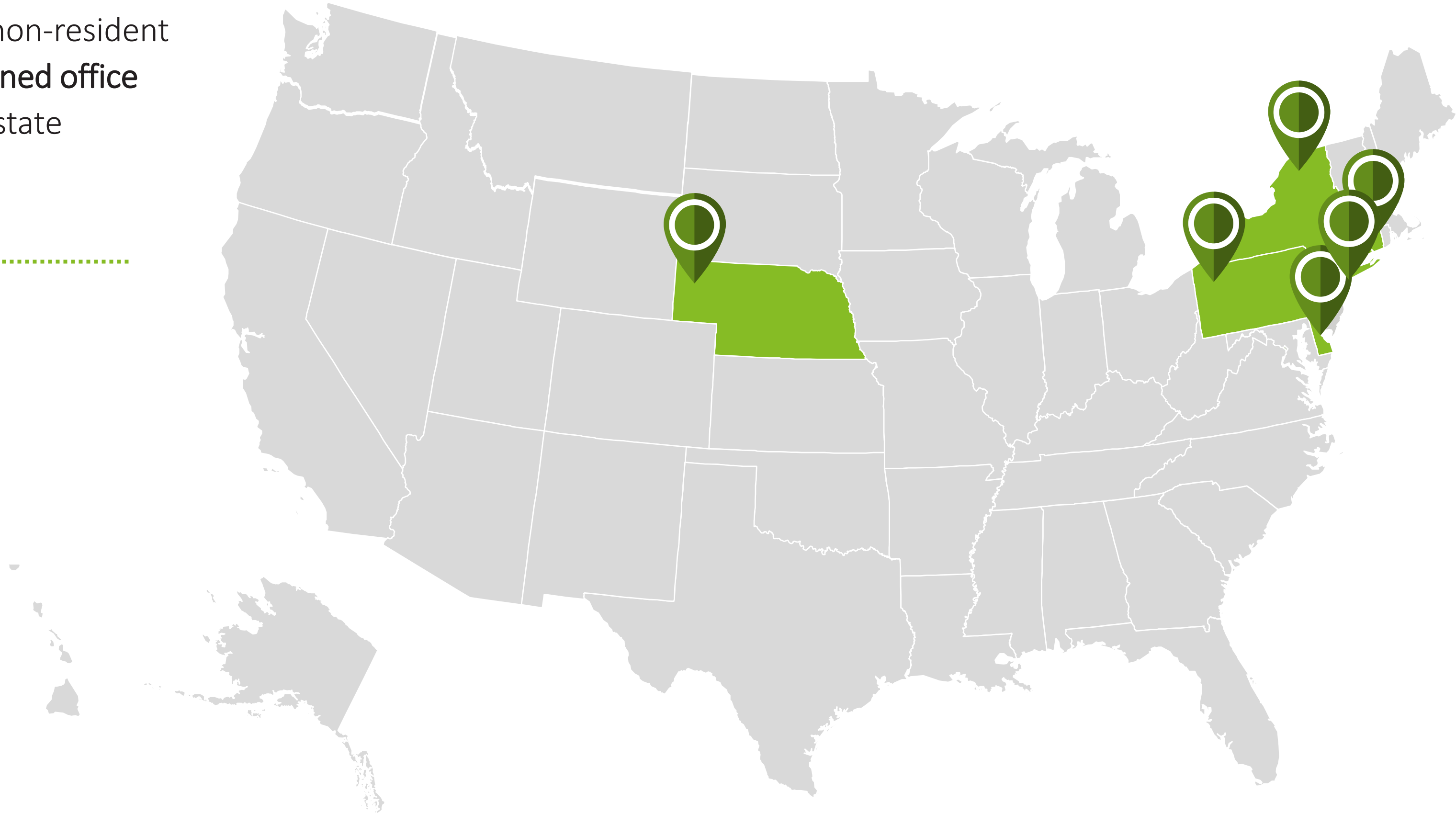
The impact of the ‘convenience of the employer’ rule on your workforce

‘CONVENIENCE OF THE EMPLOYER’ RULE… WHAT IS IT?

This rule deems that **days spent working from home** by non-resident employees are to be treated as a **day spent in their assigned office location**; as such the wages are subject to non-resident state withholding.

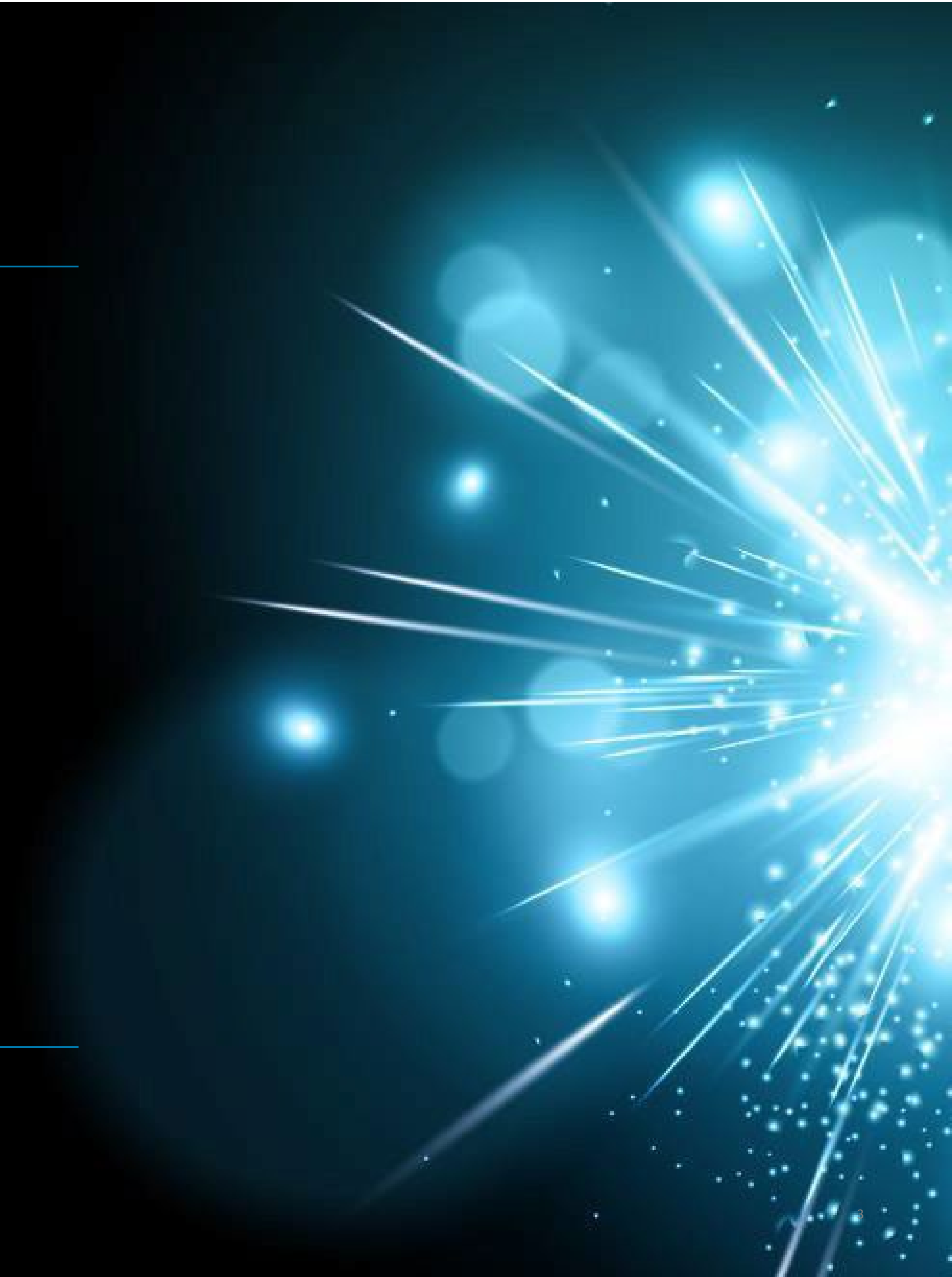
States that impose this rule include:

- Connecticut
- Delaware
- Nebraska
- New Jersey
- New York
- Pennsylvania



Remote Work – Alabama Ruling

- On March 8, 2023, the Alabama Tax Tribunal affirmed a Department of Revenue (DOR) individual income tax assessment for tax year 2020 against Taxpayer, who was working remotely from Idaho.
- The tribunal found that, even though Taxpayer abandoned his Alabama domicile, he was clearly engaged in a regular and legal employment with his employer, which was in Alabama, and he continued to transact business in Alabama via the employment.
- Therefore, Taxpayer’s income from his employment was a result of his conducting business in Alabama and was properly taxable to Alabama.
- In the ruling, the Judge essentially ignored the “test of physical presence” to allocate nonresident compensation (Ala. Admin. Code r. 810-3-14-.05) and the prior decision by the Administrative Law Division in Jonathan R. & Gail K. Smith v. State of Ala. Dept of Rev.
- Instead, the Judge used the “doing business” allocation standard that applies to entities.
- On May 19, 2023, in another case, the Alabama Tax Tribunal reaffirmed their position from March 8, 2023.



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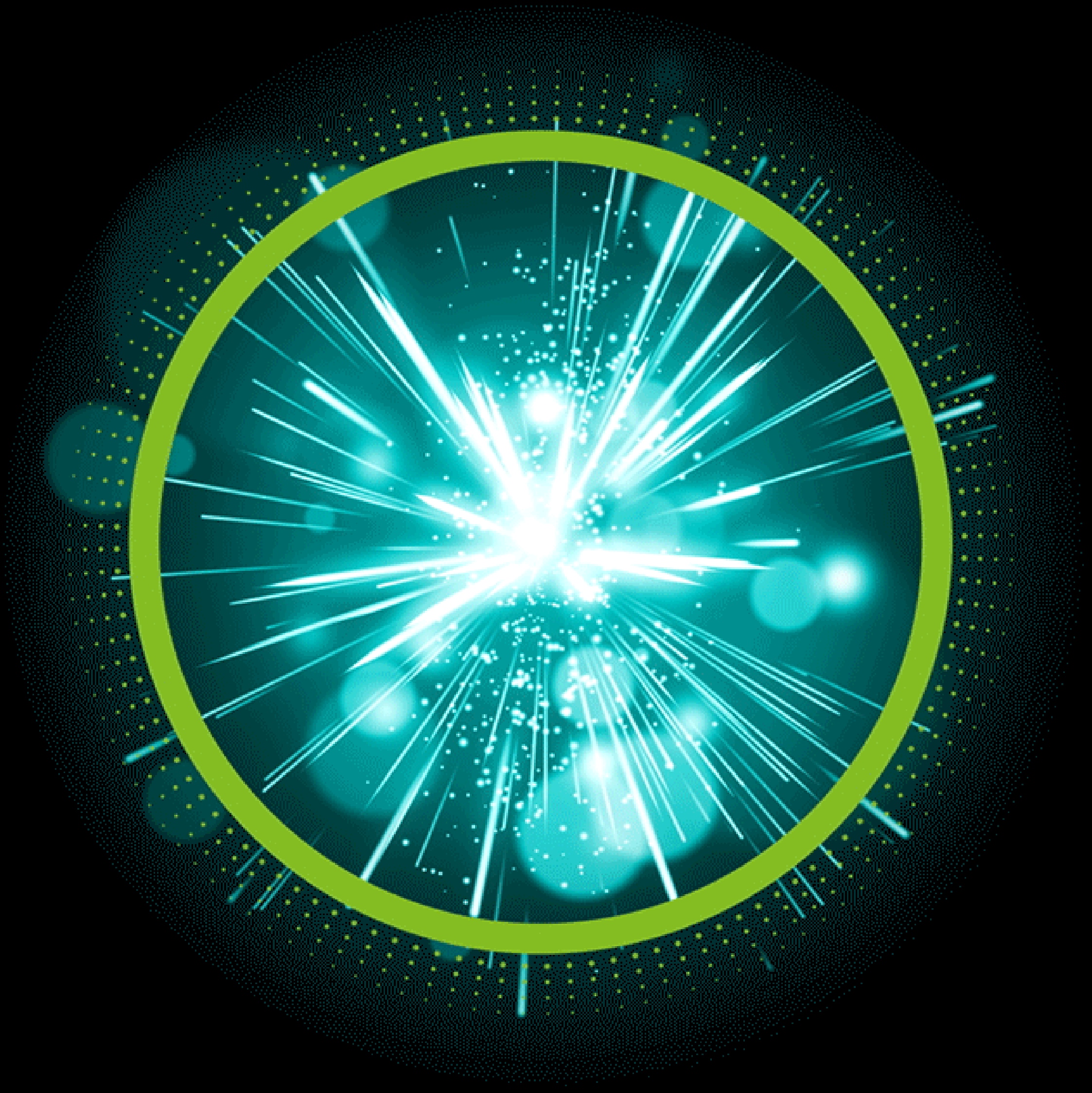

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