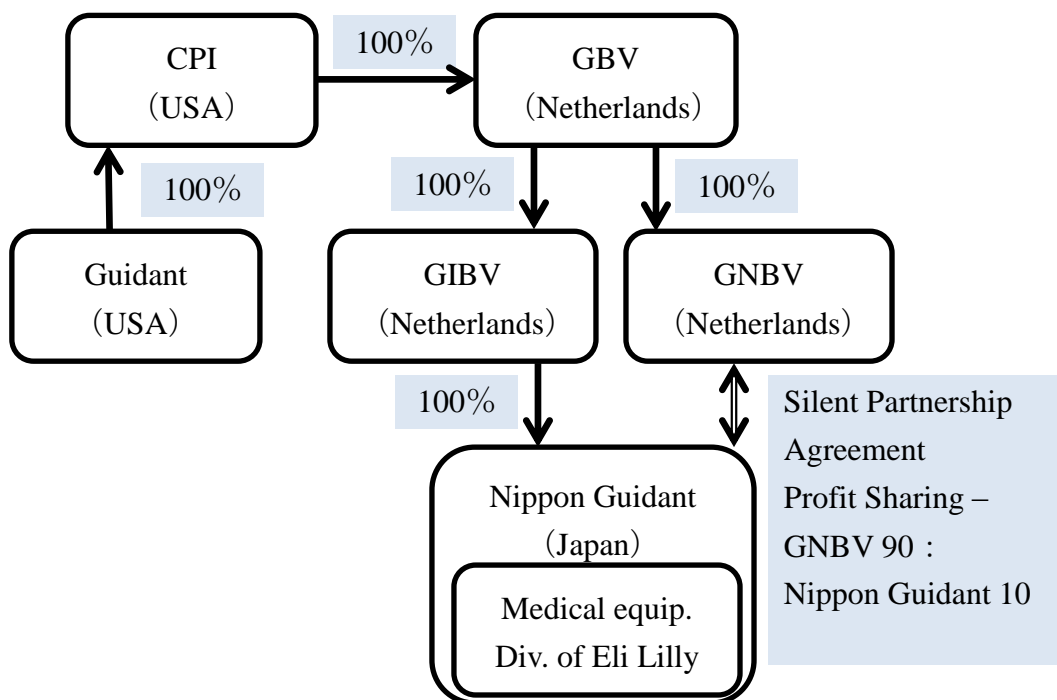


## Case 1 – Employing Technical Expertise in Tax Litigation

A subsidiary of Guidant Corporation in the United States established *Nippon Guidant* to acquire the medical equipment division of Eli Lilly Japan Ltd. in Japan. After the establishment and acquisition, a series of Dutch companies in the Guidant Group became the parent companies of *Nippon Guidant*, with GNBV, another Dutch company also in the Guidant Group, becoming a silent partner with *Nippon Guidant*, in the ownership of the medical division. Guidant Group’s stated intention was to avoid substantial taxation on the dividends generated by its newly acquired Japanese medical division, by using the Dutch intermediate companies and the silent partnership.

Diagram A: Dutch intermediate companies and a silent partnership used to avoid taxation on dividends



However, the tax avoidance scheme was rejected by the local tax authority inside Tokyo. As a result, a large tax assessment was levied against the profits distributed under the silent partnership to GNBV from *Nippon Guidant*. GNBV sued the national government of Japan to avoid the corporate tax that was imposed.

They engaged KLO and another firm (*Anderson Mori and Tomotsune*) as co-counsel to litigate this case. KLO was specifically chosen to provide highly specialized support for this case's legal tax matters, while the other firm handled the time-consuming, routine litigation. KLO's tax practice specialists have handled hundreds of cases that never reach the litigation stage, and so our technical experience was invaluable to the combined legal team. Together we argued, essentially, that while the intention of our client was to avoid taxation, if the formation of a silent partnership was valid under Japanese law, GNBV ought to be subject only to the normal tax burdens applied to silent partnerships, regardless of the overall intentions of any part of the corporate group in forming the partnership.

GNBV won its case at both the Tokyo District Court and Tokyo High Court, and ultimately prevailed over the Japanese government's appeal at the Supreme Court. Consequently, the intention of creating a tax avoidance scheme was de-emphasized in the course of tax enforcement in Japan, and the case pushed the Japanese government to change its national tax laws.